



सत्यमेव जयते

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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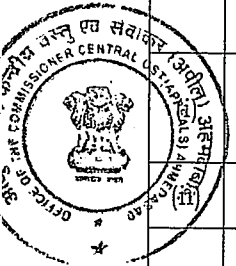


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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1609/2024 / 5495 - 5501
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-16/2024-25 and 14.05.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri 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/NBD/SUPDT-AR-1/GST/2023-24 dated 21.11.2023 passed by The Superintendent, CGST, Range-I, Division-V, Ahmedabad-North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Hariom Plastic Industries (GSTIN: 24AAAFH9639Q1ZR) 503, GIDC, Dholka, GIDC, Ahmedabad, Gujarat-380001

(A)	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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant; and (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 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-APPEALBRIEF FACTS OF THE CASE:

M/s. HARIOM PLASTIC INDUSTRIES (Trade Name: HARI OM PLASTIC) (GSTIN-24AAAFH9639Q1ZR) Situated at 503, GIDC, DHOLKA, GIDC, Ahmedabad, Gujarat, 380001 (hereinafter referred to as the "Appellant") has filed appeal against Order-in-Original No. 03/NBK/SUPDT-AR-1/GST/2023-24 dated 21/11/2023 (herein after referred as the "impugned order") passed by the Superintendent, CGST & C.Ex., Range-I, Division V, Ahmedabad-North Commissionerate, Ahmedabad (hereinafter referred to as *the 'adjudicating authority'*)

2. Brief facts of the case are that the Appellant is a partnership firm engaged in manufacturing of goods falling under the HSN heading of 39021000 & 3902200. During the scrutiny of GST Returns for the period from July-2017 to March-2018 (DGARM Report No. 200 dated 31.03.2022), some discrepancies were noticed in respect of GST Returns under Section 61 of the CGST Act, 2017 of the Appellant for the period from July-2017 to March-2018, on the basis of the data available in AIO system. During the course of scrutiny, on reconciliation of GSTR-2A, GSTR-3B & CSER-9, it was observed that the appellant had availed the excess ITC mentioned in GSTR-9 to the tune of Rs.4,65,258/- for the period from July'2017 to March'2018, but they had not reversed the excess availed ITC, accordingly Form GST ASMT-10 was issued to the appellant on 27.05.2022 for clarification along with documentary evidences. The appellant did not agree to reverse the excess ITC of Rs.4,65,258/- for the period from July'2017 to March'2018. Accordingly, Form DRC-01A was issued on 29.08.2022 on the basis of data available in GSTR-9 to the appellant for the amount of Rs.4,65,258/- for the period from July'2017 to March'2018.

On verification of the ITC ledger/purchase register submitted by the appellant it was observed that M/s Technovaa Plastic Industries Pvt. Ltd., 1256 and 1261, Raipur Zulasan Road, Village-Raipur, Mahesana, Gujarat- 382715 holding GSTIN: 24AADCT6868M1ZP had supplied the goods i.e. "Plain Flexible Film Wastage" falling under the HSN- 39201099 to M/s. HARIOM PLASTIC INDUSTRIES, 503, GIDC, Dholka GIDC, Ahmedabad, Gujarat-380001. However, M/s Technovaa Plastic Industries Pvt. Ltd., Mahesana had filed the GSTR-1 up to the month of October'2017 and GSTR-3B up to the month of

September '2017 & also they had not paid the CGST & SGST Tax liabilities in the govt. exchequer from September'2017 till the date of scrutiny. The amount of Rs.8,47,802/-(CGST Rs.4,23,901/- & SGST Rs.4,23,901/-) for the FY. 2017-2018 & Rs.49,744/-(CGST Rs.24,872/- & SGST Rs.24,872/-) for the FY. 2018-2019 availed and utilised by the Appellant as Input Tax Credit was absolutely inadmissible since the ITC availed and utilised did not fulfill the condition prescribed under Section 16(2)(c) of the CGST Act, 2017 read with Rule 36 of the CGST Rules, 2017.

Hence a Show-cause-notice dated 26.05.2023 was issued to the appellant.

3. The adjudicating authority vide the impugned order passed the following order:

"1. I disallow the wrongly availed Input Tax Credit Rs.8,97,545/- (Eight Lakhs Ninety seven thousand five hundred forty five only) (CGST Rs.4,48,772/- & SGST Rs.4,48,772/-) for the FY. 2017-2018 & 2018-2019 and order to recover the same from the registered person under Section 73(1) of CGST Act, 2017 read with Section 16 of CGST Act, 2017 read with section 73(1) of SGST Act,2017.

2. I order to recover Interest at applicable rates from the registered person on the above ITC Amount under the provisions of Section 50 of CGST Act, 2017 read with the relevant provisions of SGST Act, 2017 on the GST liability mentioned at Sr. No.1 above.

3. I impose Penalty of Rs.89,754/- (Eighty Nine thousand seven hundred fifty four only) (10% of tax amount) under section 122(2) of the CGST Act, 2017 read with similar provision of SGST Act 2017."

4. Being aggrieved with the impugned order, the Appellant filed present appeal on 23.01.2024 on the grounds that:

"That the Adjudicating authority has not appreciated the facts and circumstances of the case and therefore, the order is passed for disallowing ITC is not proper and legal.

That It is admitted fact that the Appellant has received the goods from M/s. Technovaa Plastics Ind. Pvt Ltd having GSTIN No. 24AADCT6868M1ZP. The said goods had been consumed in the production of plastics articles falling under Ch. 39021000 & 39022000. The Appellant has made payment to M/s. Technovaa Plastics Ind. Pvt Ltd. Therefore, as per Section 16 of the CGST Act, 2017, the ITC is not deniable.

That at material time, there was not provision of mismatching of GSTR2A or GSTR2B. Therefore, the notice is issued on the ground that the supplier of Raw material i.e. Technovaa Plastics Ind. Pvt Ltd has not filed return under the GST Act, 2017 is improper and therefore, the ITC is not deniable on such ground.

That the supplier has not filed GST returns under GST Act, 2017 from September'2017 onwards, it is a fault of other side i.e. M/s. Technovaa Plastics Ind. Pvt Ltd and not the recipient of goods or service or both. Therefore, ITC is not deniable on the basis of supplier fault. Therefore, in view of the above, the said OIO is not sustainable.

That the Appellant invites your kind attention to judgment reported in 1989 (39) ELT 503 (SC) in the case of Suksha International V/s. UOI wherein Hon'ble SC has observed that an interpretation unduly restricting the scope of beneficial provisions is to be avoided so that it may not take away with one hand what the policy gives with the other.

Further the appellant relies on the judgment reported in 1983 (13) ELT 1534 (SC) in the case of A. V. Narasimhalu wherein the Hon'ble SC observed that the administrative authorities should instead of relying on technicalities, act in manner consistent with broader concept of justice.

Similar observation was made by the Apex Court in the Formica India V/s. Collr. of C.Ex. reported in 1995 (77) ELT 511 (SC) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with requirement of the 'concerned rule, the proper course was to permit them to do so rather than denying them benefit on the technical grounds that the time when they could have done so had elapsed. Moreover, the substantive benefit of right cannot be denied if the benefit is available- 1991 (55) ELT 437 (SC) in the case of Mangalore Chemicals and Fertilizers Ltd. Therefore, in view of the above ruling ITC is not deniable.

That in the notice, there is no allegation that the Appellant has not received the goods from supplier. The Appellant has made payment to supplier within 180 days. The invoices are in the name of Appellant. Therefore, on this count, ITC is not deniable as per Section 16 of the GST Act, 2017.

That the ITC is denied to the Appellant on the ground that the supplier has not filed return but whether the jurisdiction authority of supplier of goods has initiated any action against the supplier of goods for non filing of return by the supplier. If not, then there is no need to issue notice for reversal of ITC by the Appellant in as much as the Appellant has made payment to supplier of goods. The Appellant on the basis of availed ITC, made payment through GSTR3B on the selling of out ward sales. Then again there is proposal to recover ITC by issuing SCN on the basis of non filing of return by supplier of goods which is not legally and correct as there are three times recovery of tax on the part of Appellant which is not proper and legal and on the basis, the said SCN is required to be waived.

That it is improper to recover the interest under Section 50 of GST Act, 2017 in as much as there is no wrongly availment of ITC. The Appellant has availed ITC within frame work of Section 16 of GST Act, 2017.

That section 122 of GST is not applicable in as much as there is no wrong avilement of ITC as explained above.

In view of the above submissions made above, Your Honour is requested to allow the appeal filed by the Appellant by way of setting aside impugned order appealed against."

5. Personal Hearing:

Personal Hearing in the matter was held on 10.05.2024, wherein Shri Naimesh K.Oza, Advocate appeared in person on behalf of the 'Appellant' as authorized Representative before the appellate authority. It has been submitted that they have procured the goods and payment has been made. The appellant can't be penalized for frauds of supplier. He further submitted additional submissions during P.H. and reiterated the written submissions and requested to allow appeal.

6 Discussion and Findings:

6.1. I have carefully gone through the facts of the case and the submissions made by the Appellant and additional submissions during P.H. and observe that the, appellant is mainly contesting with, that the Appellant has received the goods from M/s. Technovaa Plastics Ind. Pvt Ltd having GSTIN No. 24AADCT6868M1ZP, the said goods had been consumed in the production of plastics articles falling under Ch. 39021000 & 39022000. And that the Appellant had made payment to M/s. Technovaa Plastics Ind. Pvt Ltd. therefore, as per Section 16 of the CGST Act, 2017, the ITC is not deniable and therefore interest and penalty imposed are not applicable.

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

Whether the order passed by the adjudicating authority is proper or otherwise?

6.3 At the foremost, I observe that in the instant case the "impugned order" is of dated 21.11.2023 and the present appeal is filed on 23.01.2024. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within

three months time limit. I observe 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 In the instant case, I observe that the demand of ITC Rs.8,97,545/- (CGST Rs.4,48,772/- & SGST Rs.4,48,772/-) availed by the Appellant during the FY. 2017-2018 & 2018-2019, in excess to the available Input Tax Credit as per GTR-2A in contravention to Section 16(2)(c) of the CGST Act, 2017, is confirmed by the adjudicating authority. The appellant had an opportunity to reverse the excess availed credit while filing of their Annual Return but instead of reversal of wrongly availed ITC the registered person utilized the wrongly availed ITC for discharging their tax liability thus make himself liable to recovery of ITC to the tune of Rs.8,47,802/- (CGST Rs.4,23,901/- & SGST Rs.4,23,901/-) for the FY. 2017-2018 & Rs.49,744/- (CGST Rs.24,872/- & SGST Rs.24,872/-) for the FY. 2018-2019 under the provisions of Section 73(1) of the CGST Act, 2017, along with applicable interest under section 50 of the CGST Act, 2017 and penalty under section 122(2)(a) of CGST Act 2017.

6.5 The contention of the appellant that the ITC is denied to the appellant on the ground that the supplier of Raw material i.e. Technovaa Plastics Ind. Pvt Ltd has not filed returns under the GST Act, 2017 from September'2017 onwards, is a fault of M/s. Technovaa Plastics Ind. Pvt Ltd and not the recipient of goods or service or both i.e. the appellant therefore, the ITC is not deniable on such ground.

6.6 Accordingly, I refer to the relevant provisions 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.

(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:

*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).

4. Substituted "section 41" (w.e.f. a date yet to be notified) by s. 8 of The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018).

5. Omitted "or section 43A" (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 From the provisions above, it is clear that 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, all the conditions mentioned above are fulfilled by him. One of the conditions that is not fulfilled in the instant case is that the tax charged in respect of such supply has actually been not paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply and the returns under section 39 have also not been filed.

6.8 When the goods supplied by M/s.Technovaa Plastics Ind. Pvt Ltd have not been shown in their GSTR-1 and not paid GST in GSTR-3B as the GSTR-1 and GSTR-3B have not been filed by them from November-2017 and October-2017 respectively, implies that all the statutory conditions for availing ITC have not been fulfilled for availing ITC by the appellant. The contention of the appellant that they have received the goods and used in the production of their output supply and furnished copies of invoices and purchase ledger, however merely production of invoices and accounting for in ledger is not sufficient to prove the eligibility of availing ITC. All the conditions stipulated in the above provisions should be fulfilled simultaneously. It is also evident from the website of www.gst.gov.in that the registration of the supplier M/s.Technovaa Plastics Ind. Pvt Ltd has been suo moto cancelled with effect from 01.10.2017 and GSTR-1 and GSTR-3B have not been filed by them from November-2017 and October-2017. Further, it is also observed that the appellant have not submitted any proof of the receipt of goods such as details of payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof by the appellant in support of their claim of having received the goods. Therefore the ITC availed by the appellant of Rs.8,47,802/- (CGST Rs.4,23,901/- & SGST Rs.4,23,901/-) for the FY. 2017-2018 & Rs.49,744/- (CGST Rs.24,872/- & SGT Rs.24,872/-) for the FY. 2018-2019 is not eligible to be taken and the same is required to be reversed/paid along with interest and penalty.

6.9 Further, the reliance placed on the judgment reported in 1989 (39) ELT 503 (SC) in the case of Suksha International V/s. UOI wherein Hon'ble SC has observed that an interpretation unduly restricting the scope of beneficial

provisions is to be avoided so that it may not take away with one hand what the policy gives with the other is not applicable in the present case as the appellant does not fulfil the mandatory conditions for availing the ITC on the inputs procured from M/s.Technovaa Plastics Ind. Pvt Ltd.

6.10 The reliance is also placed by the appellant on the judgment reported in 1983 (13) ELT 1534 (SC) in the case of A. V. Narasimhalu wherein the Hon'ble SC observed that the administrative authorities should instead of relying on technicalities, act in manner consistent with broader concept of justice. Similar observation was made by the Apex Court in the Formica India V/s. Collr.of C.Ex. reported in 1995 (77) ELI 511 (SC) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with requirement of the concerned rule, the proper course was to permit them to do so rather than denying them benefit on the technical grounds that the time when they could have done so had elapsed. Moreover, the substantive benefit of right cannot be denied if the benefit is available - 1991 (55) ELT 437 (SC) in the case of Mangalore Chemicals and Fertilizers Ltd. Therefore, in view of the above ruling ITC is not deniable. All these judgments are not applicable in the present case, as in the present case there is neither technical issue involved nor there is any benefit of any Notification which is denied to the appellant and nor any substantive benefit of right is denied. The only issue is the provision of mandatory eligibility conditions is not fulfilled by the appellant as explained above.

6.11 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.-

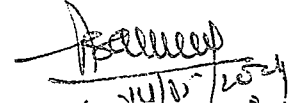
“Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.”

6.12 In view of the above, as the appellant inspite of the fact that the ITC of Rs.8,47,802/-(CGST Rs.4,23,901/- & SGST Rs.4,23,901/-) for the FY. 2017-2018 & Rs. 49,744/-(CGST Rs.24,872/- & SGT Rs.24,872/-) for the FY. 2018-2019 is not available to them and did not reverse the same on their own, and also not submitted valid proof of availing the credit as discussed above,

therefore liable for reversal of the said credit along with interest and penalty under Section 73(1), and Section 122(2)(a) of the CGST Act/GGST Act, 2017.

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.


(आदेश कुमार जैन)
संयुक्त आयुक्त(अपील्स)

केन्द्रीय वस्तु एवं सेवा कर आयातकालय अहमदाबाद |

दिनांक : .05.2024

Attested


(S. D. Nawani)
Superintendent,
CGST & C.Ex.,
(Appeals), Ahmedabad



By R.P.A.D.

To:

M/s. HARIOM PLASTIC INDUSTRIES
(Trade Name: HARI OM PLASTIC)
503, GIDC, DHOLKA, GIDC, Ahmedabad,
Gujarat, 380001 (GSTIN-24AAAFH9639Q1ZR).

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- ~~North~~ Commissionerate.
4. The Dy./Assistant Commissioner, CGST & C.Ex., Division-V, Ahmedabad ~~North~~ Commissionerate.
5. The Superintendent, CGST Range-I, Division-V, Ahmedabad- ~~North~~.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/ P.A. File.

