



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2539/2023/1198-503
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-121/2023-24 and 27.12.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	28.12.2023
(ङ)	Arising out of Order-In-Original No. 54/AC/D/2022-23/AM dated 17.03.2023 passed by The Assistant Commissioner, CGST, Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Manipal Technologies Limited (GSTIN: 24AABCM9516H1ZI), 39, Changodar Industrial Estate, Sarkhej Bavla Highway, Ahmedabad, Gujarat-382213

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s Manipal Technologies Limited, (GSTIN- 24AABCM9516H1ZI) having their principal place of business located at 39, CHANGODAR INDUSTRIAL ESTATE, Sarkhej Bavla Highway, Ahmedabad, Gujarat - 382213 (hereinafter referred to as "the appellant"), have filed appeal against Order-In-Original No.54/AC/D/22-23/AM, dated 17.03.2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division-IV, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Facts of the case in brief, are that the appellant is engaged in manufacturing Corrugated Sheets, Corrugated Box falling under HSN 4808 & 4819. During the audit conducted by the Department, it was observed that the Appellant did not agree with some of the audit objections, the objections on which they have filed the present appeal are as under:

- (i) Revenue Para 1- Wrong availment and utilization of ITC of CGST and SGST under IGST head and ITC of IGST under CGST & SGST head,
- (ii) Revenue Para 3- Excess availment and utilization of ITC due to difference between GSTR-2A and GSTR-3B,
- (iii) Revenue Para 4- Wrong availment and utilization of ITC on maintenance & Repair for other than Plant & Machinery,
- (iv) Revenue Para 5- Non reversal of ITC attributable to exempted supply of MEIS Licence as per Section 17(2) of the CGST Act, 2017,
- (v) Para 6- Short Payment of GST under RCM on GTA services received.

Therefore a show cause Notice was issued to the appellant asking them as to why:

"17.1 *Integrated Goods and Service Tax (IGST) amounting to Rs.3,98,949/-, should not be demanded and recovered from them, under the provisions of Section 74(1) of the CGST Act, 2017 read with provisions of Section 20 of IGST Act,2017. As the said Tax Payer have already paid IGST Rs.3,688/- under Section 73(5) of CGST Act,2017, why the said amount of Rs.3,688/- be not appropriated against the total IGST demanded as above;*

17.2 *Central Goods and Service Tax (CGST) amounting to Rs.34,32,473/-, should not be demanded and recovered from them, under the provisions of*

Section 74(1) of the CGST Act, 2017. As the said Tax Payer have already paid CGST Rs.1,852/- under Section 73(5) of CGST Act,2017, why the said amount of Rs.1,852/- be not appropriated against the total CGST demanded as above;

17.3 Gujarat State Goods and Service Tax amounting to Rs.34,32,473/- , should not be demanded and recovered from them under the provisions of Section 74(1) of the Gujarat State Goods and Service Tax Act, 2017. As the said Tax Payer have already paid SGST Rs.1,852/- under Section 73(5), why the said amount of Rs.1,852/- be not appropriated against the total SST demanded as above;

17.4 Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at 17.1 above, under the provisions of Section 50 of the CGST Act,2017 read with the provisions of Section 20 of the IGST Act. As the said Tax Payer have already paid IGST interest of Rs.3,147/- under Section 73(5) of CGST Act,2017, why the said amount of Rs.3,147/- be not appropriated against the total IGST interest liability;

17.5 Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at 17.2 and 17.3 above, under the provisions of Section 50 of the CGT Act,2017/ Gujarat GST Act,2017. As the said Tax Payer have already paid CGST interest of Rs.1,211/- and SGST interest of Rs.1,211/- under Section 73(5), why the said interest amounts be not appropriated against the total CGST and SGST interest liabilities;

17.6 Penalty should not be imposed upon them, under the provisions of Section 74(1) of the CGST Act,2017 read with Section 122(2)(b) of the CGST Act,2017 read with provisions of Section 20 of IGST Act,2017 on tax amount mentioned at 17.1 above;

17.7 Penalty should not be imposed upon them, under the provisions of Section 74(1) of the CGST Act,2017/ Gujarat GST Act,2017 read with Section 122(2)(b) of the CGST Act,2017 / Gujarat GST Act,2017 on tax amount mentioned at 17.2 and 17.3 above.”

3. The adjudicating authority passed the following order:

(i) I confirm the demand of IGST amounting to Rs.3,80,904/- (Rs.2,228/- +Rs. 3,74,988/- + Rs.3,688/-) under Section 74(1) of the CGST Act, 2017

read with SGST & IGST Act, 2017 and since the amount of Rs.3,688/- was already paid, I appropriate the same against the liability.

(ii)

(iii) I confirm the demand CGST of Rs.33,02,704/- and SGST of Rs.33,02,704/- total Rs.66,05,408/- (both CGST & SGST Rs.4,361/- + 28,72,020/- + 3,678/- + 1,852/- + 4,20,793/-) under section 74(1) of the CGST Act, 2017 read with SGST Act, 2017 and since the amount of CGST of Rs.1,852/- and SGST of Rs.1,852/- were already paid, I appropriate the same against the liability;

(iv) I drop the demand of CGST of Rs.1,29,769/- (Rs.30,639/- + 17,865/- + 81,265/-) and SGST of Rs.1,29,769/- (Rs.30,639/- + 17,865/- + 81,265/-) under Section 74(1) of the CGST Act, 2017 read with SGST Act, 2017 as discussed at para 7.2, 7.6 and 7.7 supra;

(v) I confirm the demand of interest under Section 50 of the CGST Act, 2017 read with SGST & IGST Act, 2017 on the amount at (i) and (iii) above and since the amount of Rs.3,147/- towards their interest liability on IGST has been paid and Rs.2,422/- (CGST Rs.1,211 and SGST Rs.1,211/-) has been paid towards their interest liability on CGST & SGST, I appropriate the same against the liability;

(vi) I impose penalty of Rs.69,86,312/- (IGST Rs.3,80,904/- , CGST Rs.33,02,704/- and SGST Rs.33,02,704/- under section 74(1) read with Section 122 (2) (b) of the CGST Act, 2017 and the respective section of SGST & IGST Act, 2017.

4. Being aggrieved with the impugned order, the appellant preferred appeal on the following grounds:

- The Appellant is eligible to avail the credit of Rs.8720.00 under CGST/GGST but inadvertently availed under IGST. Similarly, credit of Rs.2,228.00 was eligible under IGST but availed under CGST/GGST head. As a matter of fact, whole exercise is revenue neutral as amount of Rs.10,948.00 was an eligible credit and same has not been disputed. It is well settled proposition of the law that when situation is revenue neutral no demand with interest and penalty can be proposed or made. Therefore, it would be incorrect to demand the reversal of the same with interest and penalty.
- Considering the amount involved in this para, we have paid the same Rs.10,950/- along with interest and penalty to avoid further litigation. The error was not deliberate. There was no intention to gain any benefit. It is only interchange of account head. Hence, we request you to kindly drop this para in full. Payment made through DRC-03 is enclosed herewith as Annexure-9.

- The item wise reconciliation reveal that the amount of ineligible ITC of Rs.61,19,028.00 is not correct and the correct amount of ITC that should have been considered for purpose of impugned SCN/OIO is Rs.2,98,439.00. The breakup of the ITC of Rs.2,98,439.00 is as under:

ITC	July-17 to March-18 (Rs.)	2019-19 (Rs.)	2019-20(Rs.)	Total (Rs.)
IGST	11398	963	23644	36005
CGST	81073	17055	33089	131217
SGST	81073	17055	33089	131217
Total	173544	35073	89822	298439

- Thus, ITC amount for the revenue para 3 of the impugned SCN/OIO should have been Rs.2,98,439.00. The year wise list of invoices covered for Rs.2,98,439.00 is annexed hereto and marked as **Annexure-10**.

- The learned Adjudicating Authority failed to appreciate the method followed by the Appellant in determining the excess ITC and brush aside the contention made in the reply to the impugned SCN. The Appellant strongly submit that the department has inflated excess ITC amount without any in depth verification and therefore same cannot be considered as excess ITC.

- Since the correct difference of ITC between GSTR-2A & GSTR3B is Rs.2,98,439.00, the Appellant would like to rely upon CBIC circular no.183/15/2022-GST dated 27.12.2022 to demonstrate that the ITC amount of Rs.2,98,439.00 is eligible ITC as per the guidelines lay down in the said circular.

- As per the clarification contained in the aforesaid circular, a proper officer is required to ascertain following.

- Whether registered person is in possession of the tax invoice or debit note issued by the supplier;
- Whether the goods or services covered in the tax invoice has been received by the registered person;
- Whether the payment for value of supply including tax amount is paid to the supplier.

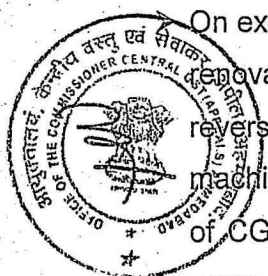
- The Appellant would like to place following illustrative documentary evidence stipulated in aforesaid circular to demonstrate that the Appellant is eligible for the ITC of Rs.2,98,439.00.

- Supplier invoices towards supply of goods & services.
- Goods Receipt Note{GRN} towards receipt of goods.
- Purchase vouchers towards receipt of services
- Supplier ledger towards payment of invoices.

- The aforesaid circular further clarify that the proper officer shall also ascertain whether the tax amount for which ITC has been availed has been paid by the supplier. For that purpose, the proper officer shall ask registered person to obtain a certificate from supplier if the amount of difference in ITC is upto Rs.5 lakhs certifying that the supplies in respect of said invoices have been actually made and tax on said supply has been paid by the supplier.
- As the total amount of ITC is less than Rs.5.00 lacs, Appellant would like to furnish some of the certificate/declaration issued by the respective suppliers towards payment of tax made by them. Said certificates/declaration is annexed hereto and marked as Annexure-12.
- The Appellant would like to place on records that the ITC of Rs.7356.00 availed is not for repairs and maintenance of immovable property and like to submit invoice wise details of items procured and their use thereof. A detailed list with comments for each invoice for the year 2018-19 and 2019-20 is enclosed herewith as Annexure-13.

On examination of the same it can be seen that ITC does not pertain to construction, renovation, additions, alteration and repairs of immovable property and hence no reversal is warranted. The ITC availed in the instant case is for repairs of plant and machinery and general repairs which are excluded from purview of Section 17(5)(d) of CGST/GGST Act, 2017. Therefore, Appellant is eligible for input tax credit and same should be allowed.

- However, considering the amount involved in this Para, we have paid the same - Rs.7356/- along with Interest and Penalty, as per OIA, to avoid further litigation. Hence, request you to kindly drop this para. in full The payment made through DRC-03 is enclosed herewith as Annexure-14.
- In the impugned SCN/OIO department seeks to recover penalty of Rs.7392.00 towards reversal of ITC in respect of exempted supply as per Section 74 read with Section 122 (2) (b) of CGST/GGST Act, 2017.
- In this regard, Appellant would like to submit that as per Section 73 (5) of the CGST/GGST Act, 2017 no SCN is required to be served when ITC with interest is paid before issuance of SCN and therefore in instant case penalty is not imposable. Further, for the period in question Noticee has not reversed ITC inadvertently without any mala fide intention.
- The amount involved in the present case is insignificant for the department to invoke Section 74 of CGST/GGST Act, 2017 and moreover facts related to same are suppressed. It is well settled law that the suppression of facts cannot be established when the show cause notice is issued on the basis of the records audited by the department.



- However, to avoid further litigation, considering the amount, we have paid the Penalty amount - Rs.7,392/ as per OIO. Kindly drop this para in full. The payment details made through DRC-03 is enclosed herewith as Annexure-15.
- The Appellant would like to submit that there is no short payment of GST under reverse charge mechanism on the GTA services during the period in question. The amount of Rs. 13,51,312.00 for year 2017-18, Rs.1,02,66,819.00 for the year 2018-19 and Rs.59,28,209.00 for the year 2019-20 identified by department in the impugned SCN does not pertain to GTA and therefore GST on RCM basis is not applicable. To support the same Appellant would like to submit the details of amount identified by the department as GTA services in below table.

Details	2017-18	2018-19 (Rs.)	2019-20 (Rs.)
GTA amount identified during Audit	1351312	10266819	5928209
Less : Amount pertaining to pre-GST (Period April-June-17	65032	Nil	Nil
Less: Provision entry only for accounting purpose	Nil	1561313	Nil
Less : Amount towards auto expenses	7240	33020	23230
Less : ocean freight paid on export shipment	1279033	8598941	5899517
Balance Amount	7	73545	5462



- From the above table it can be seen that major amount pertaining to the ocean freight on exports which does not get covered under the GTA. Further, Appellant would like to furnish the invoices pertaining to the ocean freight for the relevant period along with the list and same is enclosed herewith as Annexure-16.
- From the above it is evident that there is no short payment of GST under reverse charge mechanism and accordingly the question of making the payment of Rs. 4,38,658.00 under CGST and Rs 4,38,658.00 under SGST along with the interest and penalty does not arise.
- The impugned SCN/OIO has been issued under Section 74 of CGST/GGST Act, 2017 and it has been alleged in the SCN/OIO that the Appellant has suppressed facts from the tax authorities regarding non-payment of tax/reversal of ITC and accordingly, the penalty equal to demand of tax has been imposed in impugned SCN/OIO.
- The Appellant submits that the impugned SCN/OIO issued under Section 74 ibid is incorrect in law as well as on facts since there is no suppression of facts.

- The allegation made in impugned SCN/010 about suppression of facts is without any merit and there is no iota of evidence placed in the impugned SCN/010 to demonstrate that the facts were suppressed.
- The Appellant submits that the impugned SCN/010 issued under Section 74 ibid on the pretext of suppression of facts without leading any evidence of positive act of suppression is untenable and the same is liable to be set aside.
- The Appellant submits that the impugned SCN/OIO the audit party has demanded GST on the basis of the information contained in the balance sheet and other financial records of the Appellant. Therefore, there cannot be any suppression of facts, or mis- statement or non-submission of any information to the department. It is settled law that when the demand is based on statutory records, then there cannot be any question of suppression.
- in the impugned SCN/010 department has not placed any evidence to demonstrate the suppression of facts. Therefore the proposal to impose penalty equal to GST amount is bad in law.
- It is submitted that the penalty cannot be invoked in each and every case and it is important on part of the revenue to prove the existence of the element of mens rea on part of the Appellant while adopting the above said tax position. It is thus submitted that the penalty can be imposed only when the department succeeds in establishing that the Appellant has intentionally evaded the payment of tax. It is pertinent to note here that in the instant case there was no intention on part of the Appellant to evade the payment of tax and department has failed to prove existence of any such intention on part of the Noticee.
- The Appellant submit that it is well-settled Law that the interest is payable only when there is contravention of the provisions of a Statute. In present SCN/010, there is no contravention of law and same is established based on reply as stated in the preceding paragraphs. Therefore, when the demand of GST is not sustainable, the question of demand of interest does not arise.
- The Appellant further submit that interest is compensatory in character and the same is payable only when the payment of any tax has been withheld or is due and payable. It is submitted that interest is merely an accessory to the principal amount and if the principal amount itself is not payable then interest is also not payable. Therefore, demand of interest is not sustainable.

Further, the appellant has prayed that the impugned order be set aside by giving consequential relief.

PERSONAL HEARING:

5. Personal hearing in this case was held on 06.10.2023. Shri Venkatraman Prabhu, Manager-Taxation appeared in person, on behalf of the appellant as authorized representative. He submitted that only para 2 of the statement of facts is contested. In respect of para 3, the Audit officers have taken the figures from GSTR-2A without reconciliation of the Invoices. Reconciled figures have been submitted in Annexure-19. He requested 15 days' time reconciled GSTR-2A. (Amount of Rs.5820589/-). For the remaining amount of Rs.298439/- declarations for Rs.234921/- as requested under Circular No.183 of 2022 has also been submitted. Remaining amount of Rs.63518/-, they are in process to obtain, but still not received.

As regards to point No.6, it is submitted that during PH only sample copies of invoices were submitted stating that GST has already been charged by CHA on clearing and forwarding charges but the Ld. Adjudicating authority has only given benefit of sample invoices. Now they have submitted all such invoices (Annexure-16).

In view of the above, he requested to allow the appeal.

ADDITIONAL SUBMISSIONS:

Further, the Appellant has submitted detailed reconciliation statement of invoices claimed in GSTR-3B matching with GSTR-2A and the comparison report of ITC claimed in GSTR-3B vis-avis GSTR-2A for the relevant period which is generated from the GST portal.

6 DISCUSSION AND FINDINGS:-

6.1 I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal as well as Additional submissions at the time of personal hearing and find that the appellant is mainly contesting with the Demand confirmed in respect of the following:

- (A) Excess availment and utilization of ITC during the period 2017-18 to 2019-20 due to difference between GSTR-2A and GSTR-3B (Revenue Para 3)
- (B) Short Payment of GST under RCM on GTA services received (Revenue Para 6)

As for rest of the demand, the appellant has already paid the Tax demanded along with interest and penalty imposed vide the impugned OIO, and as they do not wish the same to be contested, therefore the said paras are not taken up further for deciding the issues therein.

6.2 So the issue to be decided in the present appeal is:

Whether the impugned order passed by the adjudicating authority with regard to (A) Excess availment and utilization of ITC due to difference between GSTR-2A and GSTR-3B, of Rs.28,72,020/- CGST + Rs.28,72,020/- SGST + Rs.3,74,988 IGST (Total Rs.61,19,028/-) during the period 2017-18 to 2019-20 and (B) Short Payment of GST under RCM on GTA services received of Rs.4,38,658.00 under CGST and Rs.4,38,658.00 under SGST (Total Rs.8,77,316/-), for the period July-2017 to March-2020, is proper or otherwise?

6.3. At the foremost, I observed that in the instant case the "impugned order" is of dated 17-03-2023 and the same is received by the appellant on 30.03.2023 and the present appeal is filed on 05.07.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three (3) months from the receipt of the impugned order. I observe, that the impugned order dated 17.03.2023 is received by the appellant on 30.03.2023 therefore the appeal was required to be filed on or before 30.06.2023. However, in the instant case the appellant has filed the present appeal on 05.07.2023 i.e. delay of less than one month from the due date. Further, I also find that in terms of provisions of Section 107(4), the appellate authority has powers to condone the delay of only one month in filing of appeal over and above the prescribed period of three months, if sufficient cause is shown. Accordingly, I find that there is an inordinate delay of only 5 days in filing the appeal over and above the normal period of three months. Thus, I find that the present appeal has been filed beyond the time limit as prescribed under the Section 107(1) of the CGST Act, 2017, however, filed within the condonation period (i.e. considering one month condonation period) as per Section 107(4) of the CGST Act, 2017. I find that the reason expressed by the Appellant for delay in filing appeal in the appeal memo dated 05-07-2023, is that since there was a technical issue in GSTN portal they were unable to file the appeal electronically and accordingly there was a delay, is condonable. Therefore, as per the provisions of Section 107(4) of the CGST Act, 2017, I condone the delay of less than one month in filing appeal by the appellant and consider the appeal as filed within the time. Accordingly, I am proceeding to decide the case.



6.4 I observed that, the demand of GST has arisen with regard to (A) Excess availment and utilization of ITC of Rs.28,72,020/- CGST + Rs.28,72,020/- SGST + Rs.3,74,988 IGST (Total Rs.61,19,028/-) due to mis-match in the GSTR-2A and GSTR-3B for the period 2017-18 to 2019-20. I also observe that the Appellant themselves have shown the said difference under GSTR-9 for the relevant periods, that they have undertaken detailed reconciliation and the difference were matched except Rs.2,98,439/-. Further, they have submitted copy of invoices, purchase voucher, payment ledger and certificate from the supplier, as per CBIC Circular No.183/15/2022-GST dated 27.12.2022, however, the adjudicating authority did not find the said documents as complete for each supply/transaction and confirmed the said demand.

6.5 I also observe, that the appellant has submitted the item wise reconciliation revealing that the amount of ineligible ITC of Rs.61,19,028/- is not correct and the correct amount of ITC that should have been considered for purpose of impugned SCN/OIO is Rs.2,98,439.00. The breakup of the ITC of Rs.2,98,439.00 as submitted by the appellant is as under:

ITC	July-17 to March-18 (Rs.)	2019-19 (Rs.)	2019-20(Rs.)	Total (Rs.)
IGST	11398	963	23644	36005
CGST	81073	17055	33089	131217
SGST	81073	17055	33089	131217
Total	173544	35073	89822	298439

6.6 The appellant has further submitted year wise list of invoices not matched with GSTR-2A along with supporting documents related to ITC availed. The declarations as per the Circular No.183/15/2022-GST dated 27.12.2022 to the extent of amount of Rs.2,34,921/- has been submitted and for balance amount Rs.63,518/-, the appellant has submitted that they are in process of obtaining the same from the respective buyers.

6.7 I find that for the mis-match of ITC between GSTR-2A and GSTR-3B, for the year 2017-18 and 2018-19 has been clarified by the CBIC vide Circular No. 183/15/2022-GST dated 27.12.2022.

Further, vide Circular No. 193/05/2023-GST dated 17.07.2023, further clarification has been issued in the matter.

W.e.f. 9.10.2019, the rule 36(4) of Central Goods and Services Tax Rules, 2017 allowed availment of Input tax credit by a registered person in respect

of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility (IFF), to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 of CGST Act in FORM GSTR-1 or using the IFF. The said limit was brought down to 10% w.e.f. 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021. The said rule was intended to allow availment of due credit in cases where the suppliers may have delayed in furnishing the details of outward supplies. Such availment of input tax credit was subject to the provisions of clause (c) of sub-section (2) of section 16 of the CGST Act which provides that ITC cannot be availed unless tax on the said supply has been paid by the supplier.

Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act, ITC can be availed only up to the extent communicated in FORM GSTR-2B.

In this context, it is mentioned that rule 36(4) of CGST Rules was a facilitative measure and availment of ITC in accordance with rule 36(4) was subject to fulfillment of conditions of section 16 of CGST Act including those of clause (c) of sub-section (2) thereof regarding payment of tax by the supplier on the said supply.

6.8 In view of the above, I am of the view that the demand confirmed vide the impugned order with regard to Excess availment and utilization of ITC during the period 2017-18 to 2019-20 due to difference between GSTR-2A and GSTR-3B, can be allowed as per the clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period for FY 2017-18 and 2018-19 and 01.04.2019 to 31.12.2021 issued by the CBIC vide Circular No. 183/15/2022-GST dated 27.12.2022 and vide Circular No. 193/05/2023-GST dated 17.07.2023 respectively and the applicable provisions of CGST Act, 2017 and Rules made there under.

6.9 I find that, as the appellant have submitted the documents before me, with regard to Excess availment and utilization of ITC during the period 2017-18 to 2019-20 due to difference between GSTR-2A and GSTR-3B e.g. year wise List of invoices, supporting documents etc., the impugned order confirming Demand on Excess availment of ITC of Rs.61,19,028/-) under

Section 74(1) of the CGST Act, 2017 read with the provisions of IGST Act, 2017 along with interest and penalty needs to be set aside in terms of Circulars and provisions as explained above.

6.10 Further as regards to (B) Short Payment of GST under RCM on GTA services received of Rs.4,38,658.00 under CGST and Rs.4,38,658.00 under SGST Total Rs.8,77,316/-), for the period July-2017 to March-2020, I observe that the adjudicating authority has dropped the demand of Rs.35,730/- (Rs.17,865/- CGST + Rs.17,865/- SGST) pertaining to Ocean freight paid on Export shipment on the invoices amounting to Rs.7,14,630/- for the year 2019-20 produced before them. Hence the demand of Rs.4,20,793.00 under CGST and Rs.4,20,793.00 under SGST, Total Rs.8,41,586/-) has been confirmed vide the impugned OIO.

6.11 In this regard, the contention of the Appellant is that there is no short payment of GST under reverse charge mechanism on the GTA services during the period in question. The amount of Rs.13,51,312.00 for year 2017-18, Rs.1,02,66,819.00 for the year 2018-19 and Rs.59,28,209.00 for the year 2019-20 identified by department in the impugned SCN does not pertain to GTA and therefore GST on RCM basis is not applicable. In support of the same, the Appellant has submitted the details of amount identified by the department as GTA services in their grounds of appeal, which are as under:

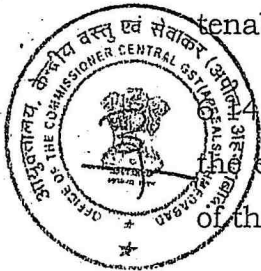


Details	2017-18	2018-19 (Rs.)	2019-20 (Rs.)
GTA amount identified during Audit	1351312	10266819	5928209
Less : Amount pertaining to pre-GST (Period April-June-17	65032	Nil	Nil
Less: Provision entry only for accounting purpose	NIL	1561313	Nil
Less : Amount towards auto expenses	7240	33020	23230
Less : ocean freight paid on export shipment	1279033	8598941	5899517
Balance Amount	7	73545	5462

6.12 Further on perusal of the list of invoices pertaining to Ocean Freight paid on Export shipment for the year 2017-18, 2018-19 and 2019-20 submitted by the Appellant, it has been observed that the below mentioned amount has been shown against the ocean freight.

Details	2017-18 (Rs.)	2018-19 (Rs.)	2019-20 (Rs.)
Ocean freight amount on export	1030936	7997673	5899517

6.13 From the above, I observe that the appellant themselves are not able to give correct figures of the Ocean freight paid on export shipment. The figures provided in the Grounds of appeal are different than the figures as provided in the list furnished along with copies of invoices. Further, as regards amount pertaining to pre-GST period i.e. April-June-17 amounting to Rs.65,032/- and provision entry only for accounting purpose of Rs.15,61,313/- during the year 2018-19, the appellant has not produced any supporting documents before me. Further, for the amount towards auto expenses paid and the balance amount as shown in the table at para 6.11 above also, the appellant has neither produced any supporting documents nor any payment details of the GST paid, before me. In the circumstances, the contention of the appellant that there is no short payment of GST under reverse charge mechanism and accordingly question of making the payment under CGST and SGST along with interest and penalty does not arise, is not tenable.



From the above I am of the view that the appeal is allowable only to the extent of any supporting documents are provided subject to verification of the same by the proper officer.

6.15 In view of the above, I find that as the appellant have submitted the documents before me, with regard to Excess availment and utilization of ITC of Rs.28,72,020/- CGST + Rs.28,72,020/- SGST + Rs.3,74,988 IGST (Total Rs.61,19,028/-) which is due to mis-match in the GSTR-2A and GSTR-3B for the period 2017-18 to 2019-20. The demand confirmed under Section 74(1) of the CGST /GGST Act, 2017 read with Section 20 of the IGST Act, 2017 along with interest and penalty needs to be set aside in terms of Circular No.183/15/2022-GST dated 27.12.2022 and No. 193/05/2023-GST dated 17.07.2023 and the applicable provisions of CGST Act, 2017 and Rules made there under.

6.16 I also find, that the appellant has submitted documents before me with regard to the demand confirmed against Short Payment of GST under RCM on GTA services received of Rs.4,38,658.00 under CGST and Rs.4,38,658.00 under SGST (Total Rs.8,77,316/-), for the period July-2017 to March-2020 under Section 74(1) of the CGST/GGST Act, 2017 read with

Section 20 of the IGST Act, 2017 along with interest and penalty, also needs to be set aside subject to verification of the documents.

7. In view of above discussions, I allow the appeal of the "Appellant" to the above extent, with a direction to submit all the relevant documents/submissions before the adjudicating authority for verification of the facts, who shall verify the facts as directed above and pass order accordingly. The adjudicating authority may also take up the matter with concerned jurisdictional officer as provided in Circular No.183/15/2022-GST dated 27.12.2022 and No. 193/05/2023-GST dated 17.07.2023, if needed.

8. The impugned order passed by the adjudicating authority is modified to the above extent.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal filed by the "Appellant" stands disposed of in above terms.

Adesh Kumar Jain
27/11/2023
(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

Date : .12.2023

ATTESTED.

Sunita D. Nawani
(SUNITA D. NAWANI)
SUPERINTENDENT
CGST & C.EX.(APPEALS),
AHMEDABAD.

By R.P.A.D.

M/s Manipal Technologies Limited,
39, CHANGODAR INDUSTRIAL ESTATE,
Sarkhej Bavla Highway, Ahmedabad,
Gujarat - 382213 (GSTIN- 24AABCM9516H1ZI).

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-IV Ahmedabad-North Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
6. Guard File/P.A. File.



