



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/2273/2023 / 6821-26
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-57/2023-24 and 28.09.2023
(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	03.10.2023
(ङ)	Arising out of Order-In-Original No. GST-06/D-VI/O&A/663/AM/2022-23 dated 28.02.2023 passed by The Assistant Commissioner, CGST, Division-VI, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Archi Exim Pvt.Ltd. (GSTIN: 24AAGCA5521R1ZF), 8 th Floor, 807, Akik Complex, Opposite Rajpath Club, S.G.Highway, Ahmedabad, Gujarat-380015

(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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
(i)	(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-APPEAL**BRIEF FACTS OF THE CASE:**

M/S Archi Exim Pvt. Ltd, 8th Floor, 807, Akik Complex, Opposite Raajpath Club, S.G.Highway, Ahmedabad, Gujarat-380015, (hereinafter referred to as the "appellant") has filed the appeal on 12.06.2023 against Order-in-Original No. GST-06/D-VI/O&A/663/AARCHI/AM/2022-23, dated 28.02.2023 (date of communication of impugned order 16.03.2023) (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Central GST & C.Ex., Division-VI, Ahmedabad North (hereinafter referred to as the "adjudicating authority") for wrong availment of Input Tax Credit in comparison to GSTR-2A with GSTR-3B, amounting to Rs. 22,17,600/- alongwith interest and penalty.

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAGCA5521R1ZF, are engaged in the business of Import and Export of chemicals and duly registered under GST. During the course of audit for the period from July 2017 to March 2018 it was found that the appellant had availed ITC in GSTR 3B return/Column No 8B (Pt III) to GSTR 9 Return which was in excess to what was available to them under GSTR 2A return/ column No 8B (Pt III) to GSTR 9 Return, Further, it was noticed that the appellant has taken Input tax Credit amount of IGST of Rs.22,17,600/- on goods purchased from M/s. Dhana Crop Sciences Ltd., during the Period October 2017, but the same was not reflected in GSTR-2A and on verification of ledger in respect of M/s. Dhana Crop Sciences Ltd., it was noticed that the appellant had not made payment to M/s. Dhana Crop Sciences Ltd. upto March 2018. Further, it was also not clear that whether the supplier has paid the IGST on such supply or otherwise. Therefore, in terms of Section 16 of the CGST Act, 2017 and relevant provisions under the SGST Act, 2017 and IGST Act, 2017 the appellant was not eligible for availment of Input tax Credit of IGST of Rs.22,17,600/- and the said amount was required to be reversed/ paid by the appellant alongwith applicable interest and penalty.

3. The appellant was further issued show Cause Notice dated 03.08.2021. Further, the adjudicating authority passed the impugned order and confirm the demand to recover the ITC of IGST amounting to Rs. 22,17,600/- under the provisions of Sections 74(1) of the CGST Act read with the SGST & IGST Act, 2017 alongwith interest under Section 50 of the CGST Act read with the SGST & IGST Act, 2017 and penalty amounting to Rs. 22,17,600/-under section 74(1) of the CGST Act read with Section 122(2)(b) of the CGST /SGST Act and the IGST Act, 2017 as applicable, for the following reasons :

- that as per GSTR 9 Return, the appellant had availed ITC in GSTR 3B return in excess to what was available to them under GSTR 2A.
- The appellant had taken Input tax Credit of IGST amount to Rs.22,17,600/- on goods purchased from M/S Dhana Crop Sciences Ltd during the Period Oct-2017, but the same was not shown in GSTR-2A.
- that the supplier had filed GSTR-1 for the month of October 2017 with GST No. of consignee instead of Buyer i.e. the appellant i.e. they have issued invoices with GST No. of the consignee and therefore the same were reflecting in the GSTR 2A of the

consignee. The appellant further submitted that the same invoices were amended by the supplier in the GSTR-1 of September 2018 return but still the invoices were reflecting in the Consignee's GSTR-2A instead of appellant GSTR-2A. Therefore, in such case the appellant as not able to avail the ITC and there has been difference of ITC as per GSTR 3B and GSTR 2A under the Annual Return GSTR 9 which was filed on 25.01.2020.

- that till January 2020 the said irregularity was not rectified and therefore the appellant was not eligible to avail ITC of IGST. Further on verification of ledger in respect of M/S. Dhana Crop Sciences Ltd it was noticed that appellant had not made payment to M/s. Dhana Crop Sciences Ltd upto Mar-2018.
- that the appellant was not eligible for avallment and utilization of ITC of IGST of Rs. 22,17,600/- in terms of condition under Section 16 of the CGST Act, 2017;
- that in order to avail credit of ITC the recipient of goods or service is required to pay the amount of goods and service long with Tax, which the appellant has not paid and therefore the appellant was not entitled for avallment and utilization of ITC of 1GST of Rs. 22,17,600/- and the same is recoverable along with interest and penalty;
- The appellant has misstated and suppressed the material fact and availed and utilized the inadmissible ITC in contravention of Section 16 of the CGST Act, 2017.
- that the appellant has with intent to defraud the revenue, availed and utilized said amount of ITC of IGST and therefore rendered themselves liable for penalty under Section 74 (1) of the CGST Act, 2017 and relevant provision under the IGST Act, 2017.

Being aggrieved with the impugned order, the appellant preferred the present appeal on 12.06.2023 for the following reasons:

Confirming the demand despite the fact that that supplier had done amendment in GSTR-1 of the Sep-18 month return and such transactions are duly reflected in GSTR-2A (B2B Amendment sheet) of the appellant from 31/10/2018.

- Confirming the demand even though material supporting evidences produced like CA Certificate certifying that supplier had paid his tax liability while filing GSTR-3B of the Oct-2017 month return and declarations issued by both the consignees that they have not taken ITC even though such transactions are shown in their GSTR-2A.
- Confirming the demand on the ground of non-reflection of transactions in GSTR 2A while SCN was issued for Non Payment of tax by supplier which suggest that impugned order travel beyond SCN and liable to be quashed.
- Confirming the demand by invoking second proviso of section 16(2) of CGST Act, 2017 despite the fact that SCN has not been issued based on such ground, hence, this impugned order travel beyond SCN and liable to be quashed.
- Imposing penalty under section 74 and 122(2)(b) of CGST Act, 2017 despite the fact that there is not an iota of suppression on the part of appellant.
- Imposing penalty under section 122(2)(b) of CGST Act, 2017 despite the fact that CA Certificate produced at the time of reply to SCN certifying the fact that supplier has already paid tax liability to the government and has duly filed his GSTR-3B returns.



- Confirming the demand by completely ignoring the Circular No, 183/15/2022-GST dated 27th December, 2022 which has been issued by CBIC specifically to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A.
- They further pray that the above order be quashed and set aside on the grounds stated above.

PERSONAL HEARING :

5. Personal hearing in the present appeal was held on 28.02.2023 and 13.09.2023. Shri Keyur Kamdar, C.A. and Shri Punit Prajapati, C.A., Authorized Representative's appeared in person on behalf of the appellant in the present appeal. During P.H. they have submitted that by mistake their supplier has mentioned the GSTN of their purchaser (Bill to ship to transaction). Later on the mistake has been corrected. Now it is reflected in their GSTR-2A (B2B amendments). Also submitted CA certificate as required under Circular No. 183/15/2022 dated 27.12.2022 and further they have reiterated the written submissions and requested to set aside O-I-O and allow appeal.

DISCUSSION AND FINDINGS:

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case whether the appellant had wrongly availed Input Tax Credit in comparison to GSTR-2A with GSTR-3B amounting to Rs. 22,17,600/- alongwith interest and penalty.

I find that in the instant case adjudicating authority is contending that the appellant has contravened the provisions of Section 16 of CGST Act 2017. In this regard, I hereby refer the relevant provisions as under:

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;

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment;

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed;

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

7(ii). In this regard, I find that the adjudicating authority in the impugned order has not submitted any facts or supporting document that justify that the appellant had not made payment to their supplier. As per para 4 of the SCN it is alleged that the appellant has failed to clarify that the tax charged by the M/s. Dhana Crop Science Ltd. in respect of each supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply. In this regard I find that the appellant has submitted CA Certificate dated 19th July 2021 issued by K. S. Ramakrishna & Co., Chartered Accountants Firm at the time of reply to SCN, which certifies that payment of IGST against four invoices has been made by the supplier while filing GSTR-3B for the month of Oct- 2017.

8(i). Further I find that the appellant while filing APL-01 and during the course of personal hearing, coated the benefit of Circular No. 183 /5 / 2022-GST issued on 27/12/2022 by The Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India which deals with matter of difference of input tax credit availed in form GSTR-3B as compared to that detailed in Form GSTR-2A for financial year 2017-18 and 2018-19. In this regard, I hereby refer the relevant provisions as under:

Circular No. 183/15/2022-GST, dated 27.12.2022.

Subject: 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 FY 2017-18 and 2018-19-reg.

The main content of this circular are reproduced as under: " In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

Sr. No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below
d.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.



4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii) that he has received the goods or services or both;
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned

supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICAI website <https://icmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

8(ii). In the instant case I find that this case falls under main content of this circular No. 188/15/2022-GST, dated 27.12.2022 (Sr. No. D) and clause no. 4.1.1. As per Sr. No. D of the said circular dated 27.12.2022, Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1, In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by the procedure provided in para 4 as mentioned above. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

8(iii). While gone through the facts of the case and written submissions made by the appellant I find that Supplier (M/s. Dhana Crop Science Ltd) has made inadvertent error, as they furnished their outward supply with GSTIN of consignee instead of the appellant being buyer of the goods and uploaded details of consignee in GSTR-1 instead of showing details of the appellant hence, there is mismatch

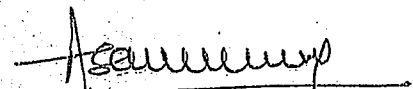


between Input Tax Credit (ITC) availed in GSTR-3B and ITC reflected in GSTR-2A, such mistake already rectified by the supplier in his GSTR-1 of September 2018 month return which is correctly reflected in GSTR-2A (B2B Amendment sheet) of the appellant since 31/10/2018. In the written submission supplier has also declared that due to said inadvertent mistake the said transactions are not appearing in GSTR 2A of the appellant. Further during personal hearing, the representative of appellant have stated that by mistake their supplier has mentioned the GSTN of their purchaser (Bill to ship to transaction). Later on the mistake has been corrected. Now it is reflected in their GSTR-2A (B2B amendments). Also submitted CA certificate as required under Circular No. 183/15/2022 dated 27.12.2022.

9. In view of the above, I find that the appellant have submitted the proper documents during filing of APL 01 form in this office. Hence, the impugned order disallowing the demand of Input Tax Credit (ITC) by the adjudicating authority under Section 74(1) needs to be set-aside to the above extent, in terms of Circular No.183/15/2022-GST dated 27.12.2022.

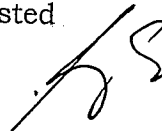
10. In view of above discussions, I allow the appeal of the "Appellant" with a direction to submit all the relevant documents/submission before the adjudicating authority for verification of the facts, who shall verify the facts as directed above and pass order accordingly.

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.


28/09/2023

(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 28.09.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To

M/S Archi Exim Pvt. Ltd,
8th Floor, 807, Akik Complex,
Opposite Raajpath Club, S.G.Highway,
Ahmedabad, Gujarat-380015

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.
4. The Dy. / Assistant Commissioner, CGST & C.Ex, Division-VI, Ahmedaba North Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.

6. Guard File

7. P.A. File.

