



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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| (क) | फ़ाइल संख्या / File No.  | GAPPL/ADC/GSTP/1970/2024 / 4450-4456  |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In -Appeal and date   | AHM-CGST-002-APP-JC-4/2024-25 and 19.04.2024  |
| (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  | 23.04.2024  |
| (ङ) | Arising out of Order-In-Original No. 29/AC/D/2023-24/FRC dated 27.10.2023 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 Amazone Wholesale (India) Private Limited<br>(GSTIN: 24AAMCA0671Q1ZA)<br>Survey No. 499, Opposite Pharma SEZ & INTAS,<br>Near Indus Industrial Park, Changodar,<br>Ahmedabad-382213 |

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| (A)   | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है।<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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant; and<br>(ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed. |
| (ii)  | The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.   |
| (C)   | उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <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-APPEAL****BRIEF FACTS OF THE CASE:**

M/s. Amazon Wholesale (India) Private Limited, Survey No. 499, Opposite Pharma SEZ & INTAS, Near Indus Industrial Park, Changodar, Ahmedabad-382212, (hereinafter referred to as the "appellant") has filed the appeal on 14.02.2024 against Order-in-Original No. 29/AC/D/2023-24/FRC, dated 27.10.2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Central GST & C.Ex., Division-IV, Ahmedabad North Commissionerate (hereinafter referred to as the "*adjudicating authority*") against demand for reversal of excess total ITC availed, amounting to Rs. 79,34,342/- alongwith interest and penalty as per CGST Rules, 2017 read with CGST Acts, 2017.

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAMCA0671QIZA, are engaged in trading in mobile phones and laptops falling under HSN 8317 and 8471. The audit of the records of the appellant was conducted for period July, 17 to March, 2020. The adjudicating authority passed the impugned order and confirm the demand to recover the total ITC of amounting to 79,34,342/- under the provisions of Sections 74(1) of the CGST Act read with the SGST Act, 2017 along with interest under Section 50 of the CGST Act read with the SGST Act, 2017 and penalty amounting to Rs. under Sections 74(1) of the CGST Act read with the SGST Act, 2017. The details of Revenue paras are as under:

- (i) Non-Reversal/Short Reversal of ITC amounting to Rs. 6,80,837/- (IGST) against credit notes issued by suppliers;
- (ii) Irregular availment and utilization of ineligible ITC amounting to Rs. 2,54,547/- (CGST Rs. 2,314/-, SGST Rs. 2,314/-, IGST Rs. 2,49,919/-) in contravention to clause (c) of Sub-Section (2) of Section 16 of the CGST Act 2017;
- (iii) Irregular availment and utilization of ITC amounting to Rs. 6998958/- (CGST Rs. 34,99,479/- and SGST Rs. 34,99,479/-) in contravention to Section 16(2) of the CGST Act, 2017.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on 14.02.2024 for the following reasons:

- that the SCN raised demand of ITC on the ground that the Appellant has availed ITC in their GSTR-3B in excess of what is reflected in their GSTR-2A. However, in the impugned Order, the reason stated is that the Appellant has not produced invoices, payment details, etc. with respect to the said ITC. The impugned Order with respect to the requirement to match GSTR-3B and GSTR-2A for availing ITC has stated that the requirement was only with effect from 01 January 2022 and that the restriction under Rule 36(4) of the CGST Rules was also only with effect from 9th October 2019;
- that the impugned Order has demanded ITC on account of credit notes reflecting in GSTR-2A of the Appellant. It submitted that the following table shows details of treatments of the reflection of credit notes in the Appellant's GSTR-2A:

| Particular  | Number of credit notes | IGST (ITC) |
|---|------------------------|------------|
| Total credit notes, w.r.t. it has been alleged that ITC has not been reversed/ short reversed | 9                      | 680837     |
| Credit notes not accounted by the appellant   | 8                      | 171710     |
| Invoice issued by the Appellant and taxes paid. Credit notes not accounted the Appellant      | 1                      | 509127     |
| Net difference  | -                      | -          |



- that there is no provision under the GST Laws/ Rules, which requires the recipient to reverse ITC basis the credit notes available in Form GSTR-2A. It is submitted that there is no onus on the recipient to reverse ITC basis the credit notes available in Form GSTR-2A;
- the demand based on allegation that the Appellant has not reversed ITC in respect of credit notes issued under section 34 of CGST Act by the suppliers is not sustainable and is liable to be set aside;
- that the proviso to Section 34(2) of CGST Act states that reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person. However, the said proviso does not mandate the recipient to reverse ITC in respect of credit notes appearing in their Form GSTR-2A. Therefore, the finding in the impugned Order that the Appellant has not reversed ITC in respect of credit notes issued by the suppliers as required under proviso to Section 34(2) of CGST Act is incorrect and is liable to be dropped;
- that mere non-payment of GST by the supplier to the Government cannot automatically take away the right of the Appellant to avail ITC;

- e reliance on the case of *M/S D.Y. Beathel Enterprises v. State Tax Officer, 2021 (3) TMI 1020 - MADRAS HIGH COURT*, wherein it was held that the approach taken by the revenue authorities in reversing the Input Tax Credit ("ITC") availed by the Petitioners (recipients) for the fault of the sellers was incorrect and that the non-remittance of payment of tax by the Supplier must be viewed seriously and action must be taken against the seller and not the recipient. It is submitted that the said decision shows that the Recipient cannot be penalised for the fault of the Supplier either in non-payment of tax or in non uploading of complete details in their GSTR;
- reliance on the following decisions wherein it has been clearly held that merely because supplier has defaulted, the recipient's ITC cannot be sought to be reversed, especially when the recipient is able to prove that tax has been paid by them. *M/S. Jognics v. Additional Commissioner of Commercial Taxes, 2022 (1) TMI 444 KARNATAKA HIGH COURT* *Sri Ranganathar Valves Pvt. Ltd. v. Assistant Commissioner (CT), 2020 (9) TMI 640 MADRAS HIGH COURT* *Assistant Commissioner (CT) v. Infiniti Wholesale Ltd., 2016 (9) TMI 1431-MADRAS HIGH COURT*;
- that with respect to supply return for which Credit Note No. UPN/CN192003093 dated 21.09.2019 was issued by Oppo Mobiles India Private Ltd., the Appellant had issued invoice numbered 2060851100004 dated 17 August 2019 to the said vendor for the said tax amount. The said invoice was reported by the Appellant in GSTR-1 and tax was duly paid in GSTR-3B filed for the tax period August 2019;

In view of the above, it is submitted that since the Appellant has issued Tax invoice and paid Tax with respect to the goods returned, for which Credit Notes has been issued by the supplier, no reversal of ITC can be sought;

- that the Appellant had issued invoice to Xiaomi for the supply of goods vide invoice no. 2060851100001 dated 24 April 2019 for the taxes of INR 69,98,959;
- that the Appellant has duly reported details of the said invoice in GSTR-1 and paid the applicable taxes in GSTR-3B of April 2019. However, the said goods supplied by the Appellant were returned by Xiaomi. At the time of stock-inward of the said goods, the Appellant inadvertently considered this as procurements and accordingly, availed ITC of Rs.69,98,959 in respect of the invoice issued by the Appellant in Form GSTR-3B of June 2019;
- that the Appellant has availed ITC in respect of the goods returned, instead of reducing its tax liability. That availment of ITC is at par with reduction of taxes, as the said ITC availed can be used for payment of taxes. It is submitted that the said availment of ITC is revenue neutral in nature and there is no loss to the exchequer. Therefore, the Appellant submits that the proposal to deny the said ITC is incorrect and is liable to be dropped;



- that when the principal demand made i.e., recovery/ reversal of ITC availed by the Appellant is itself not sustainable as already submitted above, the demand of interest under Section 50 of the CGST Act, which is only consequential to the same, also deserve to be dropped;
- that the interest and penalty imposed in the instant proceedings which has been initiated under Section 74 of the CGST/ APGST Act for availing ITC without utilization of the same is unsustainable and deserves to be set aside;

In view of the above the appellant pray to set aside the impugned Order-in-Original No. 29/AC/D/2023-24/FRC dated 27.10.2023 and pass an order in favor of the appellant.

**Persona Hearing :**

4. Virtual hearing in the present appeal was held on 09.04.2024. Shri Ashwini Chandrasekaran, Advocate and Shri Atul Rathod, Manager appeared in person on behalf of the appellant in the present appeal. During P.H. they submitted that this is a revenue neutral case. Instead of reduction in output tax liability based on credit notes ITC has been availed (Ref para 90 & 99-105 of appeal memorandum). As regards the 09 credit notes, out of which 08 credit notes does not pertains to them and no credit has been availed for remaining 01 credit note instead of reversal, Tax has been paid and invoice has been issued (Ref. para No. 67 of appeal memorandum) Further reiterated the written submissions. In view of above requested to allow appeal.

**DISCUSSION AND FINDINGS:**

5. I have gone through the facts of the case, written submissions made by the 'appellant'. The adjudicating authority passed the impugned order and confirm the demand to recover the Total ITC of amounting to Rs. 79,34,342/- under the provisions of Sections 74(1) of the CGST Act read with the SGST Act, 2017 and IGST Act, 2017 along with interest under Section 50 of the CGST Act read with the SGST Act, 2017 and penalty under Sections 74(1) of the CGST Act read with the SGST Act, 2017. So the main issue to be decided in the instant case whether the appellant had wrongly availed Total Input Tax Credit amounting to Rs. Rs. 79,34,342/- and are liable to recovered the same alongwith interest and penalty.

6(i). In respect of issue 2(i) as mentioned above, it is observed that the appellant had received goods from their suppliers. Further owing to any reason, the appellant have received credit notes in the financial year 2018-19 and 2019-20 from their supplier. As per provisions of Section 34 of CGST Act, 2017 the supplier of

goods or services have issued Credit Notes and have uploaded the said Credit Notes in their GSTR-I Return thereby reducing their output tax liability. However, the appellant, have not reversed the ITC attributable to these credit notes, as required under the proviso to Section 34 of CGST Act, 2017, though the supplier had uploaded these credit notes in their GSTR-I (which would be seen in GSTR-2A of appellant. The ITC attributable to these credit notes needs to be reversed by the reversed.

**6(ii).** In view of the above, I hereby refer the relevant provisions as under:

Section 34. Credit and debit notes:

(1) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed;

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

From the above proviso, it is clear that the incidence of tax should not be passed on to the buyer by the supplier (who has issued the credit note) if the supplier desires to issue credit note and reduce his outward tax liability. If the incidence of tax has been passed on to the buyer by the supplier in original invoice, prior to issuance of Credit Note, the same has to be reversed by the recipient of goods/ services.

Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

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

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

2[**Explanation.**- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

3[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of 4[section 41 5[\*\*\*]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39;

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

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

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

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

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 6[thirtieth day of November] following the end of financial year to which such invoice or 7[\*\*\*\*] debit note pertains or furnishing of the relevant annual return, whichever is earlier.



*[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]*

*Rule 73 : Matching of claim of reduction in the output tax liability;*

*The following details relating to the claim of reduction in output tax liability shall be matched under section 43 after the due date for furnishing the return in FORM GSTR-3, namely:-*

- (a) Goods and Services Tax Identification Number of the supplier;*
- (b) Goods and Services Tax Identification Number of the recipient;*
- (c) credit note number;*
- (d) credit note date; and*
- (e) tax amount;*

*Provided that where the time limit for furnishing FORM GSTR-1 under section 37 and FORM GSTR-2 under section 38 has been extended, the date of matching of claim of reduction in the output tax liability shall be extended accordingly:*

*Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of reduction in output tax liability to such date as may be specified therein.*

*Explanation- For the purposes of this rule, it is hereby declared that –*

- (i) the claim of reduction in output tax liability due to issuance of credit notes in FORM GSTR-1 that were accepted by the corresponding recipient in FORM GSTR-2 without amendment shall be treated as matched if the said recipient has furnished a valid return.*
- (ii) (ii) the claim of reduction in the output tax liability shall be considered as matched where the amount of output tax liability after taking into account the reduction claimed is equal to or more than the claim of input tax credit after taking into account the reduction admitted and discharged on such credit note by the corresponding recipient in his valid return."*

**6(iii).** In the instant case, Section 34 of the CGST Act 2017 prescribes the circumstances under which credit notes are issued and the time limit to issue the same and 2nd Proviso to Section 16(2) of the CGST Act, 2017 provides that where the receiver of goods or services fails to pay entire or part consideration to the



supplier within 180 days from the date of invoice, then the recipient required to reverse ITC alongwith interest. In the instant case the adjudicating authority contended that the details of the credit notes are reflected in appellant's GSTR-2A return, however in the impugned order adjudicating authority has not provided the details of the credit notes which are reflected in appellant's GSTR-2A returns against which appellant could reduced the claim of ITC. Further in the grounds of appeal, appellant mentioned that they have not accounted the credit notes value in their book of accounts and for one credit note having no. UPN/CN192003093 dated 21.09.2019 involving tax amount of Rs. 5,09,127/- they mentioned that they have paid the said tax by issuing invoice number 20608851100004 dated 17.08.2019 instead of accounting the credit note. In view of the above, the liability to reverse the wrongly availed ITC on the basis of credit notes issued to appellant by their supplier amounting to Rs. 6,80,837/- does not arise.

**7(i).** In respect of issue 2(ii) as mentioned above, it is observed that the appellant wrongly availed and utilised Input Tax Credit an inward supplies wherein concerned suppliers have not shown in their GSTR-IM statements the supplies made to the appellant and therefore the same do not reflect in GSTR2A/2B of the appellant and hence the condition of the provision of clause (c) of Sub Section (2) of Section 17 of the CCST Act, 2017 is violated. The relevant para of Section 16(2)(C) of the CGST Act, 2017 is as under:

Section 16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

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

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

2[**Explanation.-** For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or

*otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*

*(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]*

*3[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]*

***(c) subject to the provisions of 4[section 41 5[\*\*\*]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and***

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

**7(ii).** The restriction for availment of ITC as per GSTR-2A were provided under Rule 36(4) of the CGST Act, 2017 only with effect from 09.10.2019. However the availability of ITC was subject to restrictions and conditions specified in Section 16 of the CGST Act, 2017. Section 16(2)(c) of the Act says that the registered person shall be entitled to take ITC in respect of supplies on which the tax has actually been paid to the Government account. Further, the appellant has not produced any documentary evidence to say that the suppliers from whom they had made purchase, had paid the tax leviable on the supplies, therefore the ITC would not be admissible to them as the said registered person have contravened the provisions of Section 16(2)(c) of the CGST Act, 2017 as they have wrongly availed the ITC without the tax being discharged on the supplies made by suppliers from whom they had made purchases. In view of the above I find that the appellant violated the above provisions and liable to reverse the ITC amounting to Rs. 2,54,547/- in terms of Section 74(1) and Section 16 of the CGST Act, 2017 alongwith interest under Section 50 of the CGST Act 2017 and penalty in terms of Section 74(1) of the CGST Act, 2017.

**8(i).** In respect of issue 2(iii) as mentioned above, it is observed that the appellant has availed and utilised Input Tax Credit of Rs. 69,98,958/- (CGST Rs. 34,99,479/- and SGST Rs. 34,99,479/-) against Invoice No. XIA-VRETC-GJ dated 30.06.2019 issued by M/s Xiaomi Technology India Private Limited. On being asked to produce the said Purchase Invoice, the appellant failed to produce the same. However, they availed the said ITC suo-moto without having tax invoice and without receiving goods/service. Further they have issued invoice for supply of goods vide invoice numbered 2060851100001 dated 24.04.2019 having tax element of Rs. 69,98,958/- and paid the tax in the form GSTR-3B. Further the said supply was returned back by Xiaomi, at the time of stock inward, and issued a credit note for that bearing no. 2060853100002 dated 30.07.2019, however not claimed the tax adjustment in the said month as they have already claimed the ITC against this.

**8(ii).** In the instant case, it is observed that the appellant has issued a credit note bearing no. 2060853100002 dated 30.07.2019, but instead of reducing the tax liability while filing the return GSTR 3B for the month of July 2019, they have availed the credit of the said amount in the return for the month of June 2019. Further the credit note issued by the appellant regarding sales returns for the said invoice was not reflected in their GSTR-1 for the subsequent period, therefore the same was not reflected in GSTR 2A of M/s. Xiaomi. In view of the above I find that the appellant has wrongly availed the ITC amounting to Rs. 69,98,958/- (CGST Rs. 34,99,479/- and SGST Rs. 34,99,479/-) in contraventions of provisions of Section 16 and Rule as per CGST ACT/Rules 2017, therefore, liable for recovery of the said amount in terms of Section 74(1) of the CGST Act 2017 alongwith interest under Section 50 of the CGST Act 2017 and penalty under Section 74(1) of the CGST Act 2017.

**9.** Further as per Section 155 of CGST Act, 2017 the burden of proof, in case of eligibility of ITC, availed by the appellant, lies entirely on the appellant. I refer to the relevant extract of Section 155 of the CGST Act, 2017:

**Section 155. Burden of proof.-**

*Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.*

In the instant case the appellant has to prove his eligibility to avail ITC in the light of aforesaid conditions, of the CGST Act/Rules, 2017. However it is observed that the appellant has failed to satisfy all the mandatory conditions to make him eligible for ITC on supply of goods mentioned in invoices.

**10.** Further the appellant has contended that they are not liable to pay any penalty, as there is no contravention of any provisions of the CGST Act and/or Rules there under. It is observed that the that the appellant has violated the provisions of Section 16 of the Act as they have availed the ineligible ITC in respect of supplies on which the tax has actually not been paid to the Government account. Further, the appellant has not produced any documentary evidence to say that the suppliers from whom they had made purchase, had paid the tax leviable on the supplies. Accordingly, it is a clear case of wilful mis-statement and suppression of facts by the appellant with intent to avail the ineligible ITC, which is liable to be recovered alongwith interest and penalty in terms of Section 50 and Section 74 of the CGST Act, 2017 read with Section 74 of the GGST Act, 2017.

**11.** In view of the above discussions, (i) The demand of Non-Reversal/Short Reversal of ITC amounting to Rs. 6,80,837/- (IGST) against credit notes issued by suppliers is dropped; (ii). I Uphold the order in original in respect of demand for irregular availment and utilization of ineligible ITC amounting to Rs. 2,54,547/- in

contravention to clause (c) of Sub-Section (2) of Section 16 of the CGST Act 2017 alongwith interest and penalty; (iii) I Uphold order in original for the demand of irregular availment and utilization of ITC amounting to Rs. 69,98,958/- in contravention to Section 16(2) of the CGST Act, 2017 alongwith interest and penalty.

The impugned order in original is modified to above extent.

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

The appeal filed by the appellant stands disposed of in above terms.

*Adesh Kumar Jain*  
19/04/2024

(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 19.04.2024

Attested

*Sandheer Kumar*  
19/04/24

(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To

M/s. Amazon Wholesale (India) Private Limited,  
Survey No. 499, Opposite Pharma SEZ & INTAS,  
Near Indus Industrial Park,  
Changodar, Ahmedabad-382212.



Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C.Ex, Ahmedabad North Commissionerate.
4. The Dy. / Assistant Commissioner (RRA), 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
8. P.A. File.

