



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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DIN NO.: 20240364SW000001590A

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/3544/2023 13607 - 3608
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-158/2023-24 and 22.03.2024
(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	28.03.2024
(ङ)	Arising out of Order-In-Original No. MP/06/Dem/AC/23-24/VSN dated 25.09.2023 passed by The Assistant Commissioner, CGST, Division-II, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Sabras (Legal Name: Vaibhav Harshadray Doshi HUF) (GSTIN: 24AAKHV9788C1ZI) Nr. Krishna Comm, B/h Madhupura Commercial Center, Madhupura Chowk, Ahmedabad, Gujarat-380001

	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.
	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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE:

M/s. Sabras ( Legal Name: Vaibhav Harshadray Doshi (HUF)), Nr.KRISHNA COMM, B/H MADHUPURA COMMERCIAL CENTER, MADHUPURA CHOWK, AHMEDABAD, Ahmedabad, Gujarat, 380001 (GSTIN 24AAKHV9788C1ZI) (hereinafter referred to as "the appellant"), have filed appeal against Order-In-Original MP/06/Dem/AC/23-24/VSN, dated 25.09.2023 (hereinafter referred to as the "impugned order" ) passed by the Assistant Commissioner, CGST & C.Ex., Division-II, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Facts of the case in brief, are that the appellant are engaged in the business of trading of food and industrial grade chemicals. DGGI, Surat Zonal Unit (SZU) has unearthed a large ITC fraud of GST involving fraudulent availment of ITC of around Rs.194 Crores. During the investigation, it was revealed that the GST Invoices were issued by 04 shell companies/bogus firms viz. M/s Shubham Traders (GSTIN : 24GKPP8476H1ZU), M/s Darsh Exporters (GSTIN : 24AFMPT1945C1ZG), M/s Balaji Enterprise (GSTIN : 24AGJPM8879L1ZI) and M/s. Sunrise Enterprise (GSTIN : 24AEKPJ2569P1ZX). These shell companies/bogus firms were not having any genuine business activity and they are registered under GST with sole aim of passing ITC in fraudulent manner without actual supply of the goods mentioned in the invoices issued by them. ITC availed by the recipients against the invoices issued by the said shell companies/bogus firms is inadmissible as per Section 16(2) (a) and (b) of the CGST Act, 2017.

It was found that M/s Sabras, i.e. the appellant had availed the ITC on the basis of invoices issued by M/s Balaji Enterprise (GSTIN: 24AGJPM8879L1ZI). Based on the information, a search was carried out at the premises of the appellant on 24.02.2020, it was revealed that the appellant had availed ITC of Rs.39,47,446/- without actual receipt/movement of goods from M/s Balaji Enterprise. Shri Harshadray Doshi, in his statement dated 24.02.2020 stated that they had received goods against the invoices issued by M/s Balaji Enterprise. Further information from CGST & CEX. Bhiwandi Commissionerate, that M/s D S Chem (GSTIN : 27AGYPV2135M1ZH) could not be located at its principal place of business and M/s D S Chem is a fake entity created to pass input tax credit without actual supply of goods. It was found that the appellant had availed input tax credit of Rs.31,320/- without actual receipt of

goods/movement of goods from M/s D S Chem. From the GSR-2A for the period September-2018 to February-2020, it has been noticed that the taxpayer had availed ITC of Rs.39,78,766/- on the strength of 39 invoices issued between 17.09.2018 to 08.02.2020 by M/s Balaji Enterprise and M/s D S Chem, involving total GST of Rs.39,78,766/- (IGST of Rs.31,320/- CGST Rs.19,73,723/-, SGST Rs. 19,73,723/-).

Therefore, a show-cause-notice was issued to the Appellant as to why?

*"(i) ITC amounting to Rs.39,78,766/- [Rs.31,320/- (IGST)+ Rs.19,73,723/- (CGST) + Rs 19,73,723/- (SGST)], should not be disallowed and recovered along with equivalent penalty from the taxpayer under the provisions of sub-section (1) of Section 74 of the Central Goods and Services Tax Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017, Section 20 of the Integrated Goods and Service Tax Act, 2017 and;*

*(ii) interest should not be charged and recovered from them, under the provisions of Sections 50(1) of the CGST Act, 2017 read with Section 20 (xxv) of the Integrated Goods and Service Tax Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017 on the proposed demand at (i) above ;*

*(iii) penalty should not be imposed on them, under the provisions of Sections 122(1) of the CGST Act, 2017 read with the provisions of Sections 122(2)(b) of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017 for the above contraventions; and*

*(iv) penalty should not be imposed on them, under the provisions of Sections 122(1)(vii) of the CGST Act, 2017 read with the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017 for the above contraventions;*

*Shri Vaibhav Harshadray Doshi (HUF), proprietor of the appellant is called upon to show cause as to why penalty should not be imposed on him under the provisions of Section 122(3) of the CGST At, 2017 read with the corresponding entry of Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017 for abets or aids the offence as specified in Section 122(1)(vii)"*

3. The adjudicating authority passed the following order :

(a) I disallow the ITC amounting to Rs.39,78,766/- [Rs. 31,320/- IGST) + Rs.19,73,723/- (CGST) + Rs 19,73,723/- (SGST)] under Section 74 (1) of the

Central Goods Services Tax Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017.

(b) I order to recover Interest on Rs.39,78,766/- at as applicable from the date of taking ITC till the date of actual payment, under Section 50(1) of the CGST Act, 2017 read with Section 20 (xxv) of the Integrated Goods and Service Tax Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Thx Act, 2017.

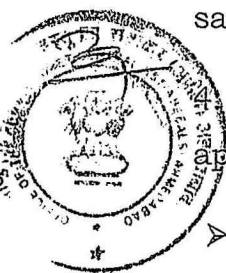
(c) I impose a penalty of Rs.19,73,723/- under Section 74(1) of the CGST Act, 2017 on the assessee ,

(d) I impose a penalty of Rs.19,73,723/- under Section 74(1) of the Gujarat GST Act, 2017 on the assessee.

(e) I impose a penalty of Rs. 31,320/- under Section 20 of the Integrated Goods and Service Tax Act, 2017 on the assessee.

(i) I refrain from imposing any penalty on Shri Vaibhav Harshadray Doshi as the penalty is already imposed on the proprietor's firm/Karta, and the proprietor/Karta and the proprietor's firm/HUF are treated as one and the same.

Being aggrieved with the impugned order, the appellant filed present appeal on the following grounds:

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- *The appellant wish to submit that they assail all the charges levelled in the SCN and submit that they had properly taken the ITC on the goods received by them, alongwith Invoice and e-way bills, and the suppliers had also filed the respective GST Returns.*
  - *The appellant submits that they had also dealt with two of the above firms, namely Balaji Enterprise and D.S. Chem, and had purchased goods for furtherance of their business of trading and sold the same with profits to other buyers. The Ld Assistant Commissioner has grossly ignored the documents submitted by them, which included copies of the supplier's invoices, and GSTR2A which shows in the appellant's GST Portal, and is evident of the fact that the supplier has paid the GST and also filed GST Returns namely, GSTR 1 and GSTR3B.*
  - *The appellant submits that the inquiry officers and the adjudicating authority, has not done any independent investigation, but has issued the SCN/OIO only based on the so called investigation report passed on to 'him' by the DGGI, Ahmedabad, and only because some names of supplier of the appellant appears in the said report. There is no independent inquiry caused by them to establish the correct facts of the actual transactions between the said suppliers and the present appellant. The SCN/OIO alleges that only because of such DGGI allegations, which is also not proved beyond doubt, it is alleged that the appellant, had wrongly*

availed the ITC on the basis of invoices issued by M/s. Balaji Enterprise (GSTIN: 24AGJPM8879LIZI), and M/s. D. S.Chem (GSTIN; 27AGYPV2135MIZH).

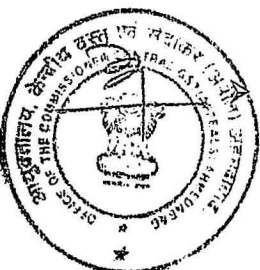
- The appellant's premises at the principal place of business was searched on 24-2-2020, and nothing incriminating was found. It was also found that the GST Returns, Invoices, Purchase registers, and books of accounts were properly maintained by the appellant. In the statement recorded on 24-2-2020, the authorised person stated that they had received goods against the invoices issued by M/s. Balaji Enterprise and D.S. Chem. The details of the invoices on which the ITC was taken and shown in the GSTR2A, as well as payments made to the suppliers is as below:.....
- The appellant submits that the only allegation against them is that they have availed ITC on the aforesaid invoices without actual receipt of the goods, and therefore not eligible to take ITC. The appellant submits that they have received the goods and have all the required documents to show that the said goods were actually received on the basis of Tax Invoice and the e-way bills. The Invoices are also shown in the GSTR2A, which means that the said supplier has also filed their GST Returns, and are genuine tax payers, duly registered with the GST Department.
- The appellant submits that they are traders of goods, and deal in the food grade and industrial grade chemicals, and both buying and selling of goods involves actual movement of goods, and transportation. The appellant wish to submit that they have correctly availed the ITC based on the tax invoices received from the various suppliers including some of the above suppliers, and have also received the raw materials. The appellant submits that the pre-requisite conditions to be fulfilled for the purpose of availing the ITC on the inputs, is at Section 16 & 41 of the CGST Act.

The appellant submits that as per both the Sections, 16 & 41 of the CGST Act, 2017, the basic requirement for availment of ITC on the goods, is that, the supplier should send the goods on a Tax invoice, and the supplier should file the GST Returns namely GSTR1, and GSTR3B, in time, showing the said Tax invoices, and should have paid the Tax charged on the invoice. The e-way bill was also made mandatory from 1-4-2018, and not before that. Further Section 41 also makes it mandatory to make payment to the supplier within 180 days, of the receipt of goods, otherwise, the ITC is to be reversed, and once the payment is made to the supplier, the same ITC can be availed again.

- In the present case, the appellant has received the goods, under the cover of Tax invoice and also e-way bills since it was made applicable from April, 2018 and also made payments to the suppliers. The GST Returns were filed in time by the appellant by self-assessing the ITC as per Section 41, of the CGST Act, 2017, and the ITC was credited in the electronic credit ledger.
- The appellant submits that all their suppliers have prepared Tax invoices, filed appropriate Returns, and also paid appropriate GST in their GSTR3B Returns, and therefore they are also able to see the supplier's invoices reflected in the GSTR2A returns, at the GST Portal. The appellant submits copies of all the GSTR2A returns, showing invoices of the suppliers, as mentioned at Para 2.5 above. The appellant also submits the copies of ledger accounts showing payments made to the said suppliers alongwith GST charged by them.



- The appellant therefore submits that they have complied with all the legal provisions of CGST Act, 2017, and mainly the Sections 16 & 41 of the CGST Act, 2017, and hence, the appellant has correctly availed the Input Tax Credit on the supplier's invoices, and have also received the goods under the cover of tax invoices, as evidenced by way of GST Returns and e-way bills. Therefore, the allegations of the GST Department based on the so-called report of the DGGI (copy of which is not provided to the appellant) officers that the appellant has wrongly availed ITC of supplier's invoices without receiving the goods, is not at all correct and only based on presumptions and assumptions. There is also no evidence to show that the appellant has not complied with section 16 & 41 of the CGST Act, 2017, therefore/ the ITC claimed by the appellant cannot be denied.
- The appellant wish to submit that in the said search operations conducted by the DGGI officers, nothing incriminating was found as evidence against the appellant, based on which it can be alleged that the appellant had not received the goods or wrongly availed ITC. However, the appellant has sufficient evidence as required under GST law, to show that the ITC has been correctly availed. No documents or any other evidence was found wherein the appellant can be held liable for wrong availment of credit. None of the documents that may have been recovered by the DGGI officer from the said searched premises, relates to the appellant, and cannot be relied upon for alleging wrong availment of ITC. Since the appellant has correctly availed the ITC, and have in possession of all the required documents and filed proper GST Returns, the ITC availed by the appellant cannot be denied.



The appellant also wish to submit that the searches were carried out by the Jurisdictional GST Officers, and based on the inquiry report of DGGI officers, the present SCN is issued, in this regard, the appellant places reliance of the Hon'ble Delhi High Court's judgment, in the case of *Manvi vs UOI & Others* cited in 2023 (4) TMI 702-Delhi High Court, wherein the Hon'ble High Court had dealt with a similar situation, in which one authority (GST) issued a letter for cancellation, and another authority cancelled the registration, without conducting any further inquiry independently, and the Hon'ble High Court has quashed such cancellation order. It was held that,

"10. The impugned order indicates that the petitioner's registration was cancelled for the following reasons:

"I. As per direction received vide Letter bearing No.DW/GST/AE/PE/STF/EXPORT VEF/297/2019-20 /15376 DT. 09.11.2021 received from DC(ANTI EVASION). The registration is being cancelled."

11. It is well settled that the Authority that is required to take the decision cannot do so on mere directions of another authority without fully satisfying itself as to the reasons for taking the said decision. It is clear from the impugned order dated 26.09.2022 that the concerned officer has passed the said order merely on the direction of another Authority. Further, the impugned order does not provide any clue as to why the petitioner's GST registration was cancelled.

12. In view of the above, the impugned show cause notice as well as the impugned order cannot be sustained and the same are accordingly set aside."

- The appellant submits that in the present case also, the search and inquiry was conducted by the GST Officers and the SCN is issued based on the report of DGGI, Surat/Ahmedabad, who were also competent to issue the SCN. The Hon'ble High Court has held supra that the order passed merely on the direction of the other officer/ authority, is not at all sustainable and is set aside. Similar situation arises in the present case, where the inquiry was caused by DGGI, and the SCN is merely issued on the directions of DGGI, without conducting any further inquiry, only on presumptions and assumptions.
- The SCN is issued under Section 74 of the CGST Act, 2017 which deals only the cases where suppression or fraud is proved. In the present case, the appellant has filed all the details of invoices in the GST returns, made payment to the suppliers, received the goods under e-way bills, and maintained proper records, and filed GST returns. Therefore, it cannot be said that the appellant had anything to suppress or hide from the GST Department towards compliance. There is also no such allegation so as to the compliances is concerned. Therefore, the Section 74 is not at all applicable to the present case, and if at all the SCN was to be issued for any short payment or wrong availment of GST without fraud, suppression, etc, then the SCN should have been issued under Section 73 of the CGST Act, 2017, which is not done here. Therefore, the SCN is not issued properly, and therefore is liable to be quashed on this ground also.

The appellant understands that that the Government has realized that claim of bogus input tax credit (ITC) and claim of refund of taxes never paid to the Revenue are the two major reasons for huge leakages of revenue. But in the process, the innocent taxpayers are also being put to un-necessary difficulties, and valuable time, money and energy is being wasted just for being genuine taxpayers also. The appellant has always cooperated with the inquiry and the investigation and also fulfilled the necessary conditions required to be eligible for credit.

Section 16(2) of the CGST Act, 2017 is relevant in this regard and which requires:

- Possession of tax invoice, debit note or any other prescribed document,
  - Receipt of the goods or services,
  - Appearance of the invoices in GSTR2A/GSTR-2B i.e. requiring the supplier to file details of the invoice in his Form GSTR- 1,
  - Payment of tax to the Exchequer, and - Filing of Form GSTR-3B by the recipient,
- Under GST there have been quite a few decisions which have held that the recipient should not be affected by the fact that the supplier has received bogus bills. One such decision is in the case of M/s. Balaji Exim cited in 2023 (3) TMI 529 - Delhi High Court where the petitioner had purchased goods from a supplier, against whom investigation was initiated for receiving fake invoices. The High Court of Delhi held that:

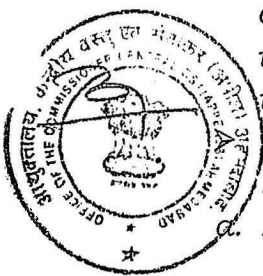


- a. Refund was rejected on a mere apprehension that its supplier had issued fake invoices. There is no conclusive finding on the basis of any cogent material that the invoices issued by the supplier to the petitioner / recipient are fake invoices.
- b. There is no allegation that the goods in question were not exported overseas.
- c. It is not correct to reject refund merely because of suspicion without any cogent material, There is no dispute that goods have been exported; the invoices in respect of which ITC is claimed were raised by a registered dealer and there is no allegation that the petitioner / recipient has not paid the invoice amount, which include taxes.
- d. Allegations of any fake credit availed by the supplier cannot be a ground for rejecting the petitioner's/recipient's refund applications unless it is established that the petitioner has not received the goods or paid for them.
- e. If the department is able to find material to establish the allegations regarding non-supply of any goods by the supplier to the petitioner, they can initiate action as may be required under the law.

- The appellant further submits that also, in the case of Bhagyanagar Copper Pvt Ltd, cited in 2021 (11) TMI 152 - Telangana High Court, the Hon'ble High Court held that the provisions of the CGST Act and the IGST Act do not mandate the petitioner to verify the genuineness of the suppliers of its supplier, in as much as enough safeguards/mechanism are provided under the Act to recover the taxes, if not paid or wrong credit is availed by the petitioner's supplier or supplier's supplier.

In certain other cases (some listed below) it has been held that the bonafide recipient should not be made to suffer due to supplier's default-

- a. New Nalbandh Traders - Gujarat High Court - 2022 (66) G, S. T. L. 334 (Guj.)
  - b. LGW Industries Limited & Ors. Vs. Union of India & Ors – Calcutta High Court - 2023 (3) TMI 826 - Calcutta High Court  
It is further submitted that, thus, an important aspect to be noted is that any allegation of fraud must necessarily be proved by the person who levels such an allegation. There are many other cases under the CENVAT regime where it has been held that mere suspicion cannot lead to denial of credit. There has to be sufficient evidence to prove this.
- 7.18 The appellant further submits that in one recent decision under the KVAT Act, 2003, in the case of Ecom Gill Coffee Trading Private Limited, cited in 2023 (3) TMI 533 – Supreme Court, the Supreme Court had held that the burden of proving the correctness of ITC claim lies with the dealer claiming such credit. The Court further stated that a dealer claiming ITC on purchases must prove and establish the actual physical movement of goods, genuineness of transactions, name and address of the selling dealer, details of the vehicle delivering the goods, payment of freight charges, acknowledgement of delivery, etc.
- The appellant submits that there are various favourable decisions in the past under the erstwhile indirect tax laws which held that bona fide dealers / assesseees, should not be denied the benefit of credit, even where the seller has not deposited the taxes with the Revenue; that it is for the





Department to recover the taxes from the selling dealer. Some of the cases are :

a. *Arise India Limited vs. Commissioner of Trade and Taxes, Delhi - 2018-TIOL-11-SC-VAT*

b. *M/s Tarapore and Company Jamshedpur v. State of Jharkhand - 2020-TIOL-93-HC-JHARKH AND-VAT*

c. *M/s. Mahalaxmi Cotton Ginning Pressing and Oil Industries, Kolhapur Vs. The State of Maharashtra & ORS 2012-TIOL-370-HC-MUM -VAT*

- The appellant submits that it is pertinent to take note of the 28th GST Council meeting held on 04-08-2018 in New Delhi it was stated as follows :
- " 18 ... There would be no automatic reversal of input tax credit at the recipient's end where tax had not been paid by the supplier. Revenue administration shall first try to recover the tax from the seller and only in some exceptional circumstances like missing dealer, shell companies closure of business by the supplier, the input tax credit shall be recovered from the recipient by following the due process of serving of notice and personal hearing."
- The appellant wish to refer to the Section 155 of the CGST Act, which is relevant here to be taken note of ...
- The appellant is in possession of all the documents required for taking ITC, on an invoice of the supplier. However, an aspect to be remembered is that any person is required to reasonably establish the eligibility of credit. Generally, it is not expected or required that he would have to prove with all possible evidence and, beyond doubt that the goods were actually received by him. In the normal course, certain documentary evidence should be sufficient to prove the genuineness of the transaction. These could be documents like transport documents (like LR) to indicate movement of goods, stock and production records to show that goods were purchased, processed and cleared for sale, etc. which can to a reasonable extent prove that the goods were actually received.
- The appellant submits that in the past also there were cases wherein it was held that the recipient has to take reasonable steps to satisfy himself about the existence, identity and address of the supplier. The fact that the suppliers are a GST Registered regular taxpayer and there is no dispute regarding existence and identity of such unit, same was considered as a reasonable care taken by the recipient. Kind reference is drawn to the decision of the Supreme Court in the case of *Ecom Gill Coffee Trading Private Limited*, cited in 2023 (3) TM: 533 - Supreme Court without evaluating the intention and the consistent view taken by the Courts, would be against the very spirit of allowing credit to businesses. The ideology of allowing credit is to avoid cascading effect and allowing on good faith (self-assessment model) and not on an assumption that all credits would be looked into through the lens of suspicion.
- The noticee also wish to submit that once the conditions provided under section 16 of the CGST Act are fulfilled and established with reasonable evidence, then the onus would be on the Department to provide positive evidence to establish the contrary (to prove fake/bogus credits). It is only when the Department can establish such suspicion with





a retrospective cancellation of the supplier's GST registration, without establishing connivance and collusion, This principal also finds support in the rulings of M/S. Balaji Exim vs Commissioner, CGST & Others cited in 2023 (3) TMI 529 - Delhi High Court., M/S LGW Industries Ltd & Others vs UOI, cited in 2021(12) TMI 834 - Calcutta High Court. The decision aligns with the judicial precedents that have consistently held that the recipient of goods should not be denied ITC unless there is concrete evidence of collusion, even in cases where the supplier fails to remit the tax to the exchequer as held in the case of On Quest Merchandising India Pvt Ltd & Others vs Gout of NCT of Delhi cited in 2017 (10) TF41 & 020 - Delhi High Court. The judgment emphasizes that recipients of goods should not bear the burden of their supplier's misconduct as long as they have not participated in any fraudulent activities. It stresses the importance of evaluating each case based on its merits and protecting the rights of honest taxpayers.

In view of the above submissions, the appellant submits that they have all the evidence to show the bona fide of the ITC credit availed and is evident from the Tax Invoices of the suppliers, e-way bills, GSTR2A, GSTR3B, and other GST Returns, books of accounts and the bank statements. Therefore, the demand of GST, Interest and Penalties, made in the impugned OIO, is also not sustainable and is liable to be set aside.

PERSONAL HEARING:

5. Personal hearing in this case was held on 12.10.2023 virtually. Shri Subramaniya, Advocate appeared in personal hearing on behalf of the appellant. He submitted that both the suppliers have supplied the goods and they have paid the payment to suppliers. In view of Sun Craft Engy Pvt. Ltd., Hon'ble Calcutta High Court's order, which has been upheld by the Hon'ble Supreme Court vide order dated 14.12.2023, they are eligible for ITC. All the documents have been submitted along with paper book. He further reiterated the written submissions and requested to allow appeal.

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 and observe that the appellant is mainly contesting with regard to disallowing of ITC amounting to Rs.39,78,766/- [Rs. 31,320/- IGST) + Rs.19,73,723/- (CGST) + Rs 19,73,723/- (SGST)] along with interest and penalty of Rs.39,78,766/- ordered to be recovered, vide the impugned order.

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

Whether the impugned order passed by the adjudicating authority, is proper or otherwise?

6.3. At the foremost, I observe that in the instant case the "impugned order" is of dated 25-09-2023 and the present appeal is filed on 09.11.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.4 I observe that Appellant has availed the ITC of Rs.39,78,766/- as under:

Name of Supplier	Period involved	IGST	CGST	SGST
Balaji Enterprise (GSTIN : 24AGJPM8879L1ZI	SEP-2018 TO JULY-2019,	0	1973723	1973723
D S Chem (GSTIN : 27AGYPV2135M1ZH	FEB-2020,	31320	0	0
TOTAL		31320	1973723	1973723
Grand total				<b>3978766</b>

6.5 I also observe that as per investigation conducted by the DGGI, M/s. Balaji Enterprises, is a bogus firm and they are not having any genuine business activity and that they were registered under GST with sole aim of passing ITC in fraudulent manner without actual supply of the goods mentioned in the invoices issued by them. Further, I observe that the CGST C.Ex.Bhiwandi Commissionerte has tried to locate the supplier M/s D S Chem at the registered premises, but could not be located at its principal place of business which also shows that M/s. D S Chem is a fake entity created to pass input tax credit without actual supply of goods.

6.6 According to the information, the investigation was carried out at the premises of the appellant by CGST Ahmedabad North Commisisionerate, wherein it was noticed by them that the appellant has availed ITC of Rs.39,78,766/- on the strength of Invoices issued by M/s Balaji Enterprise and M/s D S Chem which were found to be fake and invoices were issued only with the motive to pass on invalid ITC.

6.7 The appellant in their submissions with the appeal memorandum have submitted that they have received the goods and have all the required documents to show that the said goods were actually received on the basis of Tax Invoice and the e-way bills. The Invoices are also shown in the GSTR2A, which means that the said supplier has also filed their GST Returns, and are genuine tax payers, duly registered with the GST Department. The appellant further submitted that they are traders of goods, and deal in the food grade

and industrial grade chemicals, and both buying and selling of goods involves actual movement of goods and transportation. They have complied with all the legal provisions of CGST Act, 2017 mainly the section 16 and 41 of the CGST Act, 2017 and hence they have correctly availed the Input Tax Credit on the suppliers' invoices and have also received the goods under the cover of tax invoices as evident from GST Returns and E-way Bills.

6.8 Accordingly I refer to the relevant extract of Section 16 of the CGST Act, 2017 provides eligibility conditions for taking Input Tax Credit:-

**\*Section 16. Eligibility and conditions for taking input tax credit.-**

(1) *Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

(2) *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-*

(a) *he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*

1[[aa) *the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]*

(b) *he has received the goods or services or both.*

2[**Explanation.-** *For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-*

(i) *where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*

(ii) *where the services are provided by the supplier to any person on the direction of and on account of such registered person;]*

3[[ba) *the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]*

(c) *subject to the provisions of 4[section 41 5[\*\*\*]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and*

(d) *he has furnished the return under section 39:*

\*Enforced w.e.f. 1st July, 2017.

1. Inserted (w.e.f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 109 of The Finance Act, 2021 (No. 13 of 2021).

2. Substituted (w.e.f. 1st February, 2019) for "Explanation.-For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;" by s. 8 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018).

3. Inserted (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022.) by s. 100 of The Finance Act 2022 (No. 6 of 2022).

6.9 I observe that the contention of the appellant that they have made payment to the suppliers, the invoices of the supplier are shown in GSTR-2A, and that they have no intention to take any wrongful ITC, the e-way bills generated for each invoices, however, the same is not disputed at all in the impugned order. The receipt of goods being one of the crucial conditions for eligibility of ITC as per the above provisions is not justified. Merely stating that they had received the goods against the invoices issued by M/s. Balaji Enterprise and D.S. Chem, on the basis of invoices, E-way Bills, payment through banking channel is not sufficient to prove the eligibility of ITC. The appellant has not provided valid evidence such as details of payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof by the appellant. Thus in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established in such circumstances. All the more so when the Supplier's invoices are fraudulent/of non existing firm and the registration has been cancelled, it is beyond imagination how the goods can be considered to have been received by the appellant.

6.10 In the similar matter, the judgment dated 18.10.2023 of the Hon'ble High Court of Allahabad in WRIT TAX No. - 1237 of 2021 in case of M/S MALIK TRADERS V/s STATE OF U.P. AND 2 OTHERS, it has been held as under:

*"15. In the case in hand, the petitioner has only brought on record the tax invoices, e-way bills, GR and payment through banking channel, but no such details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof has been provided. Thus in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established and in such circumstances, further no proof of filing of GSTR 2 A has been brought on record, the proceeding has rightly been initiated against the petitioner.*

16. The Apex Court in the case of State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited (Civil Appeal No. 230 of 2023, decided on 8 13.03.2023), while considering the *pari materia* of section 70 of the Karnataka Value Added Tax Act, 2003, where the burden was upon the dealer to prove

beyond doubt its claim of exemption and deduction of ITC, has observed as under:

9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003. In the said judgement Hon'ble the Apex Court has held that primarily burden of proof for claiming the input tax credit is upon the dealer to furnish the details of selling dealer, vehicle number, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. to prove and establish the actual physical movement of the goods. Further by submitting tax invoice, e-way bill, GR or payment details is not sufficient.



17. Patna High Court in the case of M/s Astha Enterprises (supra) has held as under :- "9. .... It was held that the dealer who claims Input Tax Credit has to prove beyond doubt, the actual transaction by furnishing the name and address of selling dealer, details of the vehicle delivering the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. It was also held that to sustain a claim of Input Tax Credit on purchases, the purchasing dealer would have to prove and establish the actual physical movement of the goods and genuineness of transactions, by furnishing the details referred to above and mere production of tax invoices would not be sufficient to claim ITC."

18. Similarly, this Court in the case of the Commissioner Commercial Tax Vs. M/s Ramway Foods Ltd. (supra) has held that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual physical movement of goods, genuineness of transactions, etc. and if the

dealer fails to prove the actual physical movement of goods, the benefit cannot be granted.

19. The judgement relied upon by the counsel for the petitioner of Calcutta High Court in the cases of M/s LGW Industries Limited and others (supra) and Sanchita Kundu and another (supra) is of no aid to the petitioner as recently Hon'ble the Apex Court in the case of M/s Ecom Gill Coffee Trading Private Limited (supra) has specifically held that onus is to be discharged by the petitioner to prove and establish beyond doubt the actual transaction and physical movement of goods. But in the case in hand, the petitioner has failed to prove and establish actual physical movement of goods and genuineness of transaction as such the proceedings has rightly been initiated.

20. ....

21. In view of the facts as stated above, no interference is called for by this Court in the impugned orders. The writ petition fails and is dismissed accordingly.”

6.11 The above judgment is squarely applicable in the present case. I observe that the appellant has not submitted proof of actual receipt of the goods in support of their claim of availing the ITC of Rs. 39,78,766/-. Further when the origin of the ITC at the Supplier's end is fraudulent as they have issued invoices without supply of goods, as per the investigation carried out by the DGGI which reveals that the said two suppliers are primarily engaged in generating fake invoices and passing GST credit to their buyers without any physical movement of goods. Therefore, I am of the view that the said ITC taken and utilised by the appellant on the invoices issued by the said Suppliers without supply of goods, is not available to the appellant, as per the provisions of the GST Act and Rules made thereunder.

6.12 Further I find that as per Section 155 of CGST Act, 2017 the burden of proof, in case of eligibility of ITC, availed by the appellant, lies entirely on the appellant. I refer to the relevant extract of Section 155 of the CGST Act, 2017:

**Section 155. Burden of proof.-**

*“Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.”*

6.13 In the instant case, the appellant has to prove his eligibility to avail ITC in the light of aforesaid conditions, enumerated in Section 16 of the CGST Act, 2017. However I find that the appellant has failed to satisfy mandatory conditions to make him eligible for ITC on supply of goods by the said suppliers, mentioned in invoices. The appellant is unable to prove the



actual receipt of goods from the said suppliers as the said suppliers have been found fake invoice supplier firms /non-existent as proved by DGGI.

6.14 As regards to the contention of the appellant that there would be no automatic reversal of input tax credit at the recipient's end where tax had not been paid by the supplier, that Revenue administration shall first try to recover the tax from the seller and only in some exceptional circumstances like missing dealer, shell companies closure of business by the supplier, the input tax credit shall be recovered from the recipient by following the due process of serving of notice and personal hearing. I observe that the same is not relevant in the present case, as here there is no supply of goods, the invoices, e-way bills are fake and only on paper, to facilitate the ITC without supply of goods by the supplier, as per the investigation carried out by the DGGI.

6.15 Further, I observe that the appellant had deliberately availed such inadmissible ITC with sole intention to defraud the Government Exchequer. Had the departmental officers not initiated the enquiry, such wrong availment of ITC would have remained unnoticed and the appellant would have continued to enjoy the unlawful benefit. Thus the ITC of Rs.39,78,766/- [Rs. 31,320/- IGST) + Rs.19,73,723/- (CGST) + Rs 19,73,723/- (SGST)] availed on the fake invoices issued by the appellant is not admissible as per the discussion above and the same is required to be covered along with interest and penalty.

6.16 I observe that Penalty under Section 74(1) of the CGST/GGST Act, 2017 and under Section 20 of the IGST Act has been imposed on the appellant. Therefore, I refer the said provisions, the text of which is as under:  
***\*Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-***

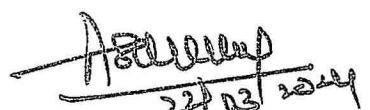
*(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

6.17 I observe that the appellant has availed ITC fraudulently without actual receipt of goods and utilized the same with intention to evade payment of GST which has been detected by the Department, as explained in the foregoing paras. I observe that the provisions of Section 74(1) of the GST Act, 2017 provides that where the input tax credit has been wrongly availed or utilised for the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equivalent to the tax specified in the notice. I find that as the Appellant in the present case has suppressed the facts of availing the credit of Rs.39,78,766/- without actual receipt of goods, therefore the Appellant is liable for equivalent penalty of the amount of ITC fraudulently availed, under the said provisions.

7. In view the foregoing facts and discussions, I do not find any infirmity in the order passed by the adjudicating authority in the present case. Thus O-I-O is upheld being Legal and proper.

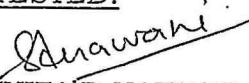
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(ADESH KUMAR JAIN)  
JOINT COMMISSIONER/(APPEALS)  
CGST & C.EX., AHMEDABAD.

Date : .03.2024

ATTESTED.

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



By R.P.A.D.

M/s. Sabras ( Legal Name: Vaibhav Harshadray Doshi (HUF)),  
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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 Assistant Commissioner, CGST & C.Ex, Division-II, Ahmedabad, North.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
6. ~~Guard File/P.A. File.~~

