आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
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सत्यमेव जयते

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| (क) | फ़ाइल संख्या / File No. | GAPPL/ADC/GSTP/2269/2294/2295/2023/8097-8102 |
| (ख) | अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date | AHM-CGST-002-APP-JC-84 to 86/2023-24 and 27.10.2023 |
| (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 | 03.11.2023 |
| (ङ) | Arising out of Order-In-Original No. 44/AC/Dem/NA/22-23 dated 10.03.2023 passed by The Assistant Commissioner, CGST, Division-V, Ahmedabad North Commissionerate | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | M/s Mahip Industries Limited (GSTIN: 24AAACC7720L1ZQ), Survey No. 127, Village-Jalalpur Gondeshwar, Dholka-Bagodara Road, Ahmedabad-387810 |

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|---|---|
| (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 –<br>(i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and<br>(ii) A sum equal to twenty five per cent of the remainingamount 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. Mahip Industries Limited, Survey No.127, Village- Jalalpur Gondeshwar, Dholka-Bagodara Road, Ahmedabad-387810 (GSTIN 24AAACC7720L1ZQ), Shri Radheshyam Tolaram Oza, Director of M/s. Mahip Industries Limited, and Shri Rajiv Govindram Agarwal, Director of M/s. Mahip Industries Limited, (hereinafter referred as *"Appellant-1"*, *"Appellant- 2"* and *"Appellant- 3"* respectively )have filed separate appeals all dated 16-06-2023 against Order-in-original No.44/AC/Dem/NA/2022-23 dated 10.03.2023 (herein after referred as the *"impugned order"*), passed by the Assistant Commissioner, CGST & C.Ex. Division –V, Ahmedabad-North Commissionerate (herein after referred as the *"adjudicating authority")*.

2. Facts of the case in brief, are that the appellant-1 are engaged in manufacturing of taxable goods i.e. corrugated boxes falling under Chapter Heading No. "48" and also availing the benefit of Input Tax Credit of the GST paid on the input goods under the provisions of the CGST Rules, 2017. The appellant-1 had wrongly availed and utilized irregular Input Tax Credit without actual supply of goods resulting in GST Liability amounting to Rs.1,30,67,188/- on consideration of Rs.10,88,93,232/- by way of wrongly availed and utilized by reason of fraud or any willful misstatement or suppression of facts of the CGST Act, 2017 and Rules made there under with intent to evade GST Liability. These facts had come to the notice of the department only after initiation of investigation by the DGGI, AZU, Ahmedabad against the appellant-1. Therefore GST evaded by way of wrong availment and utilization of inadmissible ITC by the Appellant-1 was liable to be recovered by invoking extended period as per section 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017. Further, on scrutiny of GSTR-2A Returns for the period January-2021 and February-2021, it was observed that the Appellant-1 had inward ITC of Rs.5,970/- and Rs.48,545/- in January-2021 and February-2021 Returns respectively, However, from GSTR 3-B Returns it was observed that they had availed ITC of Rs.11,06,516/- and Rs.12,26,474/- in GSTR-3B Returns for the period January-2021 and February-2021 respectively. Therefore, it appeared that the Appellant-1 had wrongly availed excess ineligible and irregular ITC of Rs.22,78,475/- which was not available in the GSTR-2A returns, fraudulently in GSTR-3B Returns and further utilized the same fraudulent ITC to pay the aforesaid evaded tax liability. The total GST payment of Rs.20,00,000/- made during the investigation was not appropriated against the total GST Liability of Rs.1,30,67,188/-.

Therefore, SCN to (A) M/s Mahip Industries Limited was issued asking them as to why?

*"(i) The CGST amount of Rs. 65,33,594/- (Rupees Sixty Five lakhs Thirty Three Five Hundred and Ninety Four only), evaded on fraudulent availment and utilization of irregular/ inadmissible Input Tax Credit on the basis of invoices on which appropriate tax has not been paid to Government and also no goods corresponding to the tax invoices have been received from both non-existent/non-operational firms namely M/s Samarth Corporation and M/s Orchid Enterprise for the period from Jan-2019 to Mar-2019, should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017;*

*(ii) The SGST amount of Rs. 65,33,594/- (Rupees Sixty Five lakhs Thirty Three Five Hundred and Ninety Four only), evaded on fraudulent availment and utilization of irregular/ inadmissible Input Tax Credit on the basis of invoices on which appropriate tax has not been paid to Government and also no goods corresponding to the tax invoices have been received from both non-existent/non-operational firms namely M/s Samarth Corporation and M/s Orchid Enterprise for the period from Jan-2019 to Mar-2019, should not be demanded and recovered from them under Section 74(1) of the Gujarat CGST Act, 2017;*

*(iii)Interest at applicable rates should not be demanded and recovered from them under Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 on the GST liability mentioned at Sr. No. 13(i) and 13(ii) above; in terms of Section 74 of CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017.*

*(iv) Penalty should not be imposed upon them under Section 74 of the CGST Act, 2017 read with Section 122(1)/ 122(2) (b) of the CGST Act, 2017 read with the Section 74 of the Gujarat GST Act, 2017 read with Section 1221)/ 1222) 6) of the Gujarat GST Act, 2017 for committing offences as stipulated below:*

*(a) Section 122(1)(vii) of the CGST Act, 2017 read with Section 122(1)(vii) of the Gujarat State GST Act, 2017 by way of wrong availment of fraudulent ITC of Rs. 1,30,67,188/- [CGST - Rs. 65,33,594/- + SGST - Rs.65,33,594/-] in contravention of the provisions of the said Act and Rules made thereunder, as discussed above;*

*(b) Section 122(1)(xvi) of the CGST Act, 2017 read with Section 122(1)(xvi) of the Gujarat State GST Act, 2017 for failing to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder, as discussed above;*

*(c) Section 122(1)(xvii) of the CGST Act, 2017 read with Section 122(1)(xvii) of the Gujarat State GST Act, 2017 for failing to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules*

*made there under or furnishes false information or documents during any proceedings under this Act;*

*(v) Penalty should not be imposed upon them, under Section 122(3)(d) of the CGST Act, 2017 read with Section 122(3)(d) of the Gujarat State GST Act, 2017 for failing to appear before the officer of DGGI, Ahmedabad, when issued with summons for appearance to give evidence and for failure to produce documents during the investigation/inquiry.*

***(B)** Therefore, Shri Rajiv Govindram Agarwal, Director of M/ s Mahip was issued a show cause notice by the Deputy Director, DGGI, AZU, Ahmedabad directing him to show cause to the undersigned as to why:-*

*(i) Penalty should not be imposed upon him under Section 122(1)/ 122(2)(b) of the CGST Act, 2017 read with Section 122(1)/ 122(2)(b) of the Gujarat CST Act, 2017 for the offences prescribed under Section 122(1)(vii) of the CGST Act, 2017 read with the Section 122(1)(vii) of the Gujarat GST Act, 2017 for taking and utilising the Input Tax Credit without actual receipt of corresponding goods, in view of the provisions of Section 137(1) of the CGST Act, 2017 read with Section 137(1) of the Gujarat GST Act, 2017 read with Section 132(1)(c) of CGST Act,2017.*

*(ii) Penalty should not be imposed upon him under Section 122(3)(d) of the CGST Act, 2017 read with Section 122(3)(d) of the Gujarat GST Act, 2017 for failing to appear before the officer of Central Tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry.*

***(C)** Therefore, Shri Radheshyam Tolaram Oza, Director of M/s Mahip was issued a show cause notice by the Deputy Director, DGGI, AZU, Ahmedabad directing him to show cause to the undersigned as to why:-*

*(i) Penalty should not be imposed upon him under Section 122(1)/ 122(2)(b) of the CGST Act, 2017 read with Section 122(1)/ 122(2)(b) of the Gujarat CST Act, 2017 for the offences prescribed under Section 122(1)(vii) of the CGST Act, 2017 read with the Section 122(1)(vii) of the Gujarat GST Act, 2017 for taking and utilising the Input Tax Credit without actual receipt of corresponding goods, in view of the provisions of Section 137(1) of the CGST Act, 2017 read with Section 137(1) of the Gujarat GST Act, 2017 read with Section 132(1)(c) of CGST Act, 2017."*

3. The Adjudicating Authority vide Order-in-Original No.44/AC/Dem/NA/ 2022-23 dated 10.03.2023 has ordered as under:

*"(1) I hereby confirm the <u>demand of Rs. 65,33,594/-</u> (Rupees Sixty Five Lacs, Thirty Three Thousand Five Hundred Ninety Four only) under Section 74(1) of the <u>CGST</u> Act, 2017 in respect of M/ s. Mahip Industries Limited, Survey No. 127, Village Jalalpur Gondeshwar, Dholka Bagodara Road, Ahmedabad-387810.*

*(2) I hereby connfirm the demand of Rs. 65,33,594/- (Rupees Sixty Five Lacs, Thirty Three Thousand Five Hundred Ninety Four only) under Section 74(1) of the Gujarat GST Act, 2017 in respect of M/s. Mahip Industries Limited, Survey No. 127, Village Jalalpur Gondeshwar, Dholka Bagodara Road, Ahmedabad-387810.*

*(3) I hereby order to pay the interest at the applicable rates on the confirmed demand shown at Sr. No. (1) & (2) above i.e. ( Demand of Rs. 65,33,594/- CGST + Rs.65,33,594/- SGST), under Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017.*

*(4) I impose a penalty of Rs. 01,30,67,188/- (CGST Rs. 65,33,594/- + SGST Rs.65,33,594/-) under Section 74 read with Section 122 (1)/ 122(2)(b) of the CGST Act, 2017 read with Section 122(1)/ 122(2)(b) of the Gujarat GST Act, 2017 on M/s. Mahip Industries Limited, Survey No. 127, Village Jalalpur Gondeshwar, Dholka Bagodara Road, Ahmedabad-387810.*

*(5) I impose a penalty of Rs.25,000/- on Shri Rajiv Govindram Agarwal, Director of M/s. Mahip Industries Limited, Survey No. 127, Village Jalalpur Gondeshwar, Dholka Bagodara Road, Ahmedabad-387810, under Section 122 (1) /122(2)(b) and 122 (3)(d) of the CGST Act, 2017 read with Gujarat GST Act, 2017, due to fraudulently taking and utilizing the ITC without actual receipt of corresponding goods and failure to appear before the officer of DGGI, Ahmedabad on summoned.*

*(6) I impose a penalty of Rs.25,000/- on Shri Radheshyam Tolaram Oza, Director of M/s. Mahip Industries Limited, Survey No. 127, Village Jalalpur Gondeshwar, Dholka Bagodara Road, Ahmedabad-387810, under Section 122 (1) /1222)) of the CGST Act, 2017 read with Gujarat GST Act, 2017, due to fraudulently taking and utilizing the ITC without actual receipt of corresponding goods."*

4. Being aggrieved with the impugned order, the Appellant-1, Appellant-2 and Appellant-3, filed the present appeals on 16-06-2023 on the grounds that:

*"At the outset it is submitted that the Impugned Order has been passed in ignorance and/or without fully appreciative of the facts, relevant to the present proceedings and contrary to the applicable legal provisions and the settled law of the legal issues involved. The Impugned Order is therefore, bad in law and deserves to be set aside for the reasons set out herein below:*

*(A) The impugned order is non speaking order. The perusal of the impugned order would reveal that in-spite the Appellant in their written submission dated 22.02.2023 & 25.02.2023 have categorically refuted all the allegations and averment levelled against them however the learned adjudicating authority conveniently ignored the categorical submission of the Appellant and not offered any findings / comments as to why the same are not acceptable. Thus, the impugned order is non speaking order. Such, an order is not sustainable under the law.*

*The Appellant hereby rely in the case of RELIANCE MEDIA WORKS LTD. Versus COMMISSIONER OF C. EX., MUMBAI-Vas reported in 2014 (301) E.L.T. 91 (Tri. - Mumbai) it's held that,*

*'Chemical preparations for photographic use ' and silver residue - Marketability of- Revenue holding impugned products excisable as said Chemicals classifiable*

*under Heading 3707 of Central Excise Tariff and silver residue under Chapter 26 ibid - Evidence - Non-speaking order by adjudicating authority confirming demand without giving any findings regarding marketability of said products despite Tribunal's Order, dated 11-7-2008 remanding instant matter with specific directions on said issue - Contention of assessee that said products made in situ and captively consumed not rebutted by Revenue - No evidence produced by Revenue showing impugned products marketable or marketed by assessee at any time - Expert opinion from Kodak India Ltd. stating said products not marketable as prone to oxidation and their shelf-life for limited period only - No tests undertaken by Department to test validity of expert opinion - Duty demand not sustainable in absence of positive evidence on marketability of impugned goods - Silver residue classifiable under Chapter 71 ibid and not Chapter 26 ibid and exempt from Excise duly during relevant period - Impugned order set aside - Section 11 A of Central Excise Act, 1944. [paras 7.1, 7.2, 7.3, 7.4, 7.5]*

*In another case before Honorable Gujarat High Court in case of M.P. COMMODITIES PVT. LTD. Versus STATE OF GUJARAT as reported in 2023 (70) G.S.T.L. 66 (Guj.) (R/Special Civil Application No. 3796 of 2022, decided on 9-3-2022) held as,*

*Assessment order - Non-speaking orders - Impugned orders passed by department were non-speaking order - HELD : Impugned orders were to be set aside and matter was to be remitted to department for fresh hearing – Deparment should ensure that a reasoned order was passed dealing with each and every submission raised by writ applicants – Writ applicants file submissions in writing and could even question legality and validity of show cause notice - Section 73 of Central Goods and Services Tax Act, 2017 - Section 73 of Gujarat Goods and Services Tax Act, 2017 - Article 226 of Constitution of India. [paras 2, 5.7 and 9]*

*There is plethora of cases in this regard however the Appellant reproduced above cases only for the ease of reference. On this ground the Appellant press and submit that on this ground the impugned order is non-speaking and hence bad in law.*

***(B) Simultaneous investigation and show cause notices by State Tax Authority and Central Tax authority.***

*The Appellant in their written submission submitted that the Appellant is facing 3 show cause notices for the same period on the same issue simultaneously by State Tax authority and Central Tax authorities.*

***Case 1: By State Enforcement Division for FY 2018-2019:***

*State GT - Enforcement division has taken up the matter for investigation of books of accounts of the Appellant and had issued DRC-01 on 06.08.2020 and subsequently issued DRC-07 on 03.10.2020 U/s. 74 of CGST Act, 2017and various other provisions and appeal against the said order is already being filed before State Appellate Authorities on 02.10.2021 (Under Covid Period).*

***Case 2: By State Jurisdictional Ghatak 11 for FY 2018-2019:***

*State GST - Enforcement division has taken up the matter for investigation of books of accounts of the Appellant and had issued ASMT-10 on 17.07.2021, then*

*DRC-01A on 10.01.2022 replied on 19.03.2022, then DRC-01 on 25.04.2022 and subsequently issued DRC-07 on 22.06.2022U / s. 74 of CGST Act, 2017 and various other provisions and appeal against the said order is already being filed before State Appellate Authorities on 21.09.2022.*

***Case 3: By DGGI for same FY 2018-2019: Present Case.***

*DGGI has taken up the matter for investigation of books of accounts of the Appellant and had searched premises of the Appellant on 07.01.2021 and subsequently issued DRC-01A on 23.06.2022, then DRC-01 on 30.06.2022 mainly alleging on same grounds of Section 74 of CGST Act, 2017 and various other provisions of the law.*

***Main observations of DGGI are that the Appellant has procured only fake invoices containing irregular and inadmissible ITC of Rs. 1,30,67,188/- which was wrongly availed and utilised to discharge the GST Liability and also the Appellant has violated payment condition of 180 days.***

*However, the Ld. Adjudicating Authority have grossly ignored the circulars and procedures, related to scrutiny by multiple agencies.*

*As mentioned above the Appellant is already facing issue of multiple SCN's (DRC-07) for the FY 2018-2019, the Appellant failed to understand and is surprise by another 3rd SCN-DRC-01 by DGGI now, which as per the appellant is in gross violation of Section 6 of CGST Act, 201 7 and various circulars issued for disciplining multiple investigations and scrutinise.*

*The appellant is surprised by hand pick reading by agency like DGGI wherein they read only relevant provision of Section 6(1) read with Circular CBEC-20/10/07/2019-GST dt. 20.06.2020 wherein they are authorised to be called as "proper officer" which the Appellant never denied.*

*However, DGGI intentionally didn't read / ignored Section 6(2) and Circular No. CBEC/20/43/01/2017-GST (Pt.) dt. 05.10.2018 and Circular No. 757/Follow-up/GSTC/2018/8198. Dt. 19.10.2022 wherein it was made loud and clear that any investigation is initiated by State GST Authorities, then subsequent investigation or issuance of DRC-01 by Central / DGGI is not possible.*

***Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.***

*6. (2) Subject to the conditions specified in the notification issued under sub-section (l),-*

*(b) where a proer officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated bv the proper officer under this Act on the same subject matter.*

*As per Section 6(2)(b) of CGST Act, 2017 clearly states that if any investigation is being initiated by State Authorities under SGT Act, 2017 (Gujarat) then, no proceedings shall be initiated by the proper officer under this Act, means CGST Act, 2017. Hence, DGGI had clearly violated the said section for their convenience just to book one more case to their kitty and*

*totally overlooking to the facts that they are already in possession of SCN issued by State Authorities which is being noted by them in para 3 of alleged SCN.*

*Also, Circular No. 757/Follow-up/GSTC/2018/8198. Dt.19.10.2022, Wherein under para (ii) its clearly said as,*

***Show Cause Notice Issuance of recurring SCN in case of_an enforcement action initiated and finalized by Central Tax Authorities against taxpayers assigned to State tax administration and vice versa***

*GST Council Office Memorandum F. No. 757/Follow-up/GSTC/2018/8198, dated 19-10-2022*
*Government of India, Ministry of Finance (Department of Revenue)*
*Central Board of Indirect Taxes & Customs, New Delhi*

*Subject: Authority regarding action consequential to issuance of Show Cause Notice and for issuance of_ recurring SCN in case of an enforcement action initiated by the Central authorities against a tax payer assigned to Sate and vice versa" - Regarding.*

.....

*2. The matter was deliberated by the GST Council in its 47th meeting, where the Council recommended to clarify the issue as follows :*

*(i) A taxpayer located within a State is open to enforcement action by both authorities. For example, an enforcement action against a taxpayer, assigned to State tax authorities can be initiated by the Central tax authorities (and vice versa). In such cases, all the consequential action relating to the case including, but not limited to appeal, review, adjudication, rectification, revision will lie with the authority which had initiated the enforcement action i.e. the Central tax authorities in the instant case.*

*Refund such cases may however, be granted only by jurisdictional tax authority, administering the taxpayer.*

*(ii) Issuance of recurring SCNs does not involve any fresh investigation as the subject matter as well as ground of SCN remain the same, and therefore, it may be desirable that such further/recurring SCNs are issued by the actual jurisdictional authorities (which is responsible for assessment of retums of the taxpayer), as they will be in a position to access the records and returns of the taxpayers, and to check whether the grounds of SCN still exist or not and take a view/action for issuance of recurring SCN, based on facts in the said period. Besides, if the same authority, who has taken enforcement based action (but does not administer the said taxpayer), is mandated to issue recurring SCN also, it will put unnecessary burden on the investigating tax authority to keep a track on subsequent practice of the taxpayer after conclusion of investigation and to collect all the data and records for issuance of recurring SCN. Accordingly, the recurring SCs may be issued by the concerned jurisdictional tax authorities administering the taxpayer, i.e. even if investigation is conducted by Central tax authorities and initial SCN is issued by them, the recurring SCN may be issued only by the jurisdictional tax authority administering the taxpayer and if the such jurisdictional tax authority is State tax, the recurring SCN may be issued by the concerned State tax authority.*

*Also, Circular No. CBEC/20/43/01/2017-GST (Pt.) dt. 05.10.2018 clearly states that who so ever has initiated the investigation shall complete, wherein the Appellant press and submit that DGGI in the present case have no jurisdiction left as investigation is already started by State GST Authorities long back before the search is being conducted at the premises of Appellant by DGGI and the matter is presently before Appellate Authority.*

*.....*

*It has been brought to the notice of the Board that there is ambiguity regarding initiation of enforcement action by the Central tax officers in case of taxpayer assigned to the State tax authority and vice versa.*

*2. In this regard, GST Council in its 9th meeting held on 16.01.2017 had discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action is recorded at para 28 af Agenda note no. 3 in the minutes of the meeting which reads asfollows:-*

*"viii. Both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain"*

*3. It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery. [ling ofaeal etc. arising out of such action.*

*4. I other words. if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers ofCentral tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions.*

*5. Similar position would remain in case of intelligence based enforcement action initiated by officers ofState tax authorities against a taxpayer administratively assigned to the Central tax authority.*

*6. It is also informed that GSTN is already making changes in the IT system in this regard. .....*

*The Appellant also rely on 2006 (197) E.L.T. 465 (S.C.) in case of NIZAM SUGAR FACTORY Versus COLLECTOR OF CENTRAL EXCISE, A.P. wherein its held and settled by Honorable Apex Court that multiple show cause notices are not possible in a situation wherein the issue is already in knowledge of authorities.*

*Civil Appeal No. 2747 of 2001 with C.A. No. 6261 of 2003 and C.A. No. 2164 of 2006 @ SLP (C) Nos. 9271-9278 of 2003, decided on 20-4-2006*

*Demand - Limitation - Suppression of facts - All relevant facts in knowledge of authorities when first show cause notice issued - While issuing second and third show cause notices, same/similar facts could not be taken as suppression of facts on part of assessee as these facts already in knowledge of authorities - No suppression of facts on part of assessee/Appellant - Demands and penalty dropped - Sections I IA and J JAC' a/Central Excise Act, 1944. [paras 9, 10]*

*Herein its being submitted that during first investigation it was done by Enforcement Team of State GST Authorities (Investigating team of State GST) and then by Ghatak (Jurisdictional Division Office), wherein entire data is being visible to authorities while making investigation and regular assessment. Hence at the later stage if the authorities alleges for further misleading or mis-declaration then it shall become endless job and no financial year assessment / investigation shall come to end.*

*However the learned adjudicating authority, while refuting aforesaid submission at para 33 observed that in term s of CBIC circular No.CBEC/20/43/01/2017-GST dated 05.10.2018 the investigation could be carried out by Central Authorities as well as by State Authorities etc ...*

*In this regard the Ld. Adjudicating authority failed to appreciate the context in which the appellant has referred the said circulars and sections. Though both the authority can do their respective job whether under Section 74 or under section 61, however the fact of the matter in this case is that period covered and facts covered by both the authority are being same, there could not be any duplication of demand. In the instant case the state authority scrutinised returns of the appellant and have issued DRC-07 which is pending before the Appellate authority, wherein the ITC of Rs.65,99,642/- is related to ITC availed on the Basis of Invoices of Samarth Corporation which is also included in the present show cause notice which is adjudicated. This is duplication of confirmation of demand both by State authority and Central Authority. Since State authority has first decided the matter, the said ITC could have been dropped from the present proceeding in-stead of confirming the same. Such confirmation has resulted in to double jeopardy to the appellant for the same period and on the same issue.*

*Therefore the confirmation of demand to the extent of Rs.65,99,642/- has to be considered as void and not sustainable under the law.*

*Herein its being submitted that during first investigation it was done by Enforcement Team of State GST Authorities (Investigating team of State GST) and then by Ghatak (Jurisdictional Division Office), wherein entire data is being visible to authorities while making investigation and regular assessment. Hence at the later stage if the authorities alleges for further misleading or mis-*

*declaration then it shall become endless job and no financial year assessment / investigation shall come to end.*

*However the learned adjudicating authority, while refuting aforesaid submission at para 33 observed that in term s of CBIC circular No.CBEC/20/43/01/2017-GST dated 05.10.2018 the investigation could be carried out by Central Authorities as well as by State Authorities etc ...*

*In this regard the Ld. Adjudicating authority failed to appreciate the context in which the appellant has referred the said circulars and sections. Though both the authority can do their respective job whether under Section 74 or under section 61, however the fact of the matter in this case is that period covered and facts covered by both the authority are being same, there could not be any duplication of demand. In the instant case the state authority scrutinised returns of the appellant and have issued DRC-07 which is pending before the Appellate authority, wherein the ITC of Rs.65,99,642/- is related to ITC availed on the Basis of Invoices of Samarth Corporation which is also included in the present show cause notice which is adjudicated. This is duplication of confirmation of demand both by State authority and Central Authority. Since State authority has first decided the matter, the said ITC could have been dropped from the present proceeding in-stead of confirming the same. Such confirm ation has resulted in to double jeopardy to the appellant for the same period and on the same issue.*

*Therefore the confirmation of demand to the extent of Rs.65,99,642/- has to be considered as void and not sustainable under the law.*

***(C) False Allegation by DGGI:***

*The appellant would like to submit that in spite of the facts that the DGGI have procured documents as sales register, purchase register, trial balance and copy of SCN issued by State Authorities (para 3 of alleged SCN); the all the ITC which is being availed and utilised by the Appellant is visible in GSTR-2A of the Appellant;, however it was alleged that the Appellant didn't paid to the supplier. In this regard it was specifically contended by the appellant that at the time of search on 07.01.2021 DGGI procured the ledger copies of M/s. Samarth Corporation and M/s. Orchid Enterprise from the Appellant (RUD-09) wherein its clearly visible that payment was squared off through Journal Voucher already passed on 31.03.2020, therefore the allegation of DGGI in the impugned show cause notice was false. In this regard the appellant have invited the provisions of Rule 37(1) of the CGST Act, 2017 and in relation to book entry, the appellant submitted that the book entry is considered as valid mode of payment and in this regard the appellant placed reliance on the Ruling delivered in the case of Sanghvi Movers Limited reported at 2020 (32) GSTL) 586 (App.AAR-GST-TN) wherein the Appellate Authority of Advance Ruling, Tamil Nadu in their Order-in-Appeal No. AAAR/08/2019 (AR), dated 13-11-2019 in A.R. Appeal No. 6/2019/ AAAR has held as under and the ratio of the case is applicable to the present case;*

*Input Tax Credit - Distinct person transaction - Non-payment of Consideration- Restriction On ITC - Noticee, a Branch Office is registered in Tamil Nadu having inter-State transaction with HO in Maharashtra wherein said HO transferring Cranes on payment of IGST on agreed value – Noticee supplying said Cranes to inter-State customers on GST payment, payment of which generally directly made by customer to HO - AA R in its Ruling has restricted ITC to amount of value set-off. i.e.. to extent of payment of value to their HO denying them benefit of Rule 37 of Central Goods and Services Tax Rules. 2017 - HELD : Statutory provisions restricting ITC in case consideration with tax is not paid to supplier within 180 days of date of invoice - However. in case of supplies covered in Schedule-I to Central Goods and Services Tax Act, 2017, consideration for supply is deemed to have been paid for availing ITC - [ instant case from facts, it is clear that transaction is between distinct persons which is covered under Schedule-I ibid - Noticee while issuing tax invoice to customers. clearly mentions that payment of same be made directly in HO account as receipts and payables are accounted at entity level - Further, tax is being paid on agreed upon value as per Memorandum of Understanding between distinct persons - Proviso to Rule ibid provides for deemed payment for such transactions –Even assuming that said Rule is not applicable as value is stated in Tax Invoice. even then ITC is not deniable as consideration stands paid to HO either directly by customer or by setting of same between HO and Noticee in terms of accenting accounting principles - In view of above AAR erred in not allowing full ITC to Noticee - Impugned Ruling modified by holding that Noticee entitled to full ITC- Rule 37 of Central Goods and Services Tax Rules. 2017 - Section 16 of Central Goods and Services Tax Act., 2017. [paras 8.1, 8.2, 8.3l*

*[emphasis supplied by underline]*

*In another Ruling in the case Senco Gold Ltd reported at 2019 (24) GSTL 688 (AARGST) delivered by Authority of Advance Ruling, West Bengal in their Order No. 02/WBAAR/2019-20, dated 8-5-2019 in Case No. 8/2019 where in it was ruled that;*

*Input Tax Credit - Payment of consideration - Book adjustment, whether proper mode – Statutory provision making payment of consideration mandatory for finally availing ITC of input supplies – While common mode for payment of consideration may be money obligation to pay can be discharged by other legal agreeable means also - Consideration as defined in GST law is so wide that no form of payment is excluded - Accordingly consideration paid by way of setting off book debt is proper payment - Objections raised by Revenue have no relevance - ITC admissible, subiect to fulfilment of other conditions - Section 16 of Central Goods and Services Tax Act. 2017/ West Bengal Goods and Services Tax Act. 2017. [paras 4.3, 4.4. 4.5, 4.6]*

*[emphasis supplied by underline}*

*However, the Ld. Adjudicating authority has conveniently ignored the submission of the appellant and no findings have been recorded in this regard in the Impugned order.*

*Accordingly, the Appellant hereby contend that the allegation that the appellant has not made payment against the supply received from both the Supplier have no locus.*

***D) No Suppression on the part of the Appellant.***

*The appellant in their written submission contended that there was no suppression of any material facts in their case at the appellant have not suppressed any facts from the department as the appellant have reported all their activities in relation to their outward supplies, their GSTR-2A is auto populated and thereby all the details of their Outward and inward are reported in the returns prescribed in section 37 and Section 39 and details of Inward supplies in terms of Section 38 are auto populated therefore all these activities would not amount to suppression as defined in the Explanation 2 provided below Section 74. Further all these data are were very well verified by investigating authorities and assessment authorities while making final assessment before issuance of DRC-07.*

*Further, it was also contended by the appellant that DGGI totally failed to establish any new fact or grounds otherwise than what is available in GSTN portal and books of accounts of the appellant in entire alleged SCN-DRC- 01. Thus at the end of investigation by both the authorities, no new facts would emerged and show cause notices were issued on the same issue and for the same period. Proceedings initiated under Section 67, 70 or under Section 61 are the different method of assessment as to whether any short payment have been noticed. Nevertheless, in the pith and substance, the fact of the matter in the present case was that the period covered, facts covered by both the authorities were same. In this back drop the appellant relied on 2006 (197) E.L.T. 465 (S.C.) in case of NIZAM SUGAR FACTORY Versus COLLECTOR OF CENTRAL EXCISE, wherein its held and settled by Honorable Apex Court that multiple show cause notices are not possible in a situation wherein the issue is already in knowledge of authorities.*

*Civil Appeal No. 2747 of 2001 with C.A. No. 6261 0f 2003 and C.A. No.2164 of 2006@ SLP (C) Nos. 9271-9278 of 2003, decided on 20-4-2006*

*Demand - Limitation - Suppression off acts - All relevant facts in knowledge of authorities when first show cause notice issued - While issuing second and third show cause notices, same/similar facts could not be taken as suppression of facts on art of assessee as these facts already in knowledge of authorities - No suppression of facts on part of assessee/Appellant – Demands and penalty dropped - Sections IA and I1AC of Central Excise Act, 1944. [paras 9,10] Though the aforesaid order was in relation to Central Excise, however in pith and substance, what has been laid down in the said case is there could not be two*

*show cause notice for the same period on the same facts. This being the case, the ratio of the aforesaid order is applicable in the case of the appellant.*

*Accordingly, it is the contention of the appellant that the issuance of show cause notice by DGGI subsequent to SCN issued and confirmed by State Authority was not sustainable under the law.*

*However, the learned adjudicating authority has not recorded any findings in this regard in their impugned order.*

***(E) Circular 171/03/2022-GST, dt. 06.07.2022.***

*The Appellant by citing aforesaid circular, without admitting contended that their case falls under Sr.No.3 of the said circular, however the learned adjudicating authority have not offered any findings in this regard.*

***(F) No admission in the Statement.***

*The appellant in their written submission submitted that perusal of the statement of Shri Rajiv Govindram Agarw al, Director in his statement have accepted their liability, however, as from the limited memory it is submitted that the Appellant had only accepted the same to buy peace of mind and whatever duty has been paid was paid under the direction of DGGI and that*
*shall always be termed as duty paid under protest.*
*However, the learned adjudicating authority has not offered their findings in the impugned order*

***(G) ITC availed by the Appellant is as per Section 16.***

*The Appellant in their written submission had submitted that ITC cannot be denied on the ground of statement only without actually evidencing the actual mens-rea and without any corroborative evidence supporting the false claims of the authorities.*

*The Appellant had followed all the eligibility conditions as stipulated U / s. 16 of CGST Act, 2017. Nevertheless, as regard to alleged violation of Section 16 of CGST Act, 201 7 the Appellant contend that they have received goods along with documents from the two firms. Not only that verification of Filing Status of GSTR 3B and GSTR-1 on GSTN Portal in respect of the said two firms it is evident that they have filed both the returns for the period 2018-19.*

*Therefore, the Appellant contend that in the absence of other evidence which are not provided to the Appellant, the allegation that the Appellant have violated the provisions of section 16 of SG T Act,2017 is not correct.*

*As regard to burden of proving eligibility of ITC is with the Appellant as provided under section 155 the Appellant submit that the as required under Section 16 the eligibility of ITC the requirements are the receipt of Invoice with goods, reflection of Invoices of inward supplies in GSTR-2A which is auto populated, and the*

*supplier of Inward supply shall have filed returns under Section 39. All these parameters are fulfilled. The Appellant claiming Credit in GSTR-3B on the basis of supply received along with Invoices and recorded in their books. Therefore the onus of denying ITC as alleged in the SCN is shifted on the authorities for which the Appellant contend that the evidences in this regards are not made available to the Appellant, without which the Appellant cannot reply the SCN.*

*The Appellant would like to state here that the respondent was in hurry in deciding the matter against the Appellant which could have been avoided as there are number petitions which are pending before various Honorable High Courts across India challenging the constitutional validity of Section 16(2)(c) of CGST Act 2017 including writ petition before Gujarat High Court in the case of M/ s Surat Mercantile Association vs Union of India [Special Civil Application No. 15329 of 2020], where Hon'ble Gujarat High Court has issued notice on plea challenging validity of GST charged in respect of supply has been actually paid to Government. There are similar number of other petitions which are before other courts that have not been produced herein under but the same can be produce if required.*

*The Appellant would like to draw attention on recent case of* ***MI/S. GARGO TRADERS VERSUS THE JOINT COMMISSIONER, COMMERCIAL TAXES (STATE TAX) & ORS. as reported in 2023 (6) TMI 533 - CALCUTTA HIGH COURT*** *wherein its held that no ITC can be denied without proper verification,*

*Cancellation of registration of petitioner - rejection of claim of the petitioner without considering the documents relied by the petitioner - violation of principles of natural justice - HELD THAT:- The main contention of the petitioner that the transactions in question are genuine and valid and relving upon all the supporting relevant documents required under law, the petitioner with due diligence verified the genuineness and identity of the supplier and name of the supplier as registered taxable person was available at the Government Portal showing its registration as valid and existing at the time of transaction - Admittedly at the time of transaction, the name of the supplier as registered taxable person was already available with the Government record and the petitioner has paid the amount of purchased articles as well as tax on the same through bank and not in cash.*

*This Court finds that without proper verification. it cannot be said that there was any failure on the part of the petitioner in compliance oa nv obligation required under the statute before entering into the transactions in question - the respondent authorities only taking into consideration of the cancellation of registration of the supplier with retrospective effect have rejected the claim of the petitioner without considering the documents relied by the petitioner.*

*The impugned orders are set aside. The respondent no.1 is directed to consider the grievance of the petitioner afresh by taking into consideration of the documents which the petitioner intends to rely in support of his claim - Petition disposed off.*

***(H) Onus of claiming ITC under Section 155 of the CGST/GGST Act, 2017 is discharged by the appellant.***

*The section 155 of the act is reproduced as under.*

*SECTION 155. Burden of proof. - 'here 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.*

*In this regard the Appellant submit that the said section does not stipulates how burden of proving their claim for eligibility of ITC. However, eligibility conditions are governed in Section 16 of the act. The said provisions are reproduced as under.*

*SECTION 16. Eligibility and conditions for taking input tax credit. -- (I) 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 taxpaying documents as may be prescribed;*

*[(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 3 7;}*

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

*[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.]*

*(c) subject to the provisions of[section 41 or section 434], the tax charged in respect of such 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; 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 ofone 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 he prescribed :*

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

*(3) Where the registered person has claimed depreciation on the tax component ofthe cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 196I), the input tax credit on the said tax component shall not be allowed.*

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply ofgoods or services or both afer the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [* * * ] debit note pertains or furnishing of the relevant annual return, whichever is earlier:*

*[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 20 I 8 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub- section (I) of section 37 ill the due date for furnishing the details under sub-section (I) of said section for the month of March, 2019.}*

*The Appellant submit that supply of goods received by them along with invoices issued by their vendor are used or intended to be used in the course or furtherance of their business and the said amount shall be credited to the electronic credit ledger of such person. Thereby they have followed the provision of Section 16(1) of the Act.*

*Further, Section 16(2) of the Act provides that 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 taxpaying documents as may be prescribed;*

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

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

*[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.]*

*{c) subject to the provisions of[section 41 or section 434], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization ofinput tax credit admissible in respect ofthe said supply; and*

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

*In this regard it is submitted that the Appellant is in possession of tax invoice issued by their vendors who are registered person thereby they have followed the clause (a) of Section 16(2) of the act.*

*The details of Appellant the invoice referred to in clause (a) has been furnished by their supplier/vendors in the statement of outward supplies [GSTR-1] and such details have been communicated to us in our GSTR-2A] of such invoice in the manner specified under section 37. Thereby the has fulfilled the condition prescribed in clause (aa) of Section 16(2) of the Act.*

*This clause was inserted vide Finance Act, 2021 however the date of its effect now notified to be effective from 01.01.2022 vide notification No.39/2021-Central Tax. Whereas the case on hand pertains to period 2017-18 to 2018-19, and therefore it cannot be applied in the case on hand.*

*As submitted in detail in para supra, the Appellant have received the goods*

*and hereby they have fulfilled the condition stipulated in clause (b) of Section 16(2) of the Act.*

*Further Section 43A is not effective till date and also the same is proposed to be omitted in the Finance Act, 2022. However, we would like to submit that our vendors has submitted their GSTR-1 and GSTR-3B thereby discharged their GST liability on the invoices issued by our vendor either in cash or through utilization of Input Tax credit and duly reflected in their GSTR-3B. Further, the appellant has no access on GSTN portal to visualize GSTR-3B filed by their vendors so as to verify how the GST has been paid by them. Therefore, Filing of GSTR-1 and GSTR-3B by their vendors is sufficient proof for the appellant that they have discharged their GST liability. Accordingly, in view of clause (c) of Section 16(2) of the Act, it is sufficient for the appellant to ensure that their supplier has submitted GSTR-1 and GSTR-3B and invoices uploaded in their GSTR-1 is communicated in the appellant's GSTR-2A. Accordingly the appellant contend that they have fulfilled the conditions prescribed at (c) of Section 16(2) of the act.*

*It is further submitted that the appellant's vendors theappelant have filed their GSTR-3B return as required under Section 39 and thereby both have followed the condition prescribed in clause (d) of Section 16(2) of the act.*

*Further, the appellant have made all the payment thr ough RTGS / Account payee cheques to the appellant's vendors within time limit prescribed in the first proviso to Section 16(2) of the act. Evidencing the same the appellant have attached herewith vendor's ledger account maintained in their books of account.*

*Therefore in view of fulfillment of all the aforesaid conditions prescribed in section 16(1), 16(2) of the act and first proviso the appellant being recipient shall be entitled to avail of the credit of input tax on payment made by them for the amount towards the value of supply of goods along with tax payable thereon as per second proviso to section 16(2) of the act.*

*The learned adjudicating authority has not appreciated the submission of the appellant and confirmed the demand in toto as raised in the show cause notice.*

***(I) No investigation with regard to outward supply against such alleged fake invoice have been carried out.***

*It is alleged in the show cause notice that the appellant have availed ITC on the so-called fake invoices without receipt of the goods and have utilized the said ITC for discharging their outward tax liability.*

*In this regard the appellant would like to submit that the said allegation is purely based on assumption and surmises only and is alleged without any investigation with regard to inventory on hand.*

*For a moment let us assume that the appellant has not received the goods than where is the question of its supply and utilization of ITC availed on such Invoices for the outward liability against the said goods would arises. In other words, the department is admitting that the appellant has received the goods and the said goods is supplied on payment of outward liability.*

*Accordingly, the appellant contend that they have received the goods along with Invoice and such invoice cannot be term ed as Fake Invoices, and allegation in this regard is factually and legally not correct.*

***(J) If supply is not received, then No outward supply would be there and consequently no out ward liability would be on the appellant being Revenue Neutrality.***

*Assuming without admitting that the appellant have not received Inward supply and only Invoice is received. In this case the effect on the inventory in the books of account would be shortage of Inventory with compared to physical balance. However, no investigation with regard to inventory position was carried out.*

*Further, it is alleged by the department that the ITC availed on the basis of fake Invoice without receipt of Inward supply, is used in out ward supply. Here the appellant would like to contend, that if no inward supply is there how can there be any outward liability on the appellant. In that case, the appellant would have to issue only Invoice and not the goods. Assuming it is done so than the ITC availed is already reversed while issue in out ward Invoice without out ward supply. Hence the appellant e is not liable to pay any amount as alleged in the show cause notice. Thus the issue is revenue neutral. Therefore, the confirm ation of the demand vide impugned order is erroneous and not sustainable.*

***[K) The demand of Rs.1,30,67,188/-***

*It is proposed to recover the amount of Rs. 1,30,67,188/- on the ground that the said amount is evaded on fraudulent availment and utilization of irregular /inadmissible Input Tax Credit on the basis of Invoices on which appropriate tax has not been paid to the Government and also no goods corresponding to the tax invoices have been received from both non-existent/non-operational firms namely M/s Samarth Corporation and Orchid Enterprise for the period from January 2019 to March,2019.*

*In this regard appellant has categorically denied all the allegations and averment as submitted above.*

*Nevertheless the appellant would like to submit both their vendors have filed their GSTR-1 and GSTR-3B and invoices reported in GSTR-1 have been reflected in GSTR-2A of the appellant, the appellant have make payment through Journal*

*Voucher against such Invoice to the vendors, than how it can be said that those vendors are said to be non-existent or non-operational and has not paid the tax to the Government exchequer.*

*If any mal-practice is adopted by those vendors in discharging their tax liability, the appellant could not be held responsible for payment of tax which was not discharged by their vendor.*
*Therefore, the appellant would like to contend that the demand itself have no legs. Such a show cause notice is non-est itself.*

***(L) Had the goods is not received, the department have failed to investigate flow back of money.***
*Assuming without admitting that goods is not received and only Invoices are received. In this regard the department alleged the banking transactions and alleged that transaction might have done from some other account but failed to bring on any evidence with regard including flow back of money from their vendor.*
*Therefore, the appellant would like to contend that the allegation in this regard is factually and legally not correct.*

***(M) Duplication of Demand***
*It is being humbly submitted that DGGI is very well in possession of SCN issued by State Authorities and also ongoing investigation and regular assessment by Ghatak, also this fact is in knowledge of DGGI that one of the party is already M/s. Samarth Corporation is already forming part of the DRC-07 issued by State Authorities. Hence, its being submitted that there could not be duplication of demand by covering the same in alleged SCN by DGGI.*

***(N) The appellant have not violated any sections as alleged including the rules made there under.***
*The para 10 / 12 of the alleged SCN which refers following various provisions read with various rules proposed to be contravened by the appellant, to which the appellant states and submits that they have not violated any of such provisions read with rules which are addressed in their previous reply and summarized in this reply as under,*

*Table appended showing various sections and the remarks of the appellant against each.*

*From the above it could be seen that the appellant and their supplier have not contravened any of the aforesaid provisions read with respective rules made thereunder as alleged in the show cause notice. Further the appellant would also*

*like to point out the desperation of DGGI, that instead of bringing out violation specifically, they have pasted the entire verbatim of the GST law.*

*However, the impugned SCN is issued only on the ground that supplier viz. Samarth Corporation and Orchid Enterprise are non-existent and non-operational and not have supplied goods along with Invoice by way of Issuing only Invoice. In this regard the appellant have submitted their detail reply in their earlier submission.*

*Had the said both the suppliers are non - existent how the registrations were issued, how their GSTR-I returns and GSTR-3B have been filed.*

*If any mal-practice if any adopted by those supplier in obtaining Registration or with regard to payment of GST, the appellant cannot be held responsible.*

***(0) Submission with regard to penalty on Directors of the Noticee company.***

*The SCN proposes penalty under Section 122(1) and 122(2)(b) upon the Directors of the company for the alleged offence under 122(1)(vii) of the act in addition to earlier submission the Directors of the company submits that;*

*The subject show cause notice is issued under section 74 which provides that;*

*Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason offraud or any willful-misstatement or suppression of facts.-*

*(I) 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.*

*The close look at the aforesaid section reveals that the said section provides that 'proper officer' shall serve notice on the person chargeable with tax. In the case on hand the person chargeable with tax is the appellant's company i.e.Mahip Industries Limited.*

*Further, the section 122( l)(vii) of CGST Act,2017 provides that;*

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

*(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*

*In this regard, the Director's of the company have not taken or utilized input tax credit without actual receipt of the goods either fully or partially in contravention of the provisions of the act or the rules made thereunder. Therefore, the Directors of the company are not the taxable person. The taxable persons are the registered person as submitted herein below.*

*As per Section 2(105) of the act, M/s Mahip Industries Limited i.e. the appellant being supplier of taxable supply as defined in section 2(108) of the act is a registered person in terms of Section 2(94) which provides as under;*

*2(94) "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;*
*2 (107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;*
*2(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;*
*2(108) "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;*

*In terms of Section 9 (1) of CGST/ GGST Act, 201 7 the GST is leviable on the supply of the goods. Therefore, the act expressly provides the liability of payment of GST is on the supplier of the goods.*

*The Directors of the appellant's company are not the supplier and not the registered person and therefore they are not liable to pay GST, but it would be the firm i.e. Mahip Industries Limited would be primarily liable to pay GST and not its Directors. Accordingly the Noticee contends that for any offence as prescribed in Section 122(1) or section 122(1)(vii) committed by the Noticee, its Directors are not liable to penalty under section 74(1) read with Section 122(2) as the said penalties are prescribed for the taxable person i.e. Mahip Industries Limited only. Similarly, Interest under Section 50 of CGST Act, 2017 is recoverable from the appellant only and not from Directors as they are not the person liable to pay tax.*
*The penalty if at all has to be imposed upon the any person other than taxable person it has to be under Section 125 of the act and not otherwise.*

*In the instant case there is no proposal to impose penalty under Section 125. Hence, the Directors of the company strongly contend that penalty under Section 122(2)(b) proposed is non est.*

***(P) Payment of Rs.20 Lacs not appropriated against the GST Liability.***

*In the impugned SCN, at para 12.4 it has been mentioned inter alia that the Noticee has paid Rs.20 Lacs during the course of Investigation; that Mahip Industries Limited has wrongly availed and utilized ITC of Rs.22, 78,475/- as the same were not reflected in their GSTR-2A, however availed fraudulently in their GSTR-3B, hence the said payment of Rs.20 Lacs is not proper and therefore it is not proposed to be appropriated against the liability of Rs.1,30,67,188/- for which the impugned show cause notice is issued.*

*In this regard it is contended by the appellant that the reason advanced for non-appropriation of the said amount of Rs.20 Lacs is arbitrary. The said payment is made by the appellant towards the impugned show cause notice and accordingly it has to be appropriated against the demand of GST proposed to be recover vide impugned show cause notice as there is no demand pending or outstanding for any amount of Rs. 22,78,475/-.*

*Hence the stand taken by DGGI is not correct by not appropriating the said payment against the impugned demand via this SCN.*

***(Q) Production in the Factory is stopped due to acquisition of land.***

*The appellant would like to invite attention to the Panchnama drawn on 07.01.2021 at their premises, wherein it has been categorically mentioned that fire was took place on 26.6.2019 at their factory premises and the records which were kept in their factory were already burned out. In token of the same FIR lodged by their company was also produced before the officers on search. However, the show cause notice failed to take note of the same.*

*Further Shri Rajiv Govindram Agarwal, the Director of the appellant's company in his statement dated 20.01.2021 while answering Question No.7 has categorically mentioned that production in their factory is stopped; that their factory premises were is already acquired by National Highway Authority of India; the reason for acquisition of the said land is that Construction of National Highway is passing through the said land where the factory is located; that the compensation for towards the acquisition of the said land is awaited and on receipt of the same, their company would discharge their tax dues. In this regard the appellant would like to submit Land acquisition letter.*

*Hence as the factory was under disturbing working due to compulsory acquisition by NHAI, the appellant was also actively engaged in trading activities."*

With regard to grounds of appeal filed by the Appellant-2 and Appellant-3, it has been submitted that since the Appellant-1 have elaboratively given their grounds of appeal in appeal filed by them, the Appellant-2 and Appellant-3 have submitted that those grounds may be considered mutatis mutandis to their appeals. As submitted therein, the impugned order is not sustainable under the law, the penalty of Rs.25,000/- and penalty of Rs.25,000/- is also not sustainable against each of the Directors i.e. Appellant-2 and Appellant-3.

The appellants have further prayed to set aside the impugned order issued by the learned adjudicating authority or to pass any other order as deemed fit.

**Personal Hearing :**

5. Personal hearing in the present appeals was held on 28.08.2023. Shri Pravin Dhandharia, Chartered Accountant appeared on behalf of all the Appellants. It is submitted by him that the SCN itself is not specific and all the violations and Sections of the Act, have been quoted. Further in OIO their reply dated 23.02.2023 and 28.02.2023 are overlooked and not considered in the order passed by the adjudicating authority, is violation of natural justice and bad in law. He further referred para 18 of the reply dated 23.02.2023 wherein it is specifically mentioned that demand of fake invoices of Samarth Corporation are already covered by state authorities and appeal is already lying before the state authorities filed on 02.01.2023.

He further reiterated written submissions. He further submitted that there is clear violation of Section 6(2) of the CGST Act. In view of the above requested to set aside the OIO

With regard to Appeals filed by the Appellant-2 and Appellant-3, he reiterated the written submissions. In view of the grounds raised in case of the appellant-1, since the demand is not sustainable, the penalty imposed is also not sustainable, therefore requested to drop the same.

**DISCUSSION AND FINDINGS:**

**6.** I have carefully gone through the facts of the case, grounds of appeal, submissions made by the Appellants and find that Appellant-1 have filed the present appeal to set aside the impugned order being factually and legally not correct and proper and non-speaking and Appellant-2 and Appellant-3 have also submitted that entire proceeding initiated by the officer

are not legal and correct and accordingly prayed to set aside the impugned order issued by the learned adjudicating authority.

6.1 So the question to be answered in the present appeal is:

(a) Whether the order passed by the adjudicating authority vide the impugned order confirming the demand of wrong availment and utilisation of fraudulent ITC of Rs. 65,33,594/- CGST and Rs. 65,33,594/- SGST under section 74(1) of CGST Act, 2017/ Gujarat GST Act, 2017 along with interest at the applicable rate on confirmed demand under section 50 of the GST Act, 2017 and penalty of Rs.1,30,67,188/- under Section 74 of the CGST Act, 2017 read with Section 122(1)/122(2) (b) of the CGST Act, 2017 read with the Gujarat GST Act, 2017 is proper or otherwise ?

(b) Whether the order passed by the adjudicating authority vide the impugned order imposing penalty of Rs. 25,000/- on Shri Rajiv Govindram Agarwal, Director of i.e. Appellant-3 under Section 122(1)/122(2) (b) /122(3)(d)of the CGST Act, 2017 read with the Gujarat GST Act, 2017, and Rs.25,000/- on Shri Radheshyam Tolaram Oza, Director i.e. Appellant-2 under Section 122(1)/122(2) (b) of the CGST Act, 2017 read with the Gujarat GST Act, 2017 is proper or otherwise?

6.2 At the foremost, I observed that in the instant case the "impugned order" is of dated 10-03-2023 which was communicated to the appellants on 17-03-2023 and the present appeals are filed online on 16.06.2023. 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 appeals have been filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. As all the three Appeals have arised out of one single OIO, I am proceeding to decide all the three appeals together.

6.3 It is observed that the appellant-1 are engaged in manufacturing of taxable goods i.e. corrugated boxes falling under Chapter Heading No. "48" and also availing the benefit of Input Tax Credit of the GST paid on the input goods under the provisions of the CGST Rules, 2017. The appellant-1 had wrongly availed and utilized irregular Input Tax Credit without actual supply of goods resulting in GST Liability amounting to Rs.1,30,67,188/- on consideration of Rs.10,88,93,232/- by way of wrongly availed and utilized by reason of fraud or any willful misstatement or suppression of facts of the CGST Act, 2017 and Rules made there under with intent to evade GST Liability. These facts had come to the notice of the department only after initiation of investigation by the DGGI, AZU, Ahmedabad against the Appellant-1. M/s Samarth Corporation

(GSTIN 24AQFPY4398C1ZI) and Orchid Enterprise (GSTIN 24CGPP7095N1ZA) of Ahmedabad were non-existent / non-functional/non-operational entity. These two entities supplied fake invoices to Appellant-1 in the name of the said 2 firms without actual supply of corresponding goods. No payment had been made to the said 2 firms mentioned at Level-0 by the Appellant-1 against the supply of these fake invoices, which also establishes that the transactions between M/s. Mahip and 2 firms/ entities were merely paper transactions. Shri Rajiv Agarwal, Director i.e. Appellant-3 in his statement recorded under Section 70 of the CGST Act, 2017 admitted to pay the tax involved in such fake invoices receipt and availment of irregular ITC by the Appellant-1. Furthermore, M/s Mahip had not provided any invoices and there was no e-way- bill available in the e-way bill portal in respect of invoices issued by M/ s Samarth Corporation and M/s Orchid Enterprise during investigation proceedings. It was revealed that there was no payment of tax by these 2 non-existent/ non-operational firms and they had wrongly availed inadmissible/ irregular ITC without actual supply of corresponding goods. This non-eligible and non-available irregular ITC credit was availed and utilized by these 2 non-existing/ non-operational firms in their GSTR-3B returns for GST payment. Further, these firms had not made any payment of tax in cash, to government exchequer in their GSTR-3B returns for the said period. This irregular / ineligible credit was passed on to their various buyers including M/s Mahip. It was further revealed that M/s Mahip had wrongly availed and utilized inadmissible ITC of Rs. 1,30,67,188/- on the basis of invoices issued in the name of 2 non-operational/ non-existing firms placed at Level 0.

6.4 I find that the State Enforcement Division had conducted investigation limited to particular suppliers of the Appellant-1 and State Ghatak Division had issued Show-Cause-Notice based on scrutiny of returns for the period under dispute. The appellant-1 in their grounds of appeal have clearly mentioned that the state GST has taken up the matter for investigation of books of accounts of the Appellant-1 and issued DRC-01, DRC-07. The contention of the Appellant-1 that there could not be duplication of demand by covering the same in alleged SCN by DGGI as SCN issued by the State Authority and also ongoing investigation and regular assessment by Ghatak is in the knowledge of DGGI that one of the party M/s Samarth Corporation is already forming part of the DRC-07 issued by State authorities. They have quoted Circular No.CBEC/20/43/01/2017-GST(pt.) dated 05.10.2018. The relevant paras of the said Circular are as under:

*"3. It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.*

*4. In other words, if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions."*

6.5 I find that the DGGI, AZU had conducted the investigation at the business premises of M/s Samarth Corporation and M/s.Orchid Enterprise of Ahmedabad and revealed that both the firms were non-existent/non-functional /non-operational entity and they had issued only fake/bogus invoices to their buyers including the Appellant-1 i.e. M/s Mahip Industries Limited and therefore investigation was extended to the premises of M/s Mahip Industries Limited. The investigation was limited for only the said non-existent suppliers i.e. M/s Samarth Corporation and M/s. Orchid Enterprise. I further find that the State Enforcement Division had conducted the investigation of particular suppliers of the Appellant-1 i.e. M/s Mahip Industries Limited and the SCN issued to the Appellant-1 by the state authority was based on scrutiny of returns.

6.6 From the above, I understand that there is vast difference of issuing demand notices based on scrutiny of returns, which has a very limited scope based on the available records and on the other hand demand notices based on initiation of inquiry proceedings wherein the scope is beyond the available records but the intelligence based wherein the evasion is detected which the Taxpayer could have suppressed the information in their returns/records.

6.7 Therefore I am of the view that, the said Circular which clarifies that the authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action. Here the DGGI, AZU had initiated the action in respect of the Appellant-1 not the state GST authority, therefore the investigation has been concluded by the DGGI by issuing the show-cause-notice. As the said show-cause-notice is answerable to the adjudicating authority i.e. Deputy / Assistant Commissioner, CGST Division-V, Ahmedabad

North Commissionerate, the same has been adjudicated by the said authority and further action if any arises in the case, would be taken by the Department of CGST only to the extent of present demand. Both the authorities are independently taking action of their own duties. The suitable future course of action may be taken up by the Appellant-1, if any arises out of the same.

6.8 Further, I find that the Appellant-1 has quoted the judgment in Civil Appeal No.2747 of 2001 with C.A.No.6261 of 2003 and C.A.No.2164 of 2006@ SLP © Nos.9271-9278 of 2003, decided on 20.04.2006 wherein it has been held that "while issuing second and third show cause notices, same/similar facts could not be taken as suppression of facts on part of assessee as these facts already in knowledge of authorities", is not applicable in the present case as the show-cause-notice issued in the matter is not the second or third i.e. it is not periodical SCN.

6.9 As regards contention of the Appellant-1 that goods are received along with invoices and such invoices cannot be termed as fake invoices, and allegation in this regard is factually and legally not correct and that without receipt of goods where is the question of supply and utilization of ITC availed on such Invoices for outward liability against the said goods would arise, I find that there is no proof submitted by the Appellant-1 either to the adjudicating authority of with the submissions made in the appeal. The investigation by the DGGI was with regard to specific vendors, hence it can't be said that there were only two such vendors. The ITC availed on fake invoices alleged and confirmed to have been used in outward supply could be supply received from other vendors of the Appellant-1. Therefore contention of the Appellant-1 that if supply is not received, then no outward supply would be there and consequently no outward liability would be on the Appellant-1 being revenue neutrality, is not acceptable.

6.10 As regards to total GST payment of Rs.20,00,000/- made during the investigation which was not appropriated against the total GST Liability of Rs.1,30,67,188/-, I find that in the Show-cause-Notice itself, it is mentioned that further, on scrutiny of GSTR-2A Returns for the period January-2021 and February-2021, it was observed that the Appellant-1 had inward ITC of Rs.5,970/- and Rs.48,545/- in January-2021 and February-2021 Returns respectively, However, from GSTR 3-B Returns it was observed that they had availed ITC of Rs.11,06,516/- and Rs.12,26,474/- in GSTR-3B Returns for the period January-2021 and February-2021 respectively. Therefore, it appeared that the Appellant-1 had wrongly availed excess ineligible and irregular ITC of Rs.22,78,475/- which was not available in the GSTR-2A returns, fraudulently

in GSTR-3B Returns and further utilized the same fraudulent ITC to pay the aforesaid evaded tax liability. The adjudicating authority has observed that the as the matter has already been clarified by DGGI regarding the said payment of Rs.20.00 lacs. I find that the Appellant-1 has contended that the said amount of Rs.20.00 lacs has been made by them towards the impugned SCN and accordingly it has to be appropriated against the demand of GST proposed to be recovered vide the impugned SCN as there is no demand pending or outstanding for any amount of Rs.22,78,475/-, I find that the Appellant-1 has not shown any proof of payment and/or the correctness of said amount of ITC available to them, hence I am of the view that the amount of Rs.20.00 lacs is not eligible for appropriation against the GST liability Rs.1,30,67,188/- at this stage.

6.11 Further, the Appellant-1 without admitting has contended that their case fall under Sl.No.3 of the Circular 171/03/2022-GST dated 06.07.2022 of CBIC, text of the same is reproduced here under:

| Sl.No. | Issue | clarification |
|---|---|---|
| | A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act | In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.However, in such cases,'B' shall be liable for penal action both under section 122(1)((ii) and section 122(1)(vii) of the CGST Act, |

| | | |
|---|---|---|
| | | for issuing invoices without any actual supply of goods and/or services as also for taking/utilizing input tax credit without actual receipt of goods and/or services |

6.12 As there is no any order passed by the adjudicating authority with regard to the above matter, therefore question of applicability of the said circular does not arise in this case.

6.13 From the foregoing, I find that the Appellant-1 has availed the ITC of Rs.1,30,67,188/- (CGST Rs. 65,33,594/- + SGST Rs.65,33,594/-), on the fake invoices issued by M/s. Samarth Corporation and M/s. Orchid Enterprise without issue of invoices and without receipt of corresponding goods, therefore the same is recoverable under the provisions explained above. Thus, the order passed by the adjudicating authority confirming the demand of Rs.1,30,67,188/- (CGST Rs. 65,33,594/- + SGST Rs.65,33,594/-) under Section 74(1) of the CGST Act, 2017 and Gujarat GST Act, 2017 along with interest under Section 50 and penalty under Section 122(1)/122(2)(b) of the CGST Act, 2017 and Gujarat GST Act, 2017, on the Appellant-1, is proper and legal.

6.14 Further as regards to the penalty on Shri Radheshyam Tolaram Oza, Director and Shri Rajiv Govindram Agarwal, Directors of M/s. Mahip Industries Limited, i.e. Appellant-2 andAppellant-3, I observe that the penalty has been imposed under Section 122(1)/122(2) (b) of the CGST Act, 2017 read with the Gujarat GST Act, 2017 on Appellant-2 and under Section 122(1)/122(2) (b) /122(3)(d)of the CGST Act, 2017 read with the Gujarat GST Act, 2017 on Appellant-3.

6.15 Therefore, I refer to the relevant provision of Sections of the CGST Act, 2017, which are reproduced as under:

***"Section 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;*
*(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
*(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*

*(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;*
*(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;*
*(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 thereunder;*
*(viii) fraudulently obtains refund of tax under this Act;*
*(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*
*(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*
*(xi) is liable to be registered under this Act but fails to obtain registration;*
*(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;*
*(xiii) obstructs or prevents any officer in discharge of his duties under this Act;*
*(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;*
*(xv) suppresses his turnover leading to evasion of tax under this Act;*
*(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;*
*(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;*
*(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;*
*(xix) issues any invoice or document by using the registration number of another registered person;*
*(xx) tampers with, or destroys any material evidence or document;*

*(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act, 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.*

*[1][(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.]*

*(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-*

***(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.***

*(3) Any person who-*

***(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a* document in an inquiry;"**

6.16 From the above provisions, I find that the penalty under Section 74 of the CGST Act, 2017 read with Section 122(1)/122(2) (b) of the CGST Act, 2017 read with the Gujarat GST Act, 2017 is imposable on the Taxable Person. The Directors i.e. Appellant-2 and Appellant-3 are not the independent taxable persons here, they are merely acting on behalf of the Appellant-1 and since Appellant-1 is the Taxable person/entity and the penalty under Section 74 of the CGST Act, 2017 read with Section 122(1)/122(2) (b) of the CGST Act, 2017 read with the Gujarat GST Act, 2017 has already been imposed on Appellant-1, I do not find any reason for imposing the same penalty on the Appellant-2 and Appellant-3. However, I find that penalty under Section 122(3)(d) of the CGST Act, 2017 read with the Gujarat GST Act, 2017 imposed on Shri Govindram Agarwal, Director i.e.Appellant-3 for failure to appear before the officer of the DGGI, AZU, Ahmedabad on summond, is imposable as the said section prescribes for penalty on any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry. As the Appellant-3 he has failed to appear before the officer of the DGGI, AZU, Ahmedabad to give evidence or produce document in an inquiry in the present case, the penalty imposed by the adjudicating authority is legal and proper.

7 In view of the above, I pass the following order:

(i) Uphold the demand for recovery of Rs.1,367,188/- (CGST Rs.65,33,594/- and Gujarat GST Rs.65,33,594/-) under Section 74(1) of the CGST/Gujarat GST Act, 2017 along with applicable interest under Section 50 of the CGST/Gujarat GST Act, 2017 and penalty of Rs.1,30,67,188/- (CGST Rs. 65,33,594/- + SGST Rs.65,33,594/-) under Section 74 read with Section 122 (1)/ 122(2)(b) of the CGST Act, 2017 read with Section 122(1)/ 122(2)(b) of the Gujarat GST Act, 2017 in respect Appellant-No.1 passed by the adjudicating authority,

(ii) Uphold the penalty of Rs.25,000/- imposed under 122 (3)(d) of the CGST Act, 2017 read with Gujarat GST Act, 2017, on Shri Rajiv Govindram Agarwal, Director of M/s. Mahip Industries Limited i.e.Appellant-No.3,

(iii) Drop the penalty of Rs.25,000/- imposed under Section 122(1)/122(2) (b) of the CGST Act, 2017 read with the Gujarat GST Act, 2017 on Shri Radheshyam Tolaram Oza, Director of M/s. Mahip Industries Limited i.e. Appellant-No.2.

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

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

9. The appeal(s) filed by the Appellant-No.1, Appellant-No.2 and Appellant-No.3 stand disposed of in above terms.

27/10/2023

(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)

Date: .10.2023

Attested

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

By R.P.A.D.

To
M/s. Mahip Industries Limited, Survey No.127,
Village- Jalalpur Gondeshwar, Dholka-Bagodara Road,
Ahmedabad-387810
(GSTIN 2t1AAACC7720L1ZQ),

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