



सत्यमेव जयते

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



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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2595/2023 / ५३१ - १४
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-94/2023-24 and 31.10.2023
(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	17.11.2023
(ङ)	Arising out of Order-In-Original No. GST/D-VI/AR-II/O&A/01/APAN/PD/2023-24 dated 03.07.2023 passed by The Superintendent, CGST, Range-II, Division-VI, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Apan Imex Private Limited (GSTIN: 24AAGCA7539P1Z5), 19, Royal Enclave, Thaltej, Ahmedabad, Gujarat-380059

(A)	<p>इस आदेश(अपील) से अग्रहित 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.</p>
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
(i)	<p>(i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.</p>
(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)	उपरोक्त अपील करने के लिए अधिकृत जानकारी के लिए, अपीलकर्ता विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता विभागीय वेबसाइट www.cbic.gov.in पर जा सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to www.cbic.gov.in .



ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE :

M/s. APAN IMEX PRIVATE LIMITED having its principal Place of business at 19, ROYAL ENCLAVE, THALTEJ, Ahmabad, Gujarat, 380059 (GSTIN - 24AAGCA7539P1Z5) (here in after referred to as the "Appellant") has filed appeal against Order-In-Original No. GST/D-VI/AR-II/O&A/01/APAN/PD/2023-24 dated 03-07-2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, CGST & C.Ex., Range-II, Division-VI, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Briefly sated, the facts of this case are that the Appellant is engaged in the trading of Dyes and Chemicals falling under HSN 3204, 3809 and 2921 of GST Tariff Act, 2017. During the course of GST Audit by the Department, it was noticed that:

(1) the Appellant had purchased goods (from a place out of India) and then supplied the same goods to a place out of India and this supply has been reported as Export Sales (Offshore) in their books of Account. Further, it was noticed that they had purchased goods from suppliers (vendor) situated outside India but has not brought the goods within India. Thereafter, they has supplied same goods on their own invoices from the location of above said vendor situated outside India to the recipients situated outside India vide Voucher No. 067/1819 dated 04.12.2018 and 071/1819 dated 23.12.2018 valued at Rs.35,03,430/- and Rs.71,44,080/- respectively involving IGST @ 18% of Rs.6,30,617/- and Rs.12,85,934/- respectively and has received the consideration/payment (value) in foreign currency. As the supplier is located in India and the place of supply is outside India and as such the same would be Inter-state supply in terms of the provisions of Section 7(5) of IGST Act, 2017. Thus, transaction undertaken by the Appellant tantamount to supply and is an Inter- state supply and IGST is leviable on the above transactions.

(2) Further with regard to Non-Reversal of Proportionate ITC availed on common services used for taxable and non-taxable supplies (Rule 42 of the CGST Rules, 2017) audit revealed that the Appellant had made High Sea Sale during the Month of September 2017 which has been exempted till 31.01.2019. Hence, Input Tax Credit* on common Input availed which have been used for taxable supplies as well as exempted supply (or exclusively used for Nil rated supplies/exempted supplies is required to be reversed as per the manner and procedure laid down under Rule 42 of the CGST Rules, 2017. ITC of Rs. 5023/- CGST and Rs. 5023/- SGST for the year 2017-18 was required to be reversed by the Appellant.



3. Therefore a show-cause-notice dated 26.03.2022 was issued to the Appellant as to why:

(i) The GST amounting to Rs 19,26,598/- (Rs.19,16,552/-(IGST)+ Rs 5023/-(CGST) + Rs 5023/-(SGST)), should not be demanded and recovered from them under the provisions of Section 74(1) of the CGST Act, 2017 along-with and the corresponding entry of the SGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017.

(ii) Interest at the prescribed rates under the provisions of Section 50(1) of the CGST Act,2017 along-with and the corresponding entry of the SGST Act, 2017, read with the provisions of Section 20 of the IGST Act, 2017 should not be demanded and recovered from them on tax demanded at Sr. No. (i) above.

(iii) Penalty under the provisions of Section 74(1) of CGST Act,2017 read with Section 122(2)(b) of CGST Act,2017 along-with and the corresponding entry of the SGST Act, 2017, read with the provisions of Section 20 of the IGST Act, 2017 should not be demanded and recovered from them on tax demanded at Sr. No. (i) above.

4. The adjudicating authority, vide the impugned order dated 22-03-2023, passed the following order:

(i) I drop the the proceeding for the demand of Rs.19, 16,552/- under the provisions of Section 74(1) of the CGST Act, 2017 along-with and the corresponding entry of the SGST Act, 2017 read with the provisions of Section 20 of the IGST ACT, 2017

(ii) I confirm the demand of Rs.10,046/- (5023/-(CGST) + Rs 5023/-(SGST)), and order for recovery of Rs.10,046/- from M/s Apan Impex Private Limited, 19, Royal Enclave, Thaltej, Ahmedabad-380059 under the provisions of Section 74(1) of the CGST Act, 2017 along-with and the corresponding entry of the SGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017.

iii. I order for recovery of Interest at the prescribed rates under the provisions of Section 50(1) of the CGST Act,2017 along-with and the corresponding entry of the SGST Act, 2017, read with the provisions of Section 20 of the IGST Act, 2017 on tax demanded at Sr. No. (ii) above.

iv. I impose Penalty of Rs.10,046/- upon Mis Apan Impex Private Limited, 19, Royal Enclave, Thaltej, Ahmedabad-380059 under the provisions of Section 74(1) of CGST Act,2017 read with Section 122(2)(b) of CGST Act,2017 along-with and the corresponding entry of the SGST Act, 2017, read with the provisions of Section 20 of the IGST Act, 2017. However, if M/s Apan Impex Private Limited, 19, Royal Enclave, Thaltej, Ahmedabad-380059 pay the entire amount of Tax

along with applicable interest recoverable from them within thirty days from the receipt of this Order, they shall be required to pay only 50% of the penalty imposed upon them, provided that the such reduced penalty is also paid within the said period of 30 days (thirty days), in terms of provision as laid down under Section 74(1) of CGST Act, 2017."

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

- The alleged exempted services are the services on which the tax was sought to be demanded in the notice. This demand pertains to transactions of sale of goods, lying in one foreign country to buyer in another foreign country. These transactions are specifically covered under Schedule III at sr no 7. This is the basis for dropping the demand in the notice.
- Now the reversal of ITC is as per Section 17 of the Act. This is reproduced below:

'(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation. -For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except,-

- (i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and
- (ii)
- (iii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.'

- This exclusion is specific and would cover the matter. The reversal is sought in respect of the supplies which are covered by Sr.No. 7 of the Schedule III. This would therefore not be subject of reversal under said section. The order for reversal is clearly bad in law and is required to be set aside.

Since the demand is not maintainable, question of interest or penalty also does not arise.

Further, the appellant has requested to set aside the impugned order with consequential relief.

PERSONAL HEARING:

6. Personal hearing in this case was held on 26.10.2023. Shri Shridev Vyas Advocate appeared in person, on behalf of the appellant as authorized representative. He reiterated the written submissions.

Discussion & findings:

7.1 I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal and observe that the appellant is mainly contesting with regard to demand of Rs.10,046/- (Rs.5,023/- CGST + Rs.5,023/- SGST) towards Non-reversal of proportionate ITC availed on common services used for taxable and non-taxable supplies [Rule 42 of CGST Rules, 2017] along with interest and penalty.

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

(a) Whether the order passed by the adjudicating authority for demand and recovery of Rs.10,046/- (Rs.5,023/- CGST + Rs.5,023/- SGST) under Section 74(1) of the CGST/GGST Act, 2017 read with section 20 of the IGST Act, 2017 and interest under Section 50(1) of the CGST/GGST Act, 2017 read with section 20 of the IGST Act, 2017 along with penalty of Rs.10,046/- imposed under Section 74(1) read with Section 122(2)(b) along with corresponding entries of GGST Act, 2017 read with the provisions of IGST Act, 2017, is proper or otherwise?

7.3. At the foremost, I observed that in the instant case the "impugned order" is of dated 03-07-2023 and the present appeal is filed on 04.08.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

In the instant case, I observe that the adjudicating authority has confirmed the demand of Rs.10,046/- (Rs.5,023/- CGST + Rs.5,023/- SGST) towards Non-reversal of proportionate ITC availed on common services used for taxable and non-taxable supplies [Rule 42 of CGST Rules, 2017] along with interest and penalty, is with regard to supply of goods from a place outside India to another place outside India, without such goods entering to India. The said supply falls under Schedule-III of CGST Act, 2017, which is reproduced *hersunder*:

SCHEDULE III.

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

7. ¹[Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

1. Inserted by s.32 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) - Brought into force w.e.f. 01st February, 2019.

7.5 Further, vide Finance Act, 2023 (CGST) para 7 of the above schedule No.III has been amended and the same shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.

7.6 I also observe that the Appellant has contended that the alleged exempted services are the services on which the tax has been demanded in the notice. This demand pertains to transactions of sale of goods, lying in one foreign country to buyer in another foreign country. These transactions are specifically covered under Schedule III at sr no 7. This is the basis for dropping the demand in the notice.

7.7 I find that the Apportionment of credit and blocked credits is provided in Section 17 of the GST Act, which is reproduced hereunder:

*** Section 17. Apportionment of credit and blocked credits.-**

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

[Explanation.- For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule;]

7.8 Further I find that the manner of determination of ITC in respect of inputs or input services and reversal thereof has been prescribed under Rule 42 of the GST Rules, 2017, which is reproduced hereunder:

Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. -

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section(2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely.....

7.9 From the above, I find that in the instant case the appellant has supplied the goods from the place outside India, to a place outside India which is covered under schedule-III of GST Act, 2017 which is already determined "NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF



SERVICES*. The said activity as per Explanation under Section 17(3) of the CGST Act, 2017 does not fall under the exempted supply, therefore the said supply is neither exempted nor in relation to furtherance of business and falls under Section 17(1) of the CGST/GGST Act, 2017. Hence, I am of the view that the demand for reversal of proportionate ITC availed on common services used for taxable and non-taxable supplies under Rule 42 of CGST Rules, 2017 along with interest under Section 50(1) of the CGST/GGST Act, 2017 is proper and legal.

7.10 Further, I find that the appellant has not reversed the proportionate credit thereby utilized the same with intention to evade payment of GST which have been detected during Audit by the Department. I observe that the provisions of Section 122(2)(b) provides that where the input tax credit has been wrongly availed or utilised for the reason of fraud or any wilful misstatement or suppression of facts to evade tax by any registered person, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher. I am of the view the Appellant is liable for penalty under the said provisions.

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

9. अपीलकर्ता द्वारा वर्क की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

Aadesh Rumar Jain
21/10/2023
(ADESH RUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

ATTESTED.

S. Nawani
(SENITA D. NAWANI)
SUPERINTENDENT
CGST & C. EX. (APPEALS),
AHMEDABAD.



By R.P.A.D.

M/s. APAN IMEX PRIVATE LIMITED having
19, ROYAL ENCLAVE, THALTEJ, Ahmadabad,
Gujarat, 380059 (GSTIN - 24AAGCA7539P1Z5)

Copy to:

1. The Principal Chief Commissioner of CGST & C. EX., Ahmedabad Zone.
 2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
 3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
 4. The Dy/Asstt. Commissioner, CGST & C. Ex, Division-VI Ahmedabad-North.
 5. The Superintendent, CGST & C. Ex, AR-II, Division-VI Ahmedabad-North.
 6. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
- ~~7. Guard File/ P.A. File.~~



