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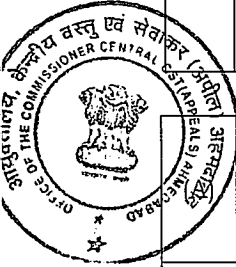
आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2164/2024 / 5167 - 94
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-15/2024-25 and 14.05.2024
(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	14.05.2024
(ङ)	Arising out of Order-In-Original No. 03/DEM/Superintendent/23-24/AKS dated 20.12.2023 passed by The Superintendent, CGST, Range-IV, Division-II, Ahmedabad-North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Arihant Tube Corporation (Damayanti Dilipbhai Shah) (GSTIN: 24BPUPS7836A2ZG) GF-5, Shreeji Shopping Centre, Lalbhadrur Shastri Road, Near Bhagwati Nagar, Bapunagar, Ahmedabad-380025



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 अपीलिय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .

ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE:

M/s Arihant Tube Corporation (Legal Name : Damayanti Dilipbhai Shah), (GSTIN-24BPUPS7836A2ZG) GF-5, Shreeji Shopping Centre, Lalbhadur Shasta Road, Near Bhagwati Nagar, Bapunagar, Ahmedabad - 380023 (hereinafter referred to as the "Appellant") have filed appeal Against OIO No.03/DEM/Superintendent/23-24/AKS dated 20.12.2023 issued by the Superintendent, CGST & C.Ex., Range-IV Division II (Naroda-Road), Ahmedabad-North Commissionerate, Ahmedabad (herein after referred as the "impugned order").

2. Brief facts of the case are that the Appellant registered under GSTIN-24BPUPS7836A2ZG is a proprietorship firm and engaged in the trading of Tubes, Pipes and Hollow profiles, seamless, of iron (other than cast iron) or steel - line pipe of a kind used for oil or gas pipelines : pipes of iron or steel : of iron, Other Tubes, Pipes and Hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel - line pipe of a kind used for oil or gas pipelines : galvanised pipes : of iron and Pig Iron and Spiegeleisen in Pigs, Blocks or Other Primary Forms - non-alloy pig iron containing by weight 0.05% or less of phosphorus falls under HSN code 7304, 7306 and 7201 respectively.

During investigation of the case of M/s Jay Enterprise ((SSTIN: 27AYLPJ3368HIZ3) by Directorate General of Goods & Services Tax Intelligence, Zonal Unit, Pune, it was found that M/s Jay Enterprise was primarily engaged in generating invoices and passing on GST credit to their buyers without any physical movement of goods. It was further observed that M/s Jay Enterprise had supplied the invoices to various companies without any actual supply of goods. In order to pass on the fraudulent ITC in the above manner, M/s Jay Enterprise had managed the purchase invoices from various suppliers, without physical supply of corresponding goods. In order to escape from the catch of Govt. Department, M/s Jay Enterprise had passed on the fraudulent ITC to the ultimate buyer, who had utilized the fraudulent ITC for clearance of goods supplied by them. One of such recipient of M/s Jay Enterprise was M/s Arihant Tube Corporation (Legal Name : Damayanti Dilipbhai Shah), GF-5, Shreeji Shopping Centre, Lalbhadur Shastri Road, Near Bhagwati Nagar, Bapunagar, Ahmedabad - 380023 (*the appellant*) to whom they had generated and issued invoices having taxable value to Rs.25,42,889/-

involving ITC of Rs.4,57,720/- (IGST Rs.4,57,720/-) . It was also revealed that M/s Jay Enterprise was found non-existent and non-operational at their registered business premises and fake entity, floated only for the purpose of generating and selling tax invoices to various entities without supply of underlying goods resulting in irregular availment and utilization of Input Tax credit by the recipients of the fake invoices. It appeared that the taxpayer had availed input tax credit of Rs.4,57,720/- (IGST Rs.4, 57,720/-) on the strength of invoices issued by M/s Jay Enterprise without actual receipt / movement of goods. The appellant vide letter dated 26.11.2021 had intimated that as they had availed ITC on the basis of the invoices issued by M/s Jay Enterprise which was a non-existing firm, and therefore, they agreed to reverse the wrongly availed ITC of Rs. 4,57,720/- (IGST Rs.4,57,720/-). They submitted that ITC reversed vide entry no. DC2411210255184 dated 23.11.2021 and submitted copy DRC-03 dated 23.11.2021 as proof of payment of the above said wrongly availed ITC on the basis of the invoices issued by M/s Jay Enterprise. However the taxpayer has not paid the interest and penalty as prescribed under the provisions of CGST Act and Rules made thereunder read with Section 20 of the 1GST Act, 2017 for these wrongly availed ITC on the basis of invoices issued by M/s Jay Enterprise.

The appellant were, therefore issued Show Cause Notice No. GEXCOM/AE/FU/2220/2020/AE-II dated 27.01.2023 to show cause as to why:-

ITC amounting to Rs 4,57,720/- (IGST Rs.4,57,720/-) should not be disallowed and recovered from the tax payer, under the provisions of Sections 74(1) of the CGST Act, 2017 read Act, 2017 read with Section 20 of the IGST Act, 2017;

(ii) ITC, amounting to Rs 4,57,720/- (IGST Rs.4,57,720/-) paid/reversed vide DRC-03 dated 23.11.2021 through ITC/cash should not be appropriated against their outstanding GST tax liability as per para (i) above;

(iii) Interest should not be charged and recovered from them, under the provisions of Section 50(1) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 on the proposed demand at (i) above;

(iv) Penalty should not be imposed on them, under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 on the proposed demand at (i) above;”

3. The adjudicating authority passed the order as under :

"(1) ITC amounting to Rs.4,57,720/- (IGST) is hereby disallowed and confirmed the said demand of Rs.4,57,720/- (IGST) under Section 74 (1) of CGST Act, 2017 read with Section 20 of IGST Act, 2017.

(2) ITC amounting to Rs. 4,57,720/- (IGST) has been paid / reversed vide DRC-03 dated 23.11.2021 by the tax payer. I appropriate the said amount of Rs.04,57,720/- against the confirmed demand as per Para- 1 above.

(3) I hereby order to charge and recovery of interest on the demand shown at Sr. No.1 above under the provision of Section 50 (3) of CGST Act, 2017 read with Section 20 of IGST Act, 2017.

(4) I hereby impose a penalty of 4,57,720/- under Section 74 (1) of the CGST Act, 2017 read with Section 122 (2) (b) and Section 20 of IGST Act, 2017 on M/s. Arihant Tube Corporation, (Legal name: Damayanti Dilipbhai Shah), GF-5, V' Shreeji Shopping Centre, LaI Bahadur Shastri Road, Bapunagar, Ahmedabad-380023."

4. Being aggrieved with the impugned order, the Appellant filed the present appeal online on 19.03.2024 on the grounds that:

"We have Purchase following Purchase from M/s. Jay Enterprise GSTN No.27AYLPJ3368HIZ3.

Bill No.	date	IGST	Vehicle No.	Transporter name	Vehicle No.	Date
40	13/01/18	1268802	228384	Shree Balaji Fleet Carrier	MH46 AR1436	13/01/18
42	03/01/18	1274087	229336	Sohan Transporter	MH 30AB 2290	03/01/18

For the above both purchases our supplier had issued valid Tax Invoices as per Rule 48 with mention our Name, Address and GSTIN Number and Specific Address where goods to be deliver with specific Truck Number and L.R number are also mention in both tax invoice/ which are already in our possession on today, hence condition for eligibility ITC of Section 16(2)(a) is fulfil.

Both our Inward Supply bills are already uploaded in Gstr I by our Supplier in prescribe time/ hence it was reflected in our 2A in the month of January 2018 hence iTC is available U/s 16(2)(ba), copy of our 2A for the month January 2018 attached herewith.

Copy of account M/s. Jay Enterprise GSTN No. 27AYLPJ3368HIZ3 from our books and bank statement for proof our payment which are attached herewith and payment made within 180 days with tax amount for our Purchases, hence condition of Section 16 for payment time limit was also full fill.

At the time of purchase, our supplier Registration was valid and active on GSTN Portal and our Inward Supply Invoices are reflected in our 2A, only those 2

system for verification of our ITC available on Portal, which we have verify there after we have claimed ITC as Self-Assessment in 3B U/s 41.

Hence anything wrong mistake done by our supplier and his registration is cancel by Department after our purchase dates, we are not require to reverse those ITC, M/s SUNCRAFT ENERGY PRIVATE LIMITED in case of Calcutta High Court principal Let down that you have to take action to our supplier.

We have made genuine purchase, sufficient proof of Delivery of Goods we have made payment to the party along with Tax amount by Cheque, we have booked purchase in our Books of account, Hence nobody can say that we have wrongly claim ITC avail and utilize by Reason of fraud or any willful misstatement or suppression of facts. Hence Sec.74(1) is not apply for me. Hence levy of penalty under Section 74(1) Rs.4,57,720/- is not correct so please remove the levy of penalty.

Learned Superintendent, Range -4, Div-2 Naroda Road, CGST, Ahmedabad (North) Initiated Interest IGST even then we have paid Tax for Reversal of ITC via DRC 03 on 23/11/2021 Tax Rs. 457720/- which we have already paid.

As our claim of ITC are Genuine even then we have paid Tax Rs. 457720/- via DRC 03 ARN No. AD24:11210045005 ON 23/11/21 under protest and further Government have Block our Credit IGST Rs. 457720/- on 16/01/20 Ref No.2401200000143 hence we can say that Payment was already done on 16/01/20 from credit ledger and there after we have paid on 23/11/21 from Cash Ledger and after our Request on 08/04/22 Ref No. 2404220002063 Block Credit Become Unblocked.

So, as per above facts we are not Liable to pay any Interest, hence Initiation of Interest U/s 50(3) of CGST act, Read with Section 20 is not applicable for me.”

5. Personal Hearing:

5. Personal hearing in the present appeal was held on 08.05.2023. Shri Bharat R. Thakkar, Advocate and authorized representative of the appellant appeared in the personal hearing. It was submitted that they were in possession of all documents and not at fault. The supplier registration was cancelled for some cases booked against him. Since they have complied with all requirements, no penalty can be imposed under Section 74 in view of various judicial pronouncements. He further submitted additional submissions and reiterated written submissions and requested to allow appeal.

6 Discussionand 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 of demand of ITC amounting to Rs.4,57,720/- (IGST Rs.4,57,720/-) along with interest and penalty under Section 74(1) read with Section 122(2)(b) of the CGST Act, 2017 and Section 20 of the IGST Act, 2017.

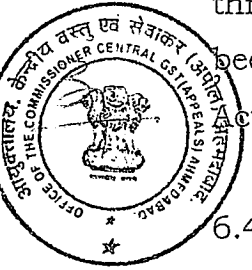
6.2 So the issue to be decided in the present appeal is:

Whether the impugned order passed by the adjudicating authority confirming the demand of ITC amounting to Rs.4,57,720/- (IGST Rs.4,57,720/-) which was paid/reversed vide DRC-03 dated 23.11.2021 through ITC/cash and against their outstanding GST tax liability under Section 74(1) read with section 20 of the IGST Act, 2017 along with interest under Section 50(3) of the CGST Act, 2017 and penalty of Rs. Rs.4,57,720/- under Section 74(1) of the CGST Act, 2017 read with Section 122(2) (b) and Section 20 of the 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 20.12.2023 and the present appeal is filed on 19.03.2024. 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.

6.4 It is observed that the supplier of the goods M/s Jay Chemicals was found non-existent and non-operational at their registered premises and fake entity, floated only for the purpose of generating and selling tax invoices to various entities without supply of underlying goods in irregular availment and utilization of input tax credit by the recipients of the fake invoices, as investigated by the DGGI, Zonal Unit, Pune. The appellant had wrongly availed the ITC on the invoices issued by the said supplier. Being wrongly availed input tax credit, the appellant paid /reversed the said input tax credit to the tune of Rs.4,57,720/- as per DRC-03 dated 23.11.2021.

6.5 The appellant in their submissions with the appeal memorandum have submitted that they had purchased the goods from M/s Jay Enterprise, the details of which have been submitted in their grounds of appeal and for the said purchases, their supplier had issued valid Tax Invoices as per Rule 48 with mention of their Name, Address and GSTIN Number and Specific Address where goods were to be delivered with specific Truck Number and L.R number



which are already in their possession, hence condition for eligibility ITC of Section 16(2)(a) is fulfilled. Further, Both the Inward Supply bills are already uploaded in GSTR-1 by their Supplier in the prescribed time hence it was reflected in GSTR-2A of the appellant in the month of January 2018 hence ITC is available U/s 16(2)(ba). Further from the Copy of account M/s. Jay Enterprise GSTN No. 27AYLPJ3368HIZ3 from the appellant's books and bank statement for proof of payment and payment was made within 180 days with tax amount for the said Purchases, the condition of Section 16 for payment time limit was also fulfilled. At the time of purchase, the supplier's Registration was valid and active on GSTN Portal which they have verified and only after verification they have claimed ITC as Self-Assessment in GSTR-3B under Section 41.

6.6 Accordingly, I refer to the relevant extract of Section 16 of the CGST Act, 2017 which provides eligibility conditions for taking Input Tax Credit:-

***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.

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:

*Enforced w.e.f. 1st July, 2017.

1. Inserted (w.e.f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021) by s. 109 of The Finance Act, 2021 (No. 13 of 2021).

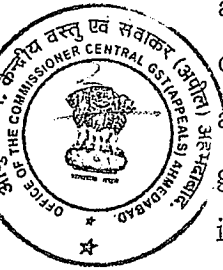
2. Substituted (w.e.f. 1st February, 2019) for "Explanation.-For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;" by s. 8 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018).

3. Inserted (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT dated 28.09.2022.) by s. 100 of The Finance Act 2022 (No. 6 of 2022).

6.7 I observe that the contention of the appellant that they have made payment to the suppliers, the invoices of the supplier are shown in GSTR-2A, and that they have no intention to take any wrongful ITC, however, the receipt of goods being one of the crucial conditions for eligibility of ITC as per the above provisions is not justified. Merely stating that they had received the goods against the invoices issued by M/s Jay Enterprise, on the basis of invoices, payment through banking channel and the details reflecting in their GSTR-2A is not sufficient to prove the eligibility of ITC. The appellant has not provided valid evidence such as details of payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof by the appellant. Thus in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established in such circumstances. All the more so when the Supplier's invoices are fraudulent/of non existing firm and the registration has been cancelled, it is beyond imagination how the goods can be considered to have been received by the appellant.

6.8 In the similar matter, the judgment dated 18.10.2023 of the Hon'ble High Court of Allahabad in WRIT TAX No. - 1237 of 2021 in case of M/S MALIK TRADERS V/s STATE OF U.P. AND 2 OTHERS, it has been held as under:

"15. In the case in hand, the petitioner has only brought on record the tax invoices, e-way bills, GR and payment through banking channel, but no such



details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof has been provided. Thus in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established and in such circumstances, further no proof of filing of GSTR 2 A has been brought on record, the proceeding has rightly been initiated against the petitioner.

16. The Apex Court in the case of State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited (Civil Appeal No. 230 of 2023, decided on 8 13.03.2023), while considering the *pari materia* of section 70 of the Karnataka Value Added Tax Act, 2003, where the burden was upon the dealer to prove beyond doubt its claim of exemption and deduction of ITC, has observed as under:

9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003. In the said judgement Hon'ble the Apex Court has held that primarily burden of proof for claiming the input tax credit is upon the dealer to furnish



the details of selling dealer, vehicle number, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. to prove and establish the actual physical movement of the goods. Further by submitting tax invoice, e-way bill, GR or payment details is not sufficient.

17. Patna High Court in the case of M/s Astha Enterprises (supra) has held as under :- "9. It was held that the dealer who claims Input Tax Credit has to prove beyond doubt, the actual transaction by furnishing the name and address of selling dealer, details of the vehicle delivering the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. It was also held that to sustain a claim of Input Tax Credit on purchases, the purchasing dealer would have to prove and establish the actual physical movement of the goods and genuineness of transactions, by furnishing the details referred to above and mere production of tax invoices would not be sufficient to claim ITC."

18. Similarly, this Court in the case of the Commissioner Commercial Tax Vs. M/s Ramway Foods Ltd. (supra) has held that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual physical movement of goods, genuineness of transactions, etc. and if the dealer fails to prove the actual physical movement of goods, the benefit cannot be granted.

The judgement relied upon by the counsel for the petitioner of Calcutta High Court in the cases of M/s LGW Industries Limited and others (supra) and Sanchita Kundu and another (supra) is of no aid to the petitioner as recently Hon'ble the Apex Court in the case of M/s Ecom Gill Coffee Trading Private Limited (supra) has specifically held that onus is to be discharged by the petitioner to prove and establish beyond doubt the actual transaction and physical movement of goods. But in the case in hand, the petitioner has failed to prove and establish actual physical movement of goods and genuineness of transaction as such the proceedings has rightly been initiated.

20.

21. In view of the facts as stated above, no interference is called for by this Court in the impugned orders. The writ petition fails and is dismissed accordingly."

6.9 The above judgment is squarely applicable in the present case, as I observe that the appellant has not submitted proof of actual receipt of the goods in support of their claim of availing the ITC of Rs.4,57,720/- (IGST Rs.4,57,720/-). Further when the origin of the ITC at the Supplier's end is fraudulent as they have issued invoices without supply of goods, as per the

investigation carried out by the DGGI which reveals that the said supplier is primarily engaged in generating fake invoices and passing GST credit to their buyers without any physical movement of goods. Therefore, I am of the view that the said ITC taken and utilised by the appellant on the invoices issued by the said Supplier without supply of goods, is not available to the appellant, as per the provisions of the GST Act and Rules made thereunder.

6.10 Further I find that 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.”

6.11 In the instant case, the appellant has to prove his eligibility to avail ITC in the light of aforesaid conditions, enumerated in Section 16 of the CGST Act, 2017. However I find that the appellant has failed to satisfy mandatory conditions to make him eligible for ITC on supply of goods by the said suppliers, mentioned in invoices. The appellant is unable to prove the actual receipt of goods from the said supplier as the said supplier has been found fake invoice supplier firms / non-existent as investigated by the DGGI. Therefore, contention of the appellant that the proper officer has not proved that they have not purchased the goods from M/s. Jay Enterprise GSTN NO.27AYLPJ3368HIZ3 is not tenable.

6.12 As regards to the contention of the appellant that the Department has to take action on their Supplier as anything wrong has been done by their supplier and quoted only the name of M/s Suncraft Energy Private Limited in case of Hon'ble Calcutta High court wherein it has been laid down that Department has to take action on Supplier. I observe that the same is not relevant in the present case, as here there is no supply of goods and the invoices issued are fake and only on paper, to facilitate the ITC without supply of goods by the supplier, as per the investigation carried out by the DGGI.

6.13 Further, I observe that the appellant had deliberately availed such inadmissible ITC with sole intention to defraud the Government Exchequer. Had the departmental officers not initiated the inquiry, such wrong availment

of ITC would have remained unnoticed and the appellant would have continued to enjoy the unlawful benefit. Thus the ITC of Rs.4,57,720/- (IGST Rs.4,57,720/-) availed by the appellant on the fake invoices issued by the Supplier is not admissible as per the discussion above and the same is required to be recovered along with interest and penalty. As the appellant has already reversed the TC of Rs.4,57,720/- (IGST Rs.4,57,720/-) vide entry no. DC2411210255184 dated 23.11.2021 and admitted the same, the interest is also payable under Section 50(3) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017. The contention of the appellant that their Credit of IGST of Rs.4,57,720/- was blocked on 16-01-2020, hence the payment was already done on 16-01-2020 from credit ledger and thereafter they paid from cash ledger on 23.11.2021 and after their request, the credit became unblocked, thus they are not liable to pay any interest. The blocking of credit does not amount to payment of ineligible ITC, unless the amount is paid/debited from the electronic cash/credit ledger. Thus the appellant is liable to pay interest from the date of availment of ITC till the date of payment of wrongly availed ITC, which has been paid through Cash Ledger by the appellant.

6.14 I observe that Penalty under Section 74(1) read with Section 122(2)(b) of the CGST Act, 2017 and read with Section 20 of the IGST Act has been imposed on the appellant. Therefore, I refer the said provisions, the text of which is as under:

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

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

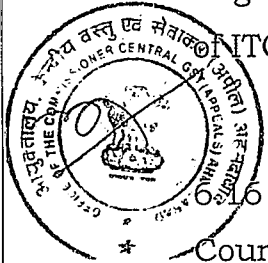
Section 122. Penalty for certain offences.-

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

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

6.15 I observe that the appellant has availed ITC fraudulently without actual receipt of goods and utilized the same with intention to evade payment of GST which has been detected by the Department, as explained in the foregoing paras. I observe that the provisions of Section 74(1) of the GST Act, 2017 provides that where the input tax credit has been wrongly availed or utilised for the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equivalent to the tax specified in the notice. I find that as the Appellant in the present case has suppressed the facts of availing the credit of Rs.4,57,720/- (IGST Rs.4,57,720/-) without actual receipt of goods, therefore the Appellant is liable for equivalent penalty of the amount of ITC fraudulently availed, under the said provisions.

6.16 As regards to the judgment in writ petition of the Hon'ble Telangana High Court in case of M/s Rase Power Infra Pvt.Ltd. V/s Superintendent of CGST No.298/2024 relied upon by the appellant and copy submitted in additional submissions, wherein it was opined that "action on the part of the respondents in initiating the show cause proceedings under Section 74 and passing of the impugned order dated 15.11.2023 both would be in excess of their jurisdiction and the same therefore deserves to be and are accordingly set aside/quashed". In this case, the authorities had confirmed the demand of notice towards irregularly availed ITC on common services used for providing taxable services and exempted supplies along with interest and penalty under Section 74(9) read with Section 122(2)(b) of the CGST Act, wherein the petitioner had accepted the audit finding and paid the entire additional tax that was required to be paid along with interest before issuance of Notice. However, in the instant case the matter is not similar. The demand confirmed is against the ITC availed on fake invoices issued by the non-existing firm. Further, the appellant has



reversed the ITC without payment of interest. Hence the judgment relied upon by the appellant is not applicable in the present case.

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

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

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

Asanup
14/05/2024
(आदेश कुमार जैन)

संयुक्त आयुक्त(अपील्स)

केन्द्रीय वस्तु एवं सेवा कर आयुक्तालय अहमदाबाद।

दिनांक : .05.2024

Attested.

S. D. Nawani

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

By R.P.A.D.

To:

M/s Arihant Tube Corporation (Legal Name : Damayanti Dilipbhai Shah);
GF-5, Shreeji Shopping Centre, Lalbhadur Shasta Road,
Near Bhagwati Nagar, Bapunagar, Ahmedabad - 380023 .
(GSTIN-24BPUPS7836A2ZG)

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-II, Ahmedabad North Commissionerate.
6. The Superintendent Range-IV, Division-II, Ahmedabad North.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File/ P.A. File.

