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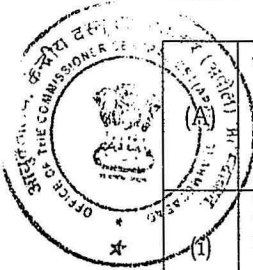
आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद ३८००१५.  
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/3538/2023 / 14006 - 12
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-2/2024-25 and 10.04.2024
(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	12.04.2024
(ङ)	Arising out of Order-In-Original No. 14/AC/D/2023-24/FRC dated 08.08.2023 passed by The Assistant Commissioner, CGST, Division-IV, Ahmedabad-North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Elite Conductors Limited (GSTIN: 24AABCE5952D1ZY) 18-19, Changodar Industrial Estate, Sarkhej-Bavla Road, Changodar, Ahmedabad-382213



	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .

ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s. Elite Conductors Limited (GSTIN-24AABCE5952D1ZY) having principal place of business at 18-19, Changodar Industrial Estate, Sarkhej-Bavla Road, Changodar, Ahmedabad-382213 (hereinafter referred to as the "Appellant") have filed appeal Against OIO No.14/AC/D/2023-24/FRC dated 08.08.2023 issued by the Assistant Commissioner, CGST & C.Ex., Division IV, Ahmedabad-North Commissionerate, Ahmedabad (herein after referred as the "impugned order").

2. Brief facts of the case are that the Appellant registered under GSTIN-24AABCE5952D1ZY are engaged in the business of supply of Copper Winding Wire and Aluminum Winding Wire. During the course of Audit of the records of the Appellant for the period July-2017 to March-2020, it was noticed that the following paras were raised wherein the Appellant was not agreed and filed appeal against the impugned order:

(1) Non-payment of GST on Supply of Second hand/Used Motor Vehicle. (Para 1 of Audit Report),

(2) Short payment of Tax due to difference in Taxable Value of Supplies reported in GSTR-1 and GSTR-3B. (Para 5 of Audit Report),

(3) Excess availment and utilisation of Inadmissible/Irregular ITC in GSTR-3B Vis-a-Vis GSTR 2A(Invoices not reflected in GSTR-2A (Para 6 of Audit Report).

(4) Non payment of Tax under RCM on services by a Goods Transport Agency (GTA) in respect of Transportation of goods by Road (Para 9 of Audit Report).

(5) Excess availment of Irregular ITC as per reconciliation of ITC taken in GSTR-3B and ITC reported in GSTR-2A (Para 10 of Audit Report).

The appellant were issued Show Cause Notice No. 206/2022-23 dated 27.12.2022 to show cause as to why:-

"18 .....

(i) Tax of Rs. 22,346/-[CGST Rs. 11,173/- + SGST Rs. 11,173/-] non payment of GST on supply(sale) of second hand/used motor vehicle ....w.r.t. Revenue Para:1 should not be demanded and recovered from them under the provisions of Sections 74(1) of the CCST Act, 2017 read with Section 74(1) of Gujarat GST Act,2017

(ii) Tax of Rs. 2,10,190/-[CGST Rs.1,05,095/- + SGST Rs.1,05,095/-] wrongly availed and utilized ...w.r.t. Revenue Para-5 should not be demanded and recovered from them under the provisions of Sections 74(1) of the CGST Act 2017 read with Section 74(1) of Gujarat GST Act, 2017;

(iii) Input tax credit of Rs. 71,132/- [IGST Rs 2,880/- + CGST Rs. 34,126/- + SGSTRs.34,126/-](Seventy One Thousand One Hundred Thirty Two only)wrongly availed and utilized .....w.r.t. Revenue Para-6 should not be demanded and recovered from them under the provisions of Sections 74(1) of the CGST Act, 2017 read with Section 74(1) of Gujarat GST Act, 2017; read with Section 20 of the IGST Act, 2017

(iv) .....

(v) Tax Rs, 12,118/- [CGST Rs, 6,059/- + SGST Rs. 6,059/-] (Twelve Thousand One Hundred Eighteen only,) Short payment of tax under RCM on services by a goods transport agency (GTA) in respect of transportation of goods by road ..... w.r.t. Revenue Para-9 should not be demanded and recovered from them under the provisions of Sections 74(1) of the CGST Act,2017 read with Section 74(1) of Gujarat GST Act, 2017;

(vi) Input tax credit of Rs. 16,16,631/- [IGST Rs 7,68,127/- + CGST Rs. 4,24,252/- +SGST Rs. 4,24,252/-](Sixteen Lakhs Sixteen Thousand Six Hundred Thirty One only)wrongly availed and utilized .....w.r.t. Revenue Para-10 should not be demanded and recovered from them under the provisions of Sections 74(1) of the CGST Act, 2017 read with Section 74(1) of Gujarat GST Act,2017; read with Section 20 of the IGST Act 2017;

(vii) Interest payable in terms of Section 50(1) of the CGST Act, 2017 read with Section 50(1) of Gujarat GST Act, 2017 should not be charged & recovered from them under Section 74(1) of the CGST Act, 2017 read with Section 74(1) of Gujarat GST Act, 2017, read with Section 20 of the IGST Act, 2017; on the demands at 18(i),18(ii) and 18(v) above;

(viii) Interest payable in terms of Section 50(3) of the CGST Act, 2017 read with Section 50(3) of Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be charged & recovered from them under Section 74(1) of the CGST Act, 2017read with Section 50(3) the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017; on the demands at 18(iii),..., and 18(vi) above;

(ix) Penalty under Section 74(1) of the CGST Act, 2017 read with the provisions of Section 74(1) of Gujarat GST Act,2017 read with Section 20 of the IGST Act,2017 should not be imposed on them in respect of the demands at 18(i), 18(ii),18(iii),...,18(v) and 18(vi) above”.

3. The adjudicating authority passed the order as under :

“(i) I confirm and order to recover the tax amount of Rs.22,346/- [CGST Rs.11,173/- + SGST Rs.11,173/-] for nonpayment of GST on supply(sale) of second hand/used motor vehicle under Section 74 (1) of the CGST Act, 2017 read with the corresponding provisions of SGST Act, 2017;

(ii) I confirm and order to recover the tax amount of Rs.2,10,190/-[CGST Rs.1,05,095/- + SGST Rs.1,05,095/-] short paid on difference in taxable value shown in GSTR-1 and taxable value shown in GSTR-3B under Section 74 (1) of the CGST Act 2017 read with the corresponding provisions of SGST Act 2017;

(iii) I confirm and order to recover the Input tax credit of Rs. 71,132/- [IGST Rs.2880/- + CGST Rs. 34,126/- + SGST Rs.34,126/- wrongly availed and utilized under Section 74 (1) of the CGST Act, 2017 read with the corresponding provisions of SGST Act, 2017/IGST Act 2017;

(iv) .....

(v) I confirm and order to recover Tax of Rs.12,118/- [CGST Rs.6,059/- + SGST Rs.6,059/-] short paid under RCM on services by a goods transport agency (GTA) in respect of transportation of goods by road under Section 74 (1) of the CGST Act, 2017 read with the corresponding provisions of SGST Act, 2017;

(vi) I confirm and order to recover Input tax credit of Rs.16,16,631/- [IGST Rs.7,68,127/- + CGST Rs.4,24,252/- + SGST Rs.4,24,252/-] wrongly availed and utilized under Section 74 (1) of the CGST Act, 2017 read with the corresponding provisions of SGST Act, 2017/IGST Act, 2017;

(vii) I confirm and order to recover interest at applicable rate under Section 50 of the CGST Act, 2017 on demands at (i),(ii), (iii), (v) and (vi) above;

(viii) I impose penalty of Rs.19,32,417/- (IGST Rs.7,71,007/- CGST Rs.5,80,705/- + SGST Rs.5,80,705/-) under Section 74(1) read with corresponding section of SGST Act, 2017/IGST Act, 2017 on demands at (i),(ii), (iii), (v) and (vi) above.”

4. Being aggrieved with the impugned order, the Appellant filed the present appeal on 03.11.2023 on the grounds that:

8. The order of the Assistant Commissioner, Central Excise & CGST, Division-IV, Ahmedabad-North in so far as confirmation of demand of tax Rs.22,346=00 + Rs.2,10,190=00 + Rs.71,132=00 + Rs.12,118=00 + Rs.16,16,631=00 and imposition of penalty of Rs.19,32,417=00 is concerned, is not proper, legal and sustainable on the ground that it is passed in routine and superfluous manner without taking into consideration the facts and legal aspects of the issue.

9. It is submitted that show cause notice was issued on the basis of audit objections raised by CGST Audit party. The appellants in their reply to the show cause notice in respect of short payment of tax submitted that allegation of short payment of tax was made merely on the basis of comparing figures reported in GSTR-1 with GSTR-3B, however department did not disclose the details of supplies in respect of which tax liability was not discharged. With respect to excess availment of input tax credit, appellants submitted that merely because invoices were not reflected in GSTR-2A, ITC could not be disallowed. Moreover, ITC availed on IGST in respect of imported goods did not reflect on GSTR-2A and therefore, ITC cannot be disallowed. It was also submitted that appellants strictly complied with the provisions of Section 16 of CGST Act. And that persons transporting goods by loading tempo and rickshaw did not issue consignment notes and therefore, service rendered by them does not come under the ambit of GTA service. However, learned Assistant Commissioner has confirmed the demand merely on the basis of difference in figures of GSTR-1 and GSTR-3B And input tax credit has been disallowed on the basis of non compliance of

instructions of CBIC circular. The demand has been confirmed and input tax credit has been disallowed without establishing contravention of any of the provisions of Section 16 of CGST Act. Therefore, order impugned may please be quashed and set aside.

**I. Non-payment of GST of Rs.22,346=00 on supply of (sale) of second hand /used motor vehicle. (Table-1 of SCN)**

10. In the show cause notice, GST of Rs 22,346=00 was demanded in respect of sale of second hand / used car in terms of Rule 32(5) of CGST Rules. The demand was raised on the ground that in terms of Rule 32(5) of CGST Rules 32(5) needs to be charged on the margin amount booked by the supplier dealing in selling/ supply of second hand goods. The appellants in their reply to the show cause notice submitted that sale of used car does not come under the ambit of supply and sale of such car cannot be said as supply of goods in the course of furtherance of business. In this connection relevant text of para 12 and 13 of the reply are reproduced herein below:

12. It is submitted that tax has been demanded without establishing the 'supply'. It is prudent to submit that levy of GST is on supplies of goods or services or both. Since taxable event under GST law is 'supply', the supply has to be established. Section 7(1)(a) of CGST Act defines "supply" .....

The necessary elements that constitute supply under GST Act are a) the activity involves supply of goods or services or both; (ii) the supply is for a consideration unless otherwise specifically provided for; (iii) the supply is made in the course or furtherance of business; (iv) the supply is a taxable supply; and (v) the supply is made by a taxable person. Since old and used car was sold, the same would not be covered under the definition of supply. In as much as sale of car cannot be construed as made in the course or furtherance of business except the sale of car by a car manufacturing company or car distributor or agent dealing in sale and purchase of car. As such when the transaction does not fall under the ambit of supply, the demand of tax is ex-facia illegal.

13. In the present case noticee is engaged in the manufacture and sale of Copper Winding Wire. The noticee is not engaged in the business of manufacturing of car or sale of purchase of car. The car was used by the Director of the company for his personal use, therefore, sale of such car cannot be said as supply of goods in the course of furtherance of business.

11. However, without rebutting the contentions of the appellants, learned adjudicating authority has confirmed the demand relying on Advance Ruling given in the case of Dishman Carbogen Amcis Ltd. cited at 2022(67)GSTL-382(AAR-GST-Guj.). With respect to reliance placed on Advance Ruling in the above case, it is submitted that issue before advance authority was of classification and valuation of old and used motor vehicles and not of taxability. In this regard question raised before the Advance Authority are reproduced for ease of reference:


4. Questions on which Advance Ruling sought.

(1) On what value, the new car purchase by the company is sold after using it for business purpose, shall the GST be charged?

(2) At what rate of GST the new car purchase by the company is sold after using it for business purpose, shall the GST be charged?

(3) Whether the value of old and used car, sold by the company as mentioned above, can be taken as the value that represent margin of the supplier, on Supply of such car and whether the GST can be charged on such margin?

(4) The value that represent margin of the supplier, on supply of such old and used goods/ car will be inclusive of GST or exclusive?



On perusal of above questioned raised before Advance Authority, it is revealed that issue involved was valuation and classification of used vehicle. Further, on perusal of Question No. (1), it would be seen that the car was used for business purpose. In the case of the appellants car was not used for business purpose. It was the facility given to the Director of the company. Therefore, learned adjudicating authority has misplaced reliance on the ruling of advance authority. Consequently, order may please be quashed and set aside.

12. It is submitted that used car sold by appellants does not fall under the ambit of supply in as much as sale of car was not supply in the course of or furtherance of business. The appellants are not engaged in the business of manufacturing or supply of car. Further/ Honourable High Court of Delhi in the case of Panacea Biotech Limited v. Commissioner of Trade and Taxes [(2013) 59 VST 524 (Del.) 'has held that, selling of used cars cannot by any stretch of the imagination be characterized as "ancillary" or incidental to the business of a pharmaceutical company. As such selling of used car cannot be construed as supply of goods in the absence of such supply in the course furtherance of business. Therefore, order passed by learned Assistant Commissioner may please be quashed and set aside.

**II. Short payment of tax of Rs. 2,10,190=00 due to difference in taxable value of supplies reported in GSTR-1 and GSTR-3B (Table-2 of SCN)**

13. With respect to demand raised on the ground of short payment of tax of Rs.2,10,190=00 due to differential taxable value reported in GSTR\_1 and GSTR-3B, appellants in their reply to the show cause notice submitted that department has not disclosed the details of supplies in respect of which tax liability was not discharged. In this connection reliance was also placed on the decision of Honourable Tribunal wherein it was held that tax cannot be demanded without establishing removal of goods. Relevant texts of written submissions- made during the personal hearing are reproduced herein below:

6. It is submitted that allegation of short payment of tax has been made merely on the basis of comparing figures reported in GSTR-1 with GSTR-3B. However, department has grossly failed to disclose the details of supplies in respect of which tax liability has not been discharged.

7. It is further submitted that charges of clearance of goods without payment of tax have been made only on the basis of audit objection. The show cause notice does not bring out any evidence of supply of goods without payment of tax. It is well settled law that Burden for proving the supply of goods without payment of tax lies upon revenue- The revenue is required to discharge the allegation of nonpayment of tax by production of sufficient and affirmative evidence as held by Honourable Tribunal in the case of Utkal Galvanizers Ltd. v/s. CCE&C, BBSR-I cited at 2003(158)ELT-42(Tri.-Kolkata) the Honourable Tribunal in para 4 and 5 of their decision has held as under:

Since, in the present show cause notice the onus with regard to supply of goods without payment of tax has not been discharged by the Department, the allegation of supply of goods cannot without payment of tax does not sustain.

However, without giving any finding on the submission of the appellants learned adjudicating authority has confirmed the demand. As such order passed by learned Assistant Commissioner may please be quashed and set aside.

14. It is submitted that appellants discharged their tax liability on all the supplies affected by them and the department has not disclosed any invoice or supply against which tax liability was not discharged. The demand has been confirmed merely because the figures of supply reflected in GSTR-1 are more than the figures shown in GSTR-3B. There is no allegation or finding that appellants supplied goods or services without payment of tax. In this connection relevant text of the finding of para 13.2 of the order is reproduced herein below:

Therefore, I hold that there is a difference in tax liability shown in their GSTR-1 and as per their GSTR-3B for the period Aug-17 to Nov-2017 and accordingly, I hold that, noticee is required to pay GST of Rs.2,10,190=00 (Rs.1,05,095=00CGST + Rs.1,05,095=00 SGST) on such differential value.

On perusal of the above finding, it is revealed that learned adjudicating authority has confirmed the demand merely on the ground of difference of figures shown in GSTR-1 and GSTR-3B. The learned adjudicating authority has not established that goods or services were supplied without payment of tax. Therefore, confirmation of tax liability merely on the basis of difference in returns is not proper and just.

15. In connection with submission that entire tax liability was discharged, Self certified copies of sales register and GSTR-3B for the period August-2017 to November-2017 along with statement of tax liability and payment thereof are enclosed at Annexure 'E-1 to E-3'. In light of the documentary evidence of discharging tax liability, the order passed by learned Assistant Commissioner may please be quashed and set aside.

16. On perusal of statement of tax liability as per sales ledger and liability discharged as per GSTR-3B, it would be seen that for the month of August-2017 tax of Rs.8,824=00 + Rs. 8,824=00 was not paid. Similarly, for the month of September-2017 tax of Rs.50,414=00 + Rs.50,414=00 was not paid' However, for the month of October-2017 tax liability was discharged in respect to all the supplies recorded in sale register. Further, for the month of November-2017 appellants paid Rs.65,671=00 +Rs.65,671=00 in excess to the liability computed from sales ledger. As such from Augut-2017 to November-2017 appellants paid Rs.6,433=00 +Rs.6,433=00 more than the liability computed under sales ledger. Therefore, order of learned Assistant Commissioner may please be quashed and set aside.

### **III. Excess availment and utilization of inadmissible/irregular ITC in GSTR-3B vis-a-vis GSTR-2A (invoices not reflected in GSTR\_2A) (Table-3 of SCN)**

17. The input tax credit of Rs.71,132=00 was sought to be denied on the ground that input tax credit was taken in GSTR-3B on the basis of invoices though the invoices were not reflecting in GSTR-2A. The appellant in reply to the show cause notice submitted as under:

17. With respect to invoices not reflecting in GSTR-2A or suppliers have not filed their GSTR-1 and therefore asking noticee to reverse ITC, it is submitted that noticee have taken input tax credit strictly in consonance with the provisions of Section 16 of CGST/GGST Act. In as much as noticee has



received the goods in respect of which input tax credit was taken and the goods were received under valid tax invoices. Further, the goods are used in the course or furtherance of the business of the noticee. It is not the case that noticee has not paid the value of supply along with tax payable thereon to the suppliers. As such merely because some suppliers have not filed GSTR-1 or wrongly filed GSTR-1, the input tax credit cannot be disallowed to the noticee. Here it is submitted that the requirement of furnishing details of invoices by the supplier in the statement of outward supply and communicating such details to recipient of such invoice brought into Section 16 vide notification No. 39/2021-CT dated 21-12-2021 with effect from 01-01-2022. Therefore, on the basis of mismatch in details furnished in GSTR-3B and GSTR-2A, input tax credit cannot be disallowed.

However, without properly discussing the submission, learned adjudicating authority has disallowed the credit without showing any contravention of Section 16 of CGST Act. Therefore, such order may please be quashed and set aside.

18. It is submitted that observation of ITC credit availed in GSTR-3B on the basis of invoices even though invoices were not reflecting in GSTR-2A is factually incorrect. In as much as 19 invoices stated to have been not reflecting in GSTR-2A as per Table-3 to the show cause notice. However, appellants have noticed that invoices shown against Sr. No. 1 to 3, 5 to 9,12 and 14 are reflecting in GSTR-2A. In this connection relevant GSTR-2A are enclosed at Annexure 'F'.

Further, with respect to remaining invoices not reflecting on GSTR-2A, copy of self certified Invoices and corresponding purchase ledger are enclosed at Annexure 'G'. In light of the above evidences, order passed by the learned Assistant Commissioner may please be quashed and set aside.

19. It is submitted that learned adjudicating authority in para 13.3 of his findings reproduced text of Section 16(1) and (2) of CGST Act and thereafter relied on CBIC circular No. 183/15/2022-GST dated 27-12-2022 and held as under:

From above clarification, it is evident that noticee have to fulfill the conditions as mentioned in Para 4 to 4.2 further, I find that the noticee have not submitted any documentary evidences regarding payment in respect of such inward supply any also not submitted any certificate required as per the Para 4.1.2 to claim the ITC in respect of the invoices which are reflecting the corresponding GSTR-2A during the period F.Y.2017-18 to F.Y.2018-19.

On perusal of above findings, it is crystal clear that learned adjudicating authority has disallowed ITC for non compliance of instructions of CBIC circular. The learned adjudicating authority has not found any contravention of the provisions of Section 16 of CGST Act. Since there is no contravention of the

provisions of Section 16, disallowing input tax credit is against the law, specifically provisions of Section 16 of CGTF Act. Therefore, order passed by learned adjudicating authority may please be quashed and set aside.

**IV. Non-payment of tax under RCM on services by a Goods Transport Agency (GTA) in respect of transportation of goods by road. (Table 5 of SCN)**

20. The demand with respect to short payment of tax in respect of Goods Transport Agency service was raised on the basis of reconciliation GSTR-3B with Profit & Loss account. However, department has not specified the transactions in respect of which tax was not paid. The appellants in reply to the show cause notice submitted that tax in respect of GTA service was paid in respect of the transportation of goods by the transporters who were covered by the definition of Goods Transport Agency and issue consignment note. However, where the goods were transported by loading tempo / rickshaw, who did not issue consignment note, the tax was not paid. The learned adjudicating authority has confirmed the demand on the ground that appellants have not submitted supportive documents. As such learned Assistant Commissioner has confirmed the demand on the basis of the allegation made in show cause notice.

21. With respect to tax not paid on GTA service, sample copies of cash vouchers in respect of transportation charges paid are enclosed at Annexure 'H'. Similarly, sample copies of bills wherein transporter has not issued consignment note are enclosed at Annexure 'I'. In light of the above documentary evidence, the order passed by the learned Assistant Commissioner may please be quashed and set aside.

**V. Excess availment of irregular ITC as per reconciliation of ITC taken in GSTR-3B and ITC reported in GSTR-2A. (Table 6 of SCN)**

22. It is submitted that input tax credit of Rs. 16,17,631=00 was sought to be recovered on the ground that input tax credit amounting to Rs.16,17,631=00 has been availed in GSTR-3B, however, the invoices in respect of which input tax credit has been availed are not reflecting in GSTR-2A. ...

The appellants in reply to the show cause notice submitted as under:

32. Further, it is pointed out that input tax credit of Rs. 16,17,631=00 has been sought to be recovered on the basis of datas / figures abstracted from form GSTR-9. In this connection kind attention is invited to column of 'particulars reported in' to Table-6 of the show cause notice. On perusal of the column to Table -6, it is revealed that all the details have been abstracted or taken from GSTR-9. Inasmuch as it has been stated that '(as per GSTR-9 Table-6A, 6D, 6E,8(A), 8(C), 8(D))'. As such show cause notice issued from the

details shown in GSTR-9 and not from the details of GSTR-2A, as stated in the show cause notice. Since show cause notice has been issued on the basis of wrong information or details, the same needs to be quashed and set aside. Here it may be submitted that form GSTR-9 was not filed properly. However, the same should not be taken ground for recovery of Input tax credit. It is also submitted that input tax credit of Rs.6,05,905=00 was taken in respect of imported goods against Bill of Entry No. 7120953 dated 07-07-2018 for Rs. 1,11,981=00, Bill of Entry No. 7283471 dated 19-07-2018 for Rs. 2,42,358=00 and Bill of Entry No. 7713106 dated 20-08-2018 for Rs. 2,51,566=00. Since input tax credit of imported goods was wrongly shown in all other ITC column instead of showing in import of goods under column 4 of GSTR-3B in the month of July and August-2018, it has been construed that noticee had availed excess credit. In light of the above submissions and the facts, allegation of taking excess credit does not hold the ground.

However, without discussing the above submissions of the appellants input tax credit disallowed on the ground that appellants have not complied with the instructions issued by CBIC circular No.183/15/2022- GST dated 27-12-2022. The relevant finding recorded under para 13.6 of OIO reads as under:

From above clarification, it is evident that noticee have to fulfill the conditions as mentioned in Para 4 to 4.2. Further, I find that the noticee have not submitted any documentary evidences regarding payment in respect of such inward supply and also not submitted any certificate required as per the Para 4.1.2 to claim the ITC in respect of the invoices which are reflecting the corresponding GSTR-2A during the period F.Y.2017-18 to F.Y.2018-19.

On perusal of above findings, it is crystal clear that learned adjudicating authority has disallowed ITC for non compliance of instructions of CBIC circular. The learned adjudicating authority has not found any contravention of the provisions of Section 16 of CGST Act. Since there is no contravention of the provisions of Section 16, disallowing input tax credit is against the law, specifically provisions of Section 16 of CGST Act. Therefore, order passed by learned adjudicating authority may please be quashed and set aside.

23. It is submitted that show cause notice was issued on the ground which reads as under:

11.1 During the audit, it was noticed that the taxpayer had availed ITC in their GSTR-3B return in excess of the ITC on inward supplies reflected in their GSTR2A return for the relevant period/year, the details of which are tabulated in the Table- 6 herein under:

In the show cause notice details of input tax credit shown in GSTR-9 have been reproduced in Table'6 of the show cause notice. However, on perusal of details of

input tax credit reproduced in Table-6 of the show cause notice, it is revealed that difference of input tax credit as per GSTR-3B at Column-A and ITC as per GSFR-2A as per Column-E is insignificant. In this connection kind attention is invited to Column-E of Table-6 for the financial year 2017-18 wherein input tax credit of CGST and SGST of Rs.2,76,36,732=00 as per GSTR-2A has been shown and in Column-A ITC of CGST and SGST of Rs.2,76,53,947=00 as per GSTR-3B has been shown. As such there is no significant difference in ITC reported in GSTR-2A and GSTR-3B. Further, appellants have prepared statement, enclosed at Annexure - J, on the basis of Table-6 of the show cause notice to prove that ITC figures- shown in GSTR-2A are matching with GSTR-3B. With respect to input tax credit of Rs.6,05,905=00 availed in respect of imported goods against Bill of Entry No. 7120953 dated 07-07-2018 for Rs.1,11,981=00, Bill of Entry No. 7283471 dated 19-07-2018 for Rs.2,42,358=00 and Bill of Entry No. 7713106 dated 20-08-2018 for Rs.2,51,566=00, self certified copies of Bills of Entry are enclosed at Annexure -K'. In light of the above, confirmation of demand on the ground that appellants availed excess ITC in GSFR-'3B in compare to ITC reflected in GSTR-2A, is factually incorrect. Therefore, order impugned may please be quashed and set aside.

24. Further, appellants are furnishing self certified copies of GSTR-3B alongwith purchase ledger for the financial year 2017-18 to 2019-20, showing therein ITC claimed to substantiate the submission that appellants availed input tax credit strictly in consonance with the provisions of Section 16 of CGST Act. Copy of self certified purchase ledger is enclosed at Annexure E. In light of the above order passed by learned Assistant Commissioner may please be quashed and set aside.

25. With respect to imposition of penalty under the provision of Section 74(1) of CGST Act, it is submitted that appellants have discharged due liability and availed input tax credit in consonance with the provisions of input tax credit law, as demonstrated with documentary evidences herein above. Therefore, there is not short payment or non payment of tax and also appellants have not taken credit wrongly. Consequently, provisions of Section 74 of CGST Act cannot be invoked.

26. Further, it is submitted that show cause notice has been issued on the basis of audit objection raised by the department. As such all the facts and business activities were known to the department. In fact show cause notice has been issued from the records maintained by the appellants. Therefore, allegation of suppression cannot be held against the appellants. In any case appellants have discharged the entire tax liability and taken input tax credit strictly in consonance with the provisions of Section 16 of CGST Act. Therefore, order of imposition of penalty may please be quashed and set aside."

**5. Personal Hearing:**

5. Personal hearing in the present appeal was held virtually on 19.12.2023. Shri P.G. Mehta, Advocate and authorized representative of appellant appeared in the hearing. It was submitted that they will submit additional submission regarding calculation within fortnight. They further, reiterated the written submission and request to allow the appeal.

**Additional Submissions:**

The Additional Submissions as requested during the personal hearing have been submitted with regard to para 5, para 6 and para 10 of the issues raised vide the Audit Report, on 02.02.2024 by the appellant.

**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 as well as additional submissions and find that the Appellant is mainly contesting with the impugned order confirming the demand of :

- (i) tax amounting to Rs.22,346=00 (CGST Rs.11,173 + SGST Rs.11,173/-) regarding nonpayment of GST on supply/sale of second hand/used motor vehicle,
  - (ii) Tax amounting to Rs.2,10,190=00 (CGST Rs.1,05,095/- + SGST Rs.1,05,095/-) Short payment of Tax due to difference in Taxable Value of Supplies reported in GSTR-1 and GSTR-3B,
  - (iii) Rs.71,132=00 Excess availment and utilisation of Inadmissible/Irregular ITC in GSTR-3B Vis-a-Vis GSTR 2A(Invoices not reflected in GSTR-2A,
  - (iv) Rs.12,118=00 Non payment of Tax under RCM on services by a Goods Transport Agency (GTA) in respect of Transportation of goods by Road,
  - (v) Rs.16,16,631=00 Excess availment of Irregular ITC as per reconciliation of ITC taken in GSTR-3B and ITC reported in GSTR-2A.
- and imposition of penalty of Rs.19,32,417=00 (IGST Rs.7,71,007 + CGST Rs.5,80,705/- + SGST Rs.5,80,705/-).

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

Whether the impugned order passed by the adjudicating authority confirming the Demand of Rs. 19,32,417/- (IGST Rs.7,71,007 + CGST Rs.5,80,705/- + SGST Rs.5,80,705/-) under Section 74(1) of the CGST Act, 2017 read with corresponding provisions of GGST/IGST Act, 2017 along with interest under Section 50 of the CGST Act, 2017 and penalty of Rs.19,32,417/- under Section 74(1) of the CGST Act, 2017 read with corresponding provisions of GGST/IGST Act, 2017 is proper or otherwise?

6.3 At the foremost, I observe that in the instant case the "impugned order" is of dated 08.08.2023 and the present appeal is filed on 03.11.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within

three months time limit. I observed that in the instant case the appeal has been filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

**Non-payment of GST on Supply of Second hand/Used Motor Vehicle.**

6.4 It is observed that the appellant have sold capitalized goods i.e. Toyota Innova 2.5L car having registration No.GJ-01-KC-0880 to Shri Gohil Naresh Mangalsinh of Godhra, Gujarat, vide car sale deed dated 13.03.2020, and booked an income of Rs.1,24,147/- under "car sale profit" under Indirect Income head in their Books of accounts. The adjudicating authority vide the impugned order has held that GST of Rs.22,346=00 (CGST Rs.11,173 + SGST Rs.11,173/-) on the said amount of income, derived as per explanation to the Notification No.8/2018-CT (R ) dated 25.01.2018 is required to be paid as per Sl.No.3 of the said Notification No.8/2018-CT ( R ) dated 25.01.2018.

6.5 The contention of the appellant is that the said car was not used for business purpose and that they are not engaged in the business of manufacturing or supply of car. Further, they have relied upon the judgment of the Hon'ble High Court of Delhi in the case of Pabacea Biotech Limited Vs. Commissioner of Trade and Taxes {(2013) 59 VST 524 (Del.)} wherein it has been held that "*selling of used cars cannot by any stretch of the imagination be characterized as "ancillary" or incidental to the business of a pharmaceutical company.*" Therefore, the appellant contended that the selling of used car cannot be construed as supply of goods, in the absence of such supply in the course of furtherance of business. Therefore the order passed by the adjudicating authority may be set aside.

6.6 To examine whether the tax is payable on selling of the used car, I refer relevant Notification No.1/2017-CT (Rate) dated 28.06.2017, whereby the Central Government, on the recommendations of the Council, has notified the rate of the central tax for different types of goods. The relevant portion is as under:

Schedule IV – 14%

S. No.	Chapter / Heading / Sub-heading/ Tariff item	Description of Goods
(1)	(2)	(3)
165.	8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars [other than Cars for physically handicapped persons]

6.7 Further, Notification No.8/2018-CT (R) dated 25.01.2018 provides for exemption from certain percentage of Central Tax, relevant text of which is as under:

*"...exempts the central tax on intra-state supplies of goods, the description of which is specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as are given in corresponding entry in column (2), from so much tax as specified in Schedule IV of Notification No. 1/2017 -Central Tax (Rate), as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4), of the said Table, on the value that represent margin of the supplier, on supply of such goods.*

Sl.No.	Chapter, Heading, Sub- heading or Tariff item	Description of Goods	Rate
01	02	03	04
3	8703	Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles. Explanation. - For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above.	9%

2. This notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods."

6.8 The Definition of Capital Goods, Inputs, Input Tax and outward supply, as per Section 2 of the CGST Act, 2017, is as under:

(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

(59) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;


(63) "input tax credit" means the credit of input tax;

(83) "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;

6.9 From the co-joint reading of the above Notifications and definitions, I observe that CGST @14% on Motor cars has been notified and, the exemption of Central Tax for supply of certain goods has been notified, in the present case old and used car for which exemption in excess of the amount calculated (i.e. in excess of rate 9% )has been notified. Further, it has been stated that the

exemption notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods. This implies that exemption granted vide the said Notification is applicable to the suppliers who have not availed ITC on such goods.

6.10 Here in this case, the old used car (capitalized goods) is supplied by the appellant, which was accounted for in the books of accounts. However, as the availment of input tax credit on such vehicles is blocked under Section 17(5) of the CGST Act, 2017 except when they are used for making the following taxable supplies viz. (A) further supply of such motor vehicles; or (B) transportation of passengers; or (C) imparting training on driving such motor vehicles, the same is not available to the appellant. The said car was used by the appellant in their business (as written by the adjudicating authority in the impugned order) and on selling, the appellant booked a profit of Rs.1,24,147/-.



6.11 As per the appellant the said car was used by the Director of the appellant for personal use (as mentioned in the grounds of appeal). It is a fact that the Director is the key person of any business entity in carrying out business activity for furtherance of business. The use of the said car for personal use cannot be hold good, as no company can capitalize the cost of the capital goods which are used only for the purpose of personal use of the Director. As per the definition of the Capital Goods, the capital goods means the value of which is capitalized in the books of accounts of the person claiming the input tax credit and which are used or intended to be used in the course of furtherance of business. Further, the income from sale of such goods is also booked in the Books which is not personal income and the same is considered for furtherance of business. Therefore, as per definition of Outward supply and Capital Goods, the supply i.e. sale of Car of the Company (capitalized goods) by the appellant, as per my view is considered as supply made by a taxable person in the course or furtherance of business, which is chargeable to Tax.

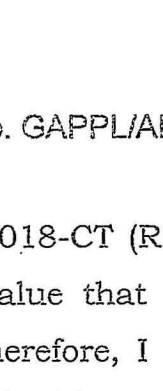
6.12 Further, the judgment of the Hon'ble High Court of Delhi in the case of Panacea Biotech Limited Vs. Commissioner of Trade and Taxes {(2013) 59 VST 524 (Del.)} quoted by the appellant is also not applicable in the present case, as the appellant have not proved at any point of time that the said Car sold for a consideration, was not used for furtherance of their business.



6.13 Thus, as per the Notification No.8/2018-CT (R ) dated 25.01.2018, the appellant is liable to pay GST on the value that represent margin of the supplier in supply/sale of such goods. Therefore, I am of the view that the order passed by the adjudicating authority, in this matter is Legal and proper.

6.14 I observe that the Appellant have failed to disclose the actual Taxable value in the Returns filed for the relevant period, as they failed to disclose the income from the sale of Car as discussed above and did not come forward at any time to disclose this fact to the Department and paid tax. It has come to the notice of the Department only when the Audit pointed out the same, thus they have suppressed the facts from the Department. The explanation-2 to Section 74(1) of the CGST Act states that for the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made there under and therefore as the Appellant have not declared the required details in the Returns filed for the relevant period, as per Section 74(1), they are liable to pay the tax along with interest under Section 50(1) of the CGST Act, 2017 and penalty under Section-74 (1)of the CGST/GGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017.

**Short payment of Tax due to difference in Taxable Value of Supplies reported in GSTR-1 and GSTR-3B.**



6.15 It is observed that the appellant have short paid the Tax amounting to Rs.2,10,190/- [CGST Rs.1,05,095/- + SGST Rs.1,05,095/-] as per the amount shown payable in GSTR-1 and tax paid as per GSTR-3B during the period August-2017 to November-2017, thereby contravened the provisions of Section 7 of the CGST Act,2017 and Section 37(1) of the CGST Act, 2017 and Section 39 of the CGST/GGST Act, 2017. By doing so, they have also contravened the provisions of Section 76(1) as they have collected tax but failed to pay to the Government. The adjudicating authority has confirmed the said amount of GST along with interest and penalty due to such difference found in GSTR-1 and GSTR-3B, as the appellant did not submit any supporting documents/details regarding short payment of tax. They have also not submitted any invoice, ledger and payment/reversal details separately in order to justify that they have paid tax on all supplies and there is no short payment of tax.

6.16 The appellant have, however, in the appeal memorandum contended that in the present case, the onus with regard to supply of goods without payment of tax has not been discharged by the Department, therefore, the allegation of supply of goods without payment of tax does not sustain. Further they have

relied upon the judgment of the Hon'ble Tribunal in the case of Utkal Galvanizers Ltd. V/s CCE&C, BBSR-I cited at 2003(158) ELT-42(Tri-Kolkata), wherein the sales figures shown in the Balance Sheet vis-à-vis RG-1 figures have been compared for allegation of clandestine removal. However, in this matter, the issue is not same hence the said judgment cannot be made applicable in the present case.

6.17 I observe that the appellant in additional submissions has submitted that they have discharged entire tax liability and submitted certified copy of sales register and GSTR-3B for the period August-2017 to November-2017 along with the statement of tax liability and payment thereof. They have further submitted that tax of Rs.8,824/- + Rs.8,824/- for the month of August-2017 was not paid. Similarly, Tax of Rs.50,414/- + Rs.50,414/- was not paid for the month of September-2017. However, for the month of October-2017, tax liability was discharged in respect of all the supplies recorded in sales register. During the month of November-2017, the appellant paid Rs.65,671/- + Rs.65,671/- in excess to the liability computed from sales register. As such from August-2017 to November-2017, they paid Rs.6,433/- + Rs.6,433/- more than the liability computed under sales register.

6.18 It is observed that the appellant has provided figures that they have paid excess amount of Tax as per their Sales register. However, the appellant has not provided comparing figures with respect to such difference arisen due to GSTR-1 and GSTR-3B for the relevant period. On the contrary they have simply submitted that invoices as detailed in the table-1 below pertaining to JOB work were issued before GST regime, however the details of which were inadvertently uploaded in the month of August-2017. Further, the invoices as in table-2 were uploaded in GSTR-1, however, credit notes were subsequently issued for such transactions and therefore the same did not show in GSTR-3B.

Table-1

Invoices issued before GST however, such invoices were uploaded in GSTR-1 for August-2017 in advertantly in r/o M/s Transformer & Rectifier (I) Ltd., Changodar.				
	Bill No.	Basic	CGST	SGST
03.08.2017	91	17367	2431.4	2431.4
05.08.2017	94	22966	3215.2	3215.2
06.08.2017	95	87	12.18	12.18
06.08.2017	97	10032	1404.5	1404.5
11.08.2017	104	2131	298.34	298.34
<b>Total</b>		<b>52583</b>	<b>7361.62</b>	<b>7361.62</b>

Table-2

Invoices uploaded in GSTR-1 however, credit notes were subsequently issued to Tamra Dhatuudhyog P Ltd.				
	Bill No.	Basic	CGST	SGST
08.09.2017	C No.16	2277	204.93	204.93
08.09.2017	C No.17	1346	121.14	121.14
08.09.2017	C No.18	2619	235.71	235.71
08.09.2017	C No.19	49978	4498.02	4498.02
09.10.2017	C No.20	5102	459.18	459.18
17.10.2017	C No.21	43061	3875.47	3875.47
17.10.2017	C No.22	197276	17754.8	17754.8
<b>Total</b>		<b>301659</b>	<b>27149.25</b>	<b>27149.25</b>

And with respect to the rest of the invoices, the appellant has contended that there was excess payment of Rs.65,671/- + Rs.65,671/- ( Total Rs. 12,866/-) in the month of November-2017. I observe that the appellant is still not clear in submission of their figures, the invoices issued before GST and uploaded in GSTR-1 of August-2017 is only misleading and is not acceptable, further, the invoices were uploaded on GSTR-1, however credit notes were subsequently issued for such transactions and therefore, the same were not shown in GSTR-3B is again without any supporting document, and while submitting that with respect to "rest of the invoices" the tax liability of August and September-2017 was discharged in November-2017 is also not clear. To substantiate their claim that they have discharged entire tax liability, the appellant has failed to submit the differential figures with specific reasons along with the supporting documents, and therefore all this leads to after thoughts which is not acceptable in absence of any supporting documents.

6.19 I further observe that the Appellant have though shown the tax payable in GSTR-1, however not paid the Tax amounting to Rs.2,10,190/- [CGST Rs.1,05,095/- + SGST Rs.1,05,095/-] in GSTR-3B Return for the relevant period. It has come to the notice of the Department only when the Audit pointed out the same, thus they have failed to pay the tax on the declared value in their GSTR-1 and failed to properly file the Return GSTR-3B and failed to disclose correct taxable value and short paid the tax accordingly, thereby contravened the provisions of Section 39(1) of the CGST Act, 2017. Thus the appellant have misstated the value of supply by not disclosing the correct value in GSTR-3B. Therefore, I am of the view that as the Appellant have not declared/misstated the required details in the GSTR-3B Returns filed for the relevant period, they are liable to pay the tax confirmed as per Section 74(1), of the CGST /GGST Act, 2017 along with interest under Section 50(1) of the CGST/GGST Act; 2017 and penalty under Section-74(1)of the CGST/GGST

Act, 2017 read with Section 122(2)(b) of the CGST/IGST Act, 2017. Therefore, I am of the view that the order passed by the adjudicating authority is legal and proper.

***Excess availment and utilization of inadmissible/irregular ITC in GSTR-3B vis-a-vis GSTR-2A (invoices not reflected in GSTR\_2A) and***

***Excess availment of irregular ITC as per reconciliation of ITC taken in GSTR-3B and ITC reported in GSTR-2A.***

6.20 It is observed that the appellant have availed and utilized excess ITC of Rs.71,132/- [IGST Rs.2,880/- CGST Rs.34,126/- + SGST Rs.34,126/-] in GSTR-3B on the basis of the invoices even though the invoices were not reflecting in their GSTR-2A for the period 2017-18 to 2019-20 in contravention of Section 16 of the CGST Act, 2017 read with Rule 59 of the CGST Rules, 2017.

6.21 It is also observed that the appellant have availed excess ITC of Rs.16,16,631/- (IGST Rs.7,68,127/- + CGST Rs.4,24,252/- + SGST Rs.4,24,252/-) in their GSTR-3B against the ITC reflected/available in the corresponding GSTR-2A for the period FY 2017-18 to FY 2019-20 in

Contravention to Section 16 of the CGST Act, 2017 read with Rule 59 of the CGST Rules, 2017

6.22 The adjudicating authority has confirmed the said amount of ITC of Rs.71,132/- [IGST Rs.2,880/- CGST Rs.34,126/- + SGST Rs.34,126/-] and Rs.16,16,631/- (IGST Rs.7,68,127/- + CGST Rs.4,24,252/- + SGST Rs.4,24,252/-) wrongly availed and utilised by the appellant, ordered to be recovered under Section 74 of the CGST Act, 2017 along with interest under Section 50(3) of the CGST Act, 2017 read with corresponding provisions of SGST Act, 2017/IGST Act, 2017 and penalty under Section 74(1) of the CGST Act, 2017 read with corresponding provisions of SGST Act, 2017/IGST Act, 2017 as applicable, as the appellant did not submit any documentary evidence regarding payment of such inward supply and also not submitted any certificate required as per para 4.1.2 of Circular No.183/15/2022-GST dated 27.12.2022 to in support of their claim of ITC in respect of invoices which are not reflecting in GSTR-2A as compared to GSTR-3B and Excess availment of ITC in GSTR-3B versus reported in GSTR-2A during the period FY 2017-18 to 2018-19.

6.23 The appellant in respect of ***Excess availment and utilization of inadmissible/irregular ITC*** of Rs.71,132/- [IGST Rs.2,880/- CGST Rs.34,126/- + SGST Rs.34,126/-] have contended that in as much as 19 invoices stated to have been not reflected in GSTR-2A are alleged in the Show-

Cause-Notice. However, Sl.No.1 to 3, 5 to 9, 12 and 14 i.e. in all 10 Invoices are reflecting in GSTR-2A of the relevant period. The details of which have been provided in Annexure-F. Further, in respect of the rest of the invoices, the appellant in additional submissions have submitted that they will provide the certificate as laid down under CBIC Circular No.183/15/2022-GST dated 27.12.2022.

6.24 Further in respect of *Excess availment of irregular ITC as per reconciliation* of Rs.16,16,631/- (IGST Rs.7,68,127/- + CGST Rs.4,24,252/- + SGST Rs.4,24,252/-), the appellant have submitted that for the FY 2017-18, ITC of CGST and SGST of Rs.2,76,36,732/- as per GSTR-2A has been shown as CGST and SGST of Rs.2,76,53,947/- in GSTR-3B. As such there is no significant difference. Further, with respect to tax credit of Rs.6,05,905/- availed in respect of Imported goods against the following Bill of entries as listed hereunder, self certified copies of Bills of Entry have been enclosed:

Sl.No.	Bill of Entry No. and date	ITC (Rs.)
01	7120953/07.07.2018	111981
02	7283471/19.07.2018	242358
03	7713106/20.8.2018	251566
	<b>Total</b>	<b>605905</b>

6.25 The appellant have further contended that the adjudicating authority has disallowed the ITC for non compliance of instructions of CBIC Circular and that not found any contravention of the provisions of Section 16 of the CGST Act, 2017.

6.26 I observe that the adjudicating authority has held that the appellant is not eligible for the said ITC in terms of provisions of Section 16 of the CGST Act, 2017 read with Rule 59 of the CGST Rules, 2017 and the Circular No.183/15/2022-GST dated 27.12.2022. The conditions not fulfilled in the said Circular include the non-fulfillment of conditions under Section 16 of the CGST Act 2017 also. Therefore, the contention of the appellant that the adjudicating authority has not found any contravention of the provisions of Section 16 of the CGST Act, 2017, does not hold good.

6.27 As regards, the details of Invoices (GSTR-2A) submitted in Annexure-F, it is observed that the appellant have submitted details in respect of 10 invoices, however, the invoice Numbers and dates of invoices issued do not match with the details as provided in Table-3 of the Show-cause-Notice/impugned order. Therefore, the credit of those invoices cannot be allowed.

6.28 Further, as regards copies of Bills of Entry submitted by the appellant, the ITC availed of Rs.6,05,905/- in respect of imported goods as per the above Bills of entry, it is observed that in the table-6 of the SCN, the amount of

Excess availment of ITC of IGST during the year July 2017 to 2019-20 is Rs.7,68,127/- and the appellant has produced certified copies of Bills of Entry as in the table shown above for Rs.6,05,905/-. Therefore I allow the credit of ITC of Rs.6,05,905/- against the demand confirmed of Rs. 7,68,127/- of IGST as these Bills of entries are not reflected in the GSTR-2A being a system generated statement of Inward supplies for a recipient.

6.29 From the above, I observe that the Appellant have wrongly availed ITC amounting to Rs.71,132/- [IGST Rs.2,880/- CGST Rs.34,126/- + SGST Rs.34,126/-] in GSTR-3B of the invoices which were not reflecting in their GSTR-2A for the period 2017-18 to 2019-20 and availed excess ITC of Rs.16,16,631/- (IGST Rs.7,68,127/- + CGST Rs.4,24,252/- + SGST Rs.4,24,252/-) in their GSTR-3B against the ITC reflecting/available in the corresponding GSTR-2A for the period 2017-18 to 2019-20, and Out of IGST Rs.7,68,127/- after deducting Rs. 6,05,905/- (which is allowable as per the Bills of entries produced as stated in forgoing paras) an amount of IGST of Rs.1,62,222/- still remains availed in excess. This came to the notice of the Department only when the Audit pointed out the same. They have not shown properly, the actual amount of ITC available to them in their monthly as well as Annual Returns. Thus the appellant have misstated and suppressed the vital facts regarding availment and utilization of inadmissible ITC. As per Section 74(1) of the CGST Act,2017, 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 and the explanation-2 to Section 74(1) of the CGST Act states that for the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made there under, I am of the view that as the Appellant have suppressed, not declared/misstated the details in the Returns filed for the relevant period, therefore, as per Section 74(1), they are liable to pay the tax along with interest under Section 50(3) of the CGST/SGST Act, 2017 and penalty under Section-74(1)of the CGST/GGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and corresponding provisions of IGST.



Therefore, I am of the view that the order passed by the adjudicating authority is legal and proper to the above extent.

***Non-payment of tax under RCM on services by a Goods Transport Agency (GTA) in respect of transportation of goods by road.***

6.30 It is observed that the appellant have not/short paid the tax in respect of transportation of goods by Road supplied by the Goods Transportation Agency under RCM to the tune of Rs.12,118/- (CGST Rs.6,059/- + SGST 6,059/-) for the period 2017-18 and 2018-19. The adjudicating authority has confirmed the said amount in absence of any supporting documents viz. Expense ledger, copies of consignment note issued by the supplier etc. along with interest and penalty.

6.31 The contention of the appellant that the demand with respect to short payment of tax in respect of Goods Transport Agency service was raised on the basis of reconciliation of GSTR-3B with Profit & Loss account. However, department has not specified the transactions in respect of which tax was not paid. The appellant have submitted that tax in respect of GTA service was paid in respect of the transportation of goods by the transporters who were covered by the definition of Goods Transport Agency and issued consignment notes. However, where the goods were transported by loading tempo / rickshaw, who did not issue consignment note, the tax was not paid. The sample copies of such cash vouchers in respect of transportation charges paid and sample copies of bills wherein transporter has not issued consignment note have been submitted.

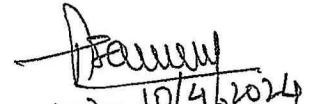
6.32 From the sample documents submitted by the appellant, it is observed that though the appellant has furnished cash vouchers in respect of transportation charges paid and wherein they have not been issued consignment notes, they have not paid tax, however it is not forthcoming as to what amount from the total Tax confirmed, they have not received consignment Notes and not paid Tax. Simply submitting the sample copies of the documents does not justify that they have rightly paid the tax. The payment of tax under RCM in respect of services received by Goods Transport Agency in respect of transportation of goods by Road is notified vide Notification No.13/2017-CT (R) dated 28.06.2017 (Sl.No.1). In absence of any summary of services received with supporting documents produced by the appellant, I am of the view that the Appellant is liable to pay GST on the services received by Goods Transport Agency, to the tune of Rs.12,118/- (CGST Rs.6,059/- + SGST 6,059/-).

6.33 I observe that the Appellant have misstated and suppressed the material facts of actual amount of GST payable under RCM on GTA services in the

Returns filed for the relevant period. It has come to the notice of the Department only when the Audit pointed out the same. They have suppressed the facts from the Department. As the Appellant have not declared the required details in the Returns filed for the relevant period, therefore I am of the view that as per the provisions of Section 74(1) of the CGST/GGST Act, 2017 and the explanation-2 to the said Section they are liable to pay the tax along with interest under Section 50(1) of the CGST/GGST Act, 2017 and penalty read with Section 122(2)(b) of the CGST/GGST Act, 2017. Therefore, I am of the view that the order passed by the adjudicating authority is legal and proper.

6.34 In view of the above, the order passed by the adjudicating authority is upheld being proper and legal. However, demand confirmed in respect of excess availment of ITC to the tune of Rs.6,05,905/- as per reconciliation, is dropped. Accordingly, the impugned order is modified to this extent.


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

  
(आदेश कुमार जैन)  
संयुक्त आयुक्त(अपील्स)

केन्द्रीय वस्तु एवं सेवा कर आयातकालय अहमदाबाद |

दिनांक : .03.2024

Attested.

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



By R.P.A.D.

To:

M/s. Elite Conductors Limited 18-19, Changodar Industrial Estate,  
Sarkhej-Bavla Road, Changodar, Ahmedabad-382213.  
(GSTIN-24AABCE5952D1ZY)

Copy to:

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