



सत्यमेव जयते

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

**By Regd. Post**

DIN NO.: 202311648W000000BF3F

|     |   |  |
|-----|---|--|
| (क) | फ़ाइल संख्या / File No.   | GAPPL/ADC/GSTP/2281/2023 / 8362 ✓  |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In -Appeal and date  | AHM-CGST-002-APP-JC-99/2023-24 and 20.11.2023  |
| (ग) | पारित किया गया / Passed By  | श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील)<br>Shri Adesh Kumar Jain, Joint Commissioner (Appeals)  |
| (घ) | जारी करने की दिनांक / Date of Issue   | 21.11.2023   |
| (ङ) | Arising out of Order-In-Original No. GST-04/SUPDT/RANGE-II/BSB/23-24 dated 22.03.2023 passed by The Superintendent, CGST, Range-II, Division-III, Ahmedabad North Commissionerate |  |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant   | M/s Rushan Enterprise<br>(Shri Mohammed Sakil Anwerbhai Malek)<br>GSTIN: 24AVDPM0139N1ZKJ,<br>Behind Motabhai Cold Storage, Mandal Road,<br>Bhojwa, Viramgam, Ahmedabad-382150 |

|       |   |
|-------|---|
| (A)   | इस आदेश(अपील) से अप्पिड कोई अप्पिड निम्नलिखित तरीके में उपयुक्त प्राधिकारी /अधिकरण के समक्ष अपील दायर कर सकता है।<br>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 remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed. |
| (ii)  | The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.   |
| (C)   | उच्च अपील अधिकारी को अपील दायर करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं।<br>For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .   |



ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s. Rushan Enterprise ( Shri Mohemmed Sakil Anwerbhai Malek), Behind Motabhai Cold Storage, Mandal Road, Bhojwa, Viramgam- 382 150, Ahmedabad (GSTIN 24AVDPM0139N1ZK) (hereinafter referred to as "the appellant"), have filed appeal against Order-In-Original GST-04/SUPDT/RANGE-LJ/BSB/23-24, dated 22.03.2023 (hereinafter referred to as the "impugned order" ) passed by the Superintendent, CGST & C.Ex., AR-II Division-III, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Facts of the case in brief, are that the appellant are engaged in the trading / manufacturing of other bars and rod of iron or non-alloys steel, not further worked than forged, hot-rolled, hot-drawn or hot- extruded but including those twisted after rolling - forged spring steel quality falling under HSN No.7214. They are availing Input Tax Credit in terms of CGST Rules, 2017 (as amended) and utilising the same for payment of GST. During the investigation carried out by the Directorate General of Goods & Services Tax Intelligence, Zonal Unit, Ahmedabad in case of M/s. Ahil Trading, M/s. Iqra Traders, M/s. Rajani Traders and M/s. Zoya Marketing, it was revealed that these firms had passed on the fraudulent ITC to their ultimate buyer, who had utilized the fraudulent ITC for clearance of goods supplied by them. One of such recipients of M/s. Ahil Trading, Iqra Traders, M/s. Rajani Traders and M/s. Zoya Marketing was M/s. Rushan Enterprise ( Shri Mohemmed Sakil Anwerbhai Malek), Behind Motabhai Cold Storage, Mandal Road, Bhojwa, Viramgam- 382 150, Ahmedabad falling under the jurisdiction of CGST, Ahmedabad North to whom they had generated and issued invoices involving ITC of Rs. 7,81,740/- ( CGST Rs. 3,90,870/- + SGST Rs. 3,90,870/-).

It was revealed that M/s.Ahil Trading, M/s.Iqra Traders, M/s. Rajani Traders and M/s. Zoya Marketing and Rushan Enterprise and Samrat Traders found to be non-existent and non-operational at their registered business premises and fake entity, floated only for the purpose of generating and selling tax invoices to various entities without supply of underlying goods resulting in irregular availment and utilization of Input Tax Credit by the recipients of the fake invoices. The Appellant had availed Input Tax Credit of Rs.7,81,740/- and on issuance of summons and advisories for reversal/payment of the said inadmissible ITC, they reversed/paid total amount of wrongly availed ITC of Rs.7,81,740/- (CGST Rs.3,90,870/- + SGST Rs.3,90,870/- ) in respect of the firm M/s. Ahil Trading, M/s. Iqra



Traders, M/s.Rajani Traders, Zoya Marketing, M/s. Roshan Enterprise and M/s. Samrat Traders, however; they have not paid interest and penalty as prescribed under the provisions of CGST and GGST Act and Rules made there under for these wrongly availed ITC on the basis of invoices issued by above firms M/s Ahil Trading, M/s.lqra Traders, M/s. Rajani Traders, M/s. Zoya Marketing, Roshan Enterprise and Samrat Traders.

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

"1. ITC amounting to Rs.7,81,740/- (CGST Rs.3,90,870/- + SGST Rs.3,90,870/- should not be disallowed and recovered from the taxpayer, under the provisions of Sections 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017;

2. The ITC amounting to Rs.7,81,740/- (CGST Rs.3,90,870/- + SGST Rs.3,90,870) paid/ reversed vide DRC-03 as stated herein above through ITC/Cash should not be appropriated against their outstanding GST liability as per para (i) above:

3. Interest should not be charged and recovered from them under the provisions of Sections 50(1) of the CGST Act, 2017 read with proviso to Section 50 of the Gujarat GST Act, 2017 on the proposed demand at (i) above. Amount of interest of Rs.70,798/- already paid as stated hereinabove should not be appropriated against their outstanding interest Liability.

4. penalty should not be imposed on them, under the provisions of Sections 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 on the proposed demand at (i) above."

The adjudicating authority passed the following order :

I disallow the ITC amounting to Rs.7,81,740/- (CGST Rs.3,90,870/- + SGST Rs.3,90,870/-) wrongly availed and utilised by them. I also order to demand and recover the same from them under the provisions of Sections 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017.

2. The ITC amounting to Rs.7,81,7402/- (CGST Rs.3,90,870/- + SGST Rs.3,90,870/- reversed by the taxpayer through various DRC-03, is hereby appropriated against their Govt. outstanding dues / liability.

3. I order that interest applicable rates recovered from the taxpayers under the provisions of Sections 50(1) of the CGST Act, 2017 read with proviso to Section 50 of the Gujarat GST Act, 2017 on the proposed demand at (i) above; Amount of interest of Rs.70,798/- already paid as stated hereinabove is hereby appropriated against their outstanding interest liability.

4. I impose penalty of Rs.7,81,740/- (CGST Rs.3,90,870/- + SGST Rs.3,90,870/- on them, under the provisions of Sections 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 on the proposed demand at (i) above."

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

*• The penalty order has been imposed based on the assumption that we availed Input Tax Credit on the basis of fake invoices. We vehemently deny these allegations and assert that we had no knowledge of the fraudulent activities at the time of procurement.*

*We have acted in good faith, and upon discovering the fraudulent activities of the suppliers, we promptly rectified the situation by reversing the Input Tax Credit or making payments through DRC 03. This demonstrates our commitment to compliance and our willingness to rectify any inadvertent errors or discrepancies.*

*The penalty order does not consider the fact that we have complied with the provisions of the OST Act and Rules by reversing the Input Tax Credit voluntarily. It is unjust to impose a penalty when we have taken prompt corrective action in accordance with the law.*

*The relief granted by the State Tax Officer in the case of M/s Rajani Traders sets a precedent and provides grounds for a reduction in penalties in our situation as well. (Drop Proceeding of DRC 01 copy attached)*

*The LD AO's assertion that our motive was to pass on invalid Input Tax Credit is completely unfounded and misleading. We have always maintained a transparent and law-abiding approach to our business operations.*

Further, the appellant has prayed that the impugned order be set aside.

PERSONAL HEARING:

Personal hearing in this case was held on 12.10.2023. Shri Moheemmed Sakil Anwer, proprietor himself appeared in person. He submitted additional submissions. He further submitted that penalty was waived by the SGST competent authority in the identical case. In view of the above, requested to allow the appeal. He further submitted that they have already paid ITC, therefore no penalty is imposable.

6 DISCUSSION AND FINDINGS:-

6.1 I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal and observe that the appellant is mainly contesting with penalty of Rs.7,81,740/- (CGST Rs.3,90,870/- + SGST .Rs.3,90,870/- ) imposed vide the impugned order.

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

Whether the impugned order passed by the adjudicating authority with regard to penalty imposed under the provisions of Sections 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 on the appellant for avallment of ineligible ITC without actual receipt of goods and utilization thereof, is proper or otherwise?

6.3. At the foremost, I observed that in the instant case the "impugned order" is of dated 22-03-2023 and the present appeal is filed on 19.06.2023. 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 appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.4 I observe that Appellant has availed the ITC of Rs.7,81,740/- (CGST Rs.3,90,870/- + SGST Rs.3,90,870/-) without physical receipt of goods. The the said ITC availed fraudulently has been utilized for payment of GST by reasons of fraud as they have not actually /physically received the goods and suppressed the material facts with intention to evade the GST. The appellant has reversed the said fraudulently availed ITC vide various DRC-03. I find that the act of fraudulently availed ITC without actual receipt of goods is punishable under the law.

6.5 I observe that Penalty under Section 74(1) of the CGST/GGST Act, 2017 has been imposed. Therefore, I refer the said provisions, the text of which is as under:

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

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

6.6 I observe that the appellant has availed ITC fraudulently without actual receipt of goods and inspite of the fact that it was not eligible to be taken, they knowingly availed and utilized the same with intention to evade payment of GST which has been detected by the DGGI, AZU, Ahmedabad as explained in the foregoing paras. I observe that the provisions of Section 174(1) of the GST Act, 2017 provides that where the input tax credit has been wrongly availed or utilised for the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equivalent to the tax specified in the notice. I find that as the Appellant in the present case has suppressed the facts of availing the credit of Rs.7,81,740/- without actual receipt of goods which has been accepted by them, therefore the Appellant is liable for equivalent penalty of the amount of ITC fraudulently availed, under the said provisions.


6.7 As regards contention of the Appellant that they have reversed/paid the ITC along with interest, therefore penalty is not imposable, I refer the provisions of payment of penalty which are as under:

*(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

*(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.*

*(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.*



From the above provisions, it is crystal clear that the penalty at different stages of payment has been prescribed, after payment of Tax (reversal/payment of ITC) along with interest i.e. Penalty of 15% of such tax, on his own ascertainment, 25% of such tax, within thirty days of issue of the notice and 50% of such tax, within thirty days of communication of the order is required to be paid. Therefore, the penalty cannot be waived even if the Tax amount along with interest has been paid by the Appellant. Here, I observe that the Appellant has not made payment of penalty at any stage as described above, therefore equal amount of penalty is liable to paid by the Appellant.

6.9 Further, as regards to contention of the Appellant that penalty was waived by the State Tax Officer in case of proceedings against them regarding Rajani Traders, I am of the view that the same is not binding on this authority. Thus, the contention of the appellant is not acceptable, in view of the above provisions and discussions.

6.10 Further I find that In a case of excess availment of ITC, i.e. in case of *Munna Traders Vs State of Bihar (Patna High Court) Appeal Number : Civil Writ Jurisdiction Case No. 9032 of 2023 Date of Judgement/Order : 08/08/2023, the Hon'ble High Court has held that:*

*"12. In the present case, it is seen that the assessee has defaulted tax payment, based on an excessive claim of input tax credit, later deposited the input tax credit without interest due under Section 50; which attracted the penalty under Section 122. We have already found that there can be no coercion found in so far as the*

deposit is concerned. The assessee, hence, has admitted the discrepancy with respect to excess claim of input tax credit and paid the amounts due on which interest was also due under Section 50 of the BGST Act. The non-payment of tax due and the failure to pay interest attracted the penalty imposed.

13. ....the allegation of excess claim has been admitted and differential amount paid by the assessee. The penalty levied was proper and a civil liability, attracted on the failure to pay the tax due, on a wrong claim of input tax credit.

6.11 The above judgment is squarely applicable to the present case. Therefore, I find that the penalty imposed under Section 74(1) of the CGST/GGST Act, 2017, vide the impugned order, is proper and legal.

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


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

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

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

Date : .11.2023

ATTESTED.

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

By R.P.A.D.

M/s. Rushan Enterprise  
( Shri Mohemmed Sakil Anwerbhai Malek),  
Behind Motabhai Cold Storage, Mandal Road,  
Bhojwa, Viramgam- 382 150, Ahmedabad.  
(GSTIN 24AVDPM0139N1ZK)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-III, Ahmedabad-North Commissionerate.
5. The Superintendent AR-II, Division-III Ahmedabad-North.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/P.A. File.



