



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
Phone: 079-26305065 Fax: 079-26305136  
E-Mail : commrappl1-cexamd@nic.in



F.No.: GAPPL/ADC/GSTP/1182/2023/1300-1307  
DIN: 20230864SW00004984AD

Date: 09.08.2023

M/s Rajkalp Mudranalya Pvt Ltd,  
(GSTIN-24AABCR046M1ZH)  
Plot No 29/2 &3, Before Shilpgram-II,  
Lapkaman-Dantali Estate Road,  
Lapkaman, Tal Daskroi,  
Ahmedabad, Gujarat-380060

**CORRIGENDUM**

विषय: Order-in-Appeal dated 31.07.2023 issued in appeal no. GAPPL/ADC/GSTP/1182/2023 filed by M/s Rajkalp Mudranalya Pvt Ltd against Order No. GST/D-VI/Range-V/01/Rajkalp/CGP/2022-23 dated 20.01.2023 passed by The Superintendent, CGST, Range-V, Division-VI, Ahmedabad North Commissionerate: matter regarding

This is with reference to Order-in-Appeal dated 31.07.2023 issued in subject appeal. The Order-In-Appeal number "GAPPL/ADC/GSTP/1182/2023" in above referred OIA issued may be read as "AHM-CGST-002-APP-JC-40/2023-24".

o/c

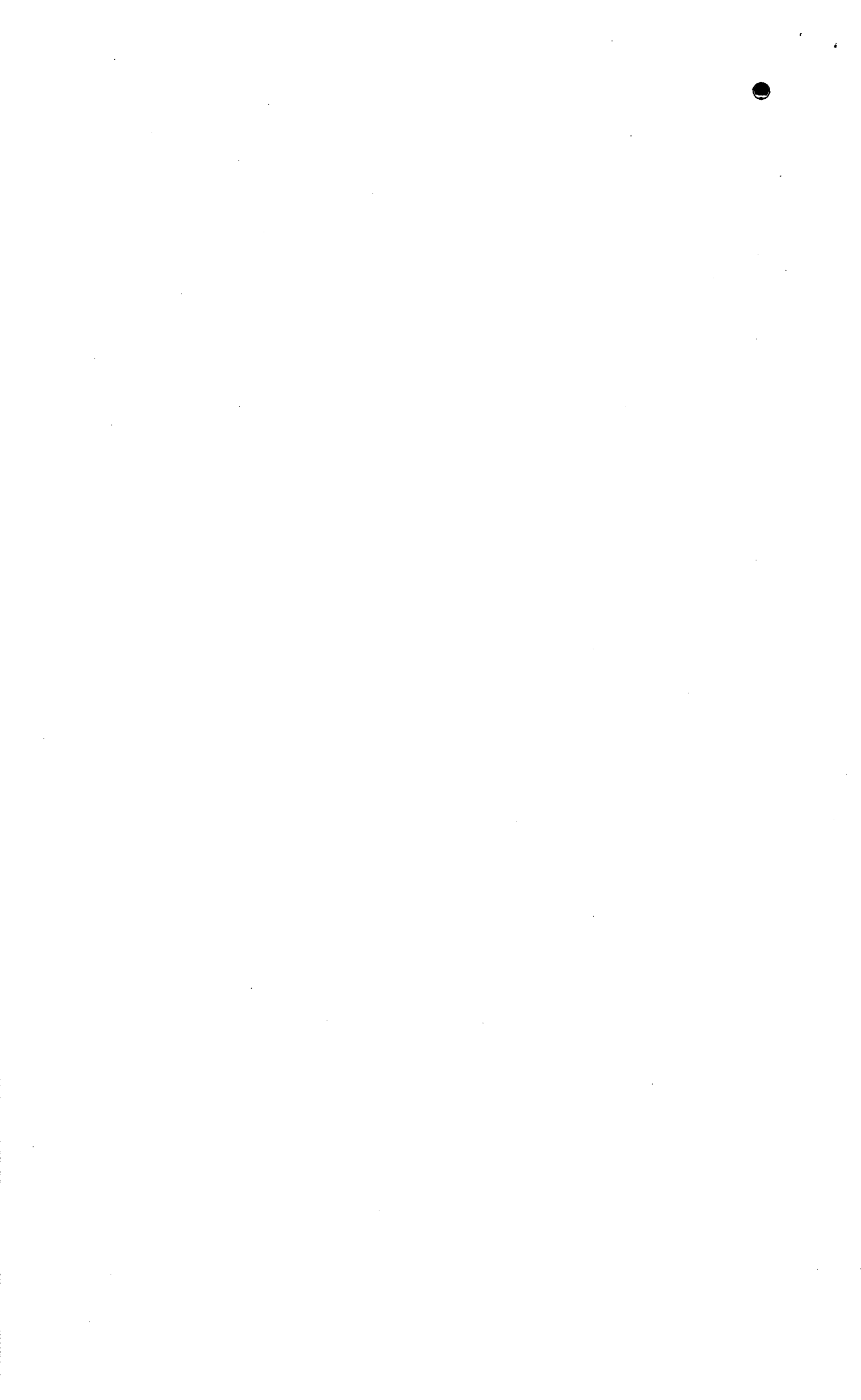


*Adesh Kumar Jain*  
09/08/2023  
(Adesh Kumar Jain)

Joint Commissioner (Appeals),  
CGST, Appeals, Ahmedabad.

Copy To: -

1. Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C.Ex, Ahmedabad-North Commissionerate,
4. The Deputy/Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
6. The Superintendent, CGST, Range-V, Division-VI,, Ahmedabad North Commissionerate.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad for publication on website.
8. Guard File/P.A. File.





सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
Phone: 079-26305065 Fax: 079-26305136  
E-Mail : commrappl1-cexamd@nic.in

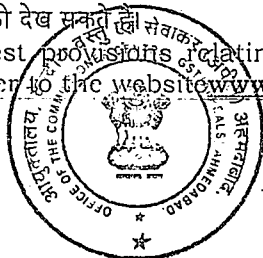


**By Regd. Post**

DIN NO.: 20230864SW000011111D

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1182/2023 / 1183 - 90
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	GAPPL/ADC/GSTP/1182/2023 and 31.07.2023
(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	07.08.2023
(ङ)	Arising out of Order-In-Original No. GST/D-VI/Range-V/01/Rajkalp/CGP/2022-23 dated 20.01.2023 passed by The Superintendent, CGST, Range-V, Division-VI, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Rajkalp Mudranalya Pvt Ltd (GSTIN-24AABCR0460M1ZH), Plot No 29/2 & 3, Before Shilpgram-II, Lapkaman-Dantali Estate Road, Lapkaman, Tal Daskroi, Ahmedabad, Gujarat-380060

(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 twenty five per cent 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:**

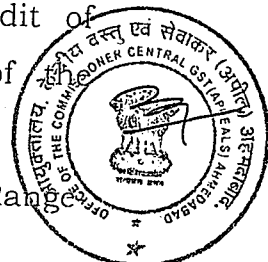
M/s Rajkalp Mudranalaya Pvt. Ltd. (GSTIN-24AABCR0460M1ZH) Plot No.29/2 & 3, before Shilpgram-II, Lapkaman – Dantali Estate Road, Village – Lapkaman Taluka Daskroi, Ahmedabad, (hereinafter referred to as the 'Appellant' ) has filed the present appeal against Order-In-Original No.GST/D-VI/Range-V/01/Rajkalp/CGP/2022-23 dated 20.01.2023 (hereinafter referred to as the 'impugned order) issued by the Superintendent, CGST, Range-V, Division-VI, Ahmedabad North Commissionerate (hereinafter referred to as the 'adjudicating authority').

2. Briefly stated the fact of the case is that the appellant was registered under GSTIN 24AABCR0460M1ZH. The appellant was issued Show Cause Notice dated 31-03-2022 for :

(a) penalty under Section 122(1)(ii) of the CGST Act, 2017 read with Section 122 (1)(ii) of Gujarat State GST Act, 2017 and also read with Section 20 of IGST Act, 2017 for reason of issuance of taxable invoices involving IGST @ 5% amounting to Rs.13,33,790/- without supply of goods in violation of the provisions of this act or the rules made there under and

(b) penalty under Section 122(1)(vii) of the CGST Act, 2017 read with Section 122 (1)(vii) of Gujarat State GST Act, 2017 and also read with Section 20 of IGST Act, 2017 for reason of taking and utilizing Input Tax Credit of Rs.2,87,960/- without actual receipt of goods in contravention of provisions of this act or the rules made there under.

3. The Adjudicating Authority vide Order-in-Original No.GST/D-VI/Range-V/01/Rajkalp/CGP/2022-23 dated 20.01.2023 has imposed:



(a) penalty of Rs.13,33,790/- upon the appellant under the provisions of Section 122(1)(ii) of the CGST Act, 2017 read with Section 122 (1)(ii) of Gujarat State GST Act, 2017 and also read with Section 20 of IGST Act, 2017 for issuance of taxable invoice without supply of goods in violation of the provisions of this act and rules made there under;

(b) penalty of Rs. 2,87,960/- under the provisions of Section 122(1)(vii) of the CGST Act, 2017 read with Section 122 (1)(vii) of Gujarat State GST Act, 2017 and also read with Section 20 of IGST Act, 2017 for taking and utilizing input tax credit of Rs.2,87,960/- without actual receipt of goods in contravention of the provisions of this act and rules made there under ;

( c ) penalty of Rs.10,000/- on Shri Kalpesh Patel, Director of the appellant under the provisions of Section 122(3) of the CGST Act, 2017 read with Section 122(3) of the Gujarat State GST Act, 2017 and also read with Section 20 of IGST Act, 2017 and the rules frame there under for aiding or abetting offence specified in clause (ii) and (vii) of sub-section I of section 122 of the CGST Act,

2017 read with clause (ii) and (vii) of sub-section 1 Section 122(3) of the Gujarat State GST Act, 2017 and also read with section 20 of the IGST Act, 2017.

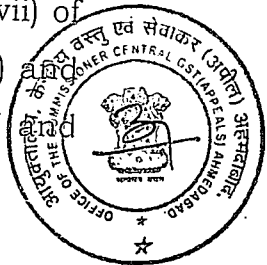
4. Being aggrieved with the impugned order the appellant filed the present appeal on 21.03.2023 for deletion of penalty which is not justified and against the natural justice, on the grounds that:

(i) The learned Assessing Officer has erred in imposing penalty of Rs.13,33,790/- under the provisions of Section 122 (1)(ii) of the CGST Act, 2017 read with Section 122(1)(ii) of Gujarat State GST Act, 2017 and also read with Section 20 of the IGST Act 2017 for issuance of taxable invoice without supply of goods in violation of provision of this Act and Rules,

(ii) The learned Assessing Officer has erred in imposing penalty of Rs.2,87,960/- under the provisions of Section 122(1)(vii) of the CGST Act, 2017 read with Section 122(1)(vii) of Gujarat State GST Act, 2017 and also read with Section 20 of the IGST Act 2017 for taking and utilising Input Tax Credit of Rs.2,87,960/- without actual receipt of goods in contravention of provision of Act and Rules,

(iii) The learned Assessing Officer has erred in imposing penalty of Rs.10,000/- under the provisions of Section 122 (3) of the CGST Act, 2017 read with Section 122(3) of Gujarat State GST Act, 2017 and also read with Section 20 of IGST Act, 2017 for aiding or abetting offence specified in clause (ii) and (vii) of sub-section (1) of section 122 of the CGST Act, 2017 read with clause (ii) and

(vii) of sub-section 1 Section 122(3) of the Gujarat State GST Act, 2017 and also read with section 20 of the IGST Act, 2017.



**Personal Hearing :**

5. Personal hearing in the present appeal was held on 28.07.2023. Shri Ronak S. Jain, Advocate, appeared in person on behalf of the appellant in the present appeal. During P.H. they submitted a set of documents dated 02-05-2022 and re-iterated the written submission and that they have reversed the ITC of Rs.2,87,960/- and requested for lenient view.

**DISCUSSION AND FINDINGS:-**

6. 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 at the time of personal hearing and find that appellant is mainly contesting the imposition of penalty under Section 122(1)(ii), 122(1)(vii) and 122 (3) of the CGST Act, 2017 read with Section 122 (1)(ii), 122(1)(vii) and 122 (3) of Gujarat State GST Act, 2017 and also read with Section 20 of IGST Act, 2017.

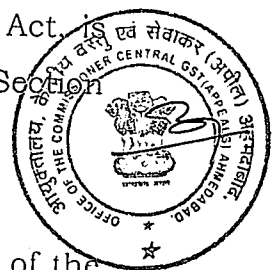
6.1 According to the appellant, they issued invoices to M/s Quarterfold Printabilities under the bonafide belief that the same will be considered for the purpose of fulfillment of the export obligations. The said invoices were reported

in GSTR-1 and GSTR-3B return of the respective months. However, the said invoices were not taken in the records by M/s.Quarterfold Printabilities and no ITC was availed by them as per their contention, that there was no intention of any bogus billing or passing any wrong input tax credit, the appellant has already been penalized by the Settlement Commission for not fulfilling the export obligations, there was no Govt. revenue loss as M/s Quarterfold Printabilities has not taken Input Tax Credit against the invoices of the appellant, that appellant issued credit notes against the said invoices issued to M/s Quarterfold Printabilities so that the party cannot avail wrong input tax credit against tax invoices of the appellant, therefore in view of no government revenue loss, imposition of penalty under sec.122 (1)(ii) of the Act, is not justified and against the natural justice and therefore penalty of Rs.13,33,790/- should be deleted.

6.2 Further according to the appellant, they had availed input tax credit of Rs.2,87,960/- on the strength of invoices issued by M/s Imprints, that they (appellant) have reversed the said ITC of Rs.2,87,960/-before utilization of the ITC in credit ledger on 15-10-2018, the appellant also paid the relevant Interest of Rs.15,342/- under Section 50 of the Act and penalty of Rs.43,194/- through DRC-03 under Section 74(5) of the Act and informed the concerned Officer in writing. Therefore, in view of Section 74(5), the appellant is discharged from any other penalty and offence.

6.3 The penalty of Rs.10,000/- imposed under Section 122(3) of the Act, is consequential to deletion of the penalty of Section 122 (1)(ii) and Section 122(1)(vii) of the provision of the Act.

6.4 So the questions to be answered in the present appeal are:



(i) Whether imposition of penalty under Section 122(1)(ii) and 122(1)(vii) of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 for reasons of issuance of taxable invoices involving IGST @ 5% amounting to Rs.13,33,790/- without supply of goods and for reasons of taking and utilizing ITC of Rs.2,87,960/- without actual receipt of goods respectively is proper or otherwise and

(ii) Whether imposition of penalty under Section 122(3) of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 on the Director of the appellant is proper or otherwise.

6.5 At the foremost, I observed that in the instant case the "impugned order" is of dated 20.01.2023 and the present appeal is filed on 21.03.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. I observed that in the instant case the appeal has been filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.6 I find that the show cause notice proposed to impose the penalty under Section 122(1)(ii) of the CGST Act, 2017 and under Section 122(1)(ii) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 is for issuance of fraudulent invoices to fulfill the export obligation in respect of EPCG license to evade Customs duty for which the DRI has also searched the premises of the appellant on 16-08-2018. Shri Kalpesh Patel, Director of the appellant has admitted that they had raised 39 Tax Invoices of Rs.2,80,09,956/- including IGST @ 5% amounting to Rs.13,33,790/- in the name of Merchant Exporter M/s Quarterfold Printabilities, Mumbai for export during the period March-2018 to July-2018 but there was no movement of any goods at all. He had also admitted that the appellant had accordingly wrongly passed on IGST @ 5% amounting to Rs.13,33,790/- to the merchant Exporter.

6.7 I find that had the case not been booked by DRI, the appellant would have not issued credit notes to the merchant exporter, and based on the invoices issued, the merchant exporter would have availed the ITC to the tune of Rs.13,33,790/- fraudulently without actual receipt of goods, hence I am of the view that the offence committed is punishable under law.

6.8 I find that the adjudicating authority has imposed penalty under Section 122(1)(ii) of the CGST Act, 2017 and under Section 122(1)(ii) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 which reads as under:

*"122. Penalty for certain offences.— (1) Where a taxable person who—*

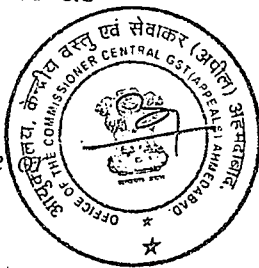
*(i) supplies any goods or services or both without issue of any invoice issues an incorrect or false invoice with regard to any such supply;*

*(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made there under;*

*.....  
he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher".*

6.9 Since no other penalty for this offence is either paid by the appellant or imposed by the adjudicating authority, I uphold the penalty imposed by the adjudicating authority vide impugned order.

7. Further, I find that the appellant had purchased only invoices from M/s Imprints, Mumbai valued at Rs.60,47,165/- which involved ITC @ 5%



IGST amounting to Rs.2,87,960/- and had taken credit of the same but there was no receipt of goods. The director of the appellant accepted the violation of the provisions of CGST Act and the Rules made there under and agreed to pay/reverse the GST amounting to Rs.2,87,960/- with interest and penalty voluntarily. They debited/reversed the ITC fraudulently availed of Rs.2,87,960/- (IGST) through Electronic Credit Ledger on 15-10-2018 along with interest of Rs.15,342/- and penalty of Rs.43,194/- on 06-11-2018 as mentioned in the SCN.

7.1 I find that, had the case not been booked by DRI, the appellant would have not accepted the violation and would not have debited the fraudulently availed ITC to the tune of Rs.2,87,960/- (IGST), without actual receipt of goods, hence I am of the view that the offence committed is punishable under law.

7.2 I find that the adjudicating authority has imposed penalty under Section 122(1)(vii) of the CGST Act, 2017 and under Section 122(1)(vii) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 which reads as under:

*"122. Penalty for certain offences.— (1) Where a taxable person who—*

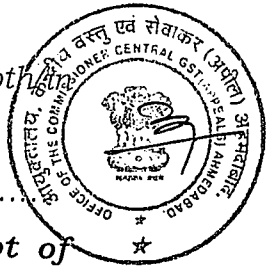
*(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*

*(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*

.....

*(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made there under*

*he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher".*



7.3 Since the intention of evasion of duty by fraudulently availing ITC, on the part of the appellant is apparent, the appellant is liable for imposition of penalty under Section 122(1) (vii) of the CGST Act, 2017 and Section 122 (1) (vii) of the GGST Act, 2017. However, as per Section 75(13) of the CGST Act, 2017 read with Section 75(13) of GGST Act, 2017 - General provisions relating to determination of tax is as under :-



"Section 75(13) :- Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provisions of this Act".

7.4 Since the appellant have already accepted the offence, debited/reversed the fraudulently availed ITC on 15-10-2018 along with payment of interest under Section 50 of the CGST Act, 2017 and penalty under section 74(5) of the CGST Act, 2017, vide DRC-03 dated 06-11-2018 as informed vide letter dated 02-05-2022 to the authority, before issuance of SCN, I am of the view that since the penalty has already been paid on the voluntary payment/debit by the appellant before issuance of SCN, the same can be deemed to be concluded/accepted. Therefore, there cannot be double penalty for the same offence. I therefore, reject the penalty imposed upon the appellant under section 122(1) (vii) of the CGST Act, 2017 and section 122(1) (vii) of Gujarat GST Act, 2017 read with section 20 of the IGST Act, 2017, in terms of Section 75(13) of the CGST Act, 2017.

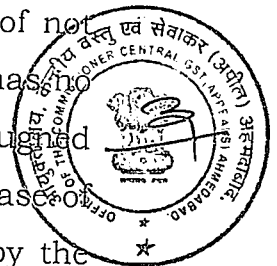
8. As regards, contention of the appellant that there was no intention of any bogus billing or passing any wrong input tax credit and that the appellant has already been penalized by the Settlement Commissioner for not fulfilling the export obligation, I find that the issue of Customs of not fulfilling export obligation and penalty already imposed for the issue has no relevance with the penalties imposed for the offences vide the impugned order dated 20-01-2023. Further, I find that this is an established case of invoices issued fraudulently without supply of goods and admitted by the Director of the appellant company. Therefore, the penalty imposed under section 122(1)(ii) of the CGST Act, 2017 and under Section 122(1)(ii) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act is maintainable, legal and proper.

9. Further, I find that since the Director of the appellant has already accepted the offences vide his statement dated 12-10-2018 as in the Show Cause Notice, I find that the penalty imposed on Shri Kalpesh Patel, Director of the appellant vide impugned order amounting to Rs.10,000/- is just and fair.

10. In view of the above,

10(i) I uphold the penalty of Rs.13,33,790/- imposed on the appellant under Section 122(1)(ii) of the CGST Act, 2017 and under Section 122(1)(ii) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act by the adjudicating authority.

10(ii) I also uphold the penalty of Rs.10,000/- on Shri Kalpesh Patel, Director of the appellant imposed under Section 122(3) of the CGST Act,



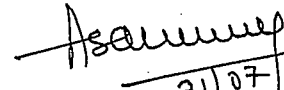
2017 and Section 122(3) of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 by the adjudicating authority.

10(iii) I hold that penalty of Rs.2,87,960/- imposed under Section 122(1)(vii) of CGST Act, 2017 and Section 122(1)(vii) of Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 is not maintainable in terms of Section 75(13) of the CGST Act, 2017.

11. The appeal filed by the Appellant is partially allowed to the above extent.

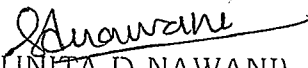
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

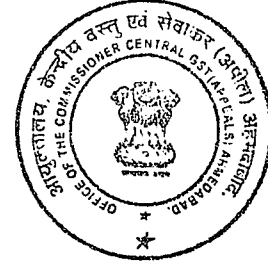
The appeal filed by the Appellant stands disposed of in above terms.

  
31/07/2023

(ADESH KUMAR JAIN)  
JOINT COMMISSIONER (APPEALS),  
AHMEDABAD.

ATTESTED.

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



By R.P.A.D.

To,

M/s Rajkalp Mudranalaya Pvt. Ltd. (GSTIN-24AABCR0460M1ZH),  
Plot No.29/2 & 3, before Shilpgram-II, Lapkaman - Dantali Estate Road,  
Village - Lapkaman Taluka Daskroi, Ahmedabad

**Copy to:**

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C.Ex, Ahmedabad-North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-VI, Ahmedabad-North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
6. The Superintendent, CGST, Range-V, Division-VI, Ahmedabad-North Commissionerate.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File/ P.A. File.

