



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
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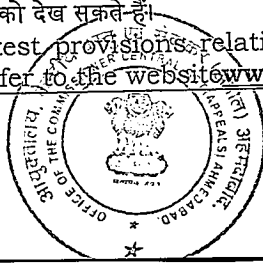


**By Regd. Post**

DIN NO.: 20240564SW0000777A81

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2162/2024 / 57330 - 5733
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-21/2024-25 and 21.05.2024
(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	21.05.2024
(ङ)	Arising out of Order-In-Original No. CGST/WT07/PG/192/2023-24 dated 17.11.2023 passed by The Deputy Commissioner, CGST, Division-VII, Ahmedabad-North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Vallabh Agencies (GSTIN: 24AAHFV7329L1ZP), FF-108, Sigma Balaji, Nr. Navrang School, Darpan Six Road, Ahmedabad, Gujarat-380009

(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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



## ORDER-IN-APPEAL

## BRIEF FACTS OF THE CASE:

M/s VALLABH AGENCIES (GSTIN-24AAHFV7329L1ZP) having principal place of business FF-108, SIGMA BALAJI, NR.NAVARANG SCHOOL, DARPAN SIX ROAD, Ahmedabad, Gujarat, 380009 (hereinafter referred to as the "Appellant") has filed appeal Against OIO No. CGST/WT07/PG/192/2023-24 dated 17.11.2023 issued by the Deputy Commissioner, CGST & C.Ex., Division VII, Ahmedabad-North Commissionerate, Ahmedabad (herein after referred as the "impugned order").

2. Brief facts of the case are that the Appellant are engaged in the business of Medicaments and holding GSTIN-24AAHFV7329L1ZP, had belatedly filed their GSTR 3B returns (as detailed below) after due date as prescribed under Section 16(4) of CCST Act, 2017 and corresponding section of SGST Act 2017.

Tax period	Due dt. of claiming ITC u/s 16(4)	Total ITC availed after the time limit prescribed u/s 16(4)			
		IGST	CGST	SGST	Total
July-17 to March-18	23.04.2019	93706.08	465359.75	465359.75	1024425.58
2018-19	20.10.2019	125560.4	543709.83	543709.83	1212980.06
Total		219266.48	1009069.58	1009069.58	2237405.64

Thus, it appeared that the appellant had contravened the provisions of Section 16(4) of CGST Act, 2017 in the manner that they had claimed ITC beyond the due date for filing GSTR-3B return as tabulated above and hence ITC total amounting to Rs.22,37,405.64/- appeared to be irregularly availed as per provisions of Section 16(4) of the CGST Act, 2017. Hence, the appellant was issued Show Cause Notice dated 13.07.2023, as to why:

*"(i) Wrongly / excess availed/ claimed ITC amounting to Rs. 22,37,406/- (IGST Rs. 219266.48, CGST Rs.1009069.58/-, SGST Rs.1009069.58/- for the period 2017-18, 2018-19, 2019-20 and 2020-21 should not be demanded and recovered from them under Section 74[1] of CG ST Act 2017 read with corresponding provisions of GGST Act, 2017 and IGST Act. 2017;*

(ii) Interest as applicable should not be demanded and recovered from them under section 50 of the CGST Act, 2017, read with corresponding provisions of GGST Act, 2017 and IGST Act, 2017 on the Goods & Service Tax so demanded in Para 7(i) above;

(iii) Penalty should not be imposed upon the Noticee under Section 122(2) (b) read with 74 of the Act 2017 & corresponding provisions of GGST Act, 2017 and IGST Act, 2017 for tax not paid or short-paid or where the Input tax credit has been wrongly availed or utilized, in respect 'of Goods and Service Tax so demanded in (i) above."

3. The Adjudicating authority vide the impugned order dated 17.11.2023 passed the following order:

"1. I disallow and confirm the demand of Rs.22,37,406/- (IGST Rs.219266.48, CGST Rs.1009069.58/-, SGST Rs.1009069.58/-) availed by the notice during the period 2017- 18, 2018-19, 2019-20 and 2020-21 under the proviso to Section 74[1] of CGST Act 2017 read with corresponding provisions of GGST Act, 2017 and IGST Act. 2017.

2. I confirm the amount of interest as applicable under Section 50 of CCST Act, 2017, read with corresponding, provisions of GGST Act, 2017 and IGST Act, 2017 on the Goods & Service Tax so demanded in Para 7(i) above.

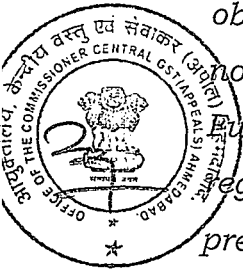
3. I impose penalty of Rs.22,37,406/- (IGST Rs.219266.48, CGST Rs.1009069.58/-, SGST Rs.1009069.58/-) under section 122(2)(b) of the CGST Act, 2017."

The appellant filed the present appeal on 29.02.2024 on the grounds

that:

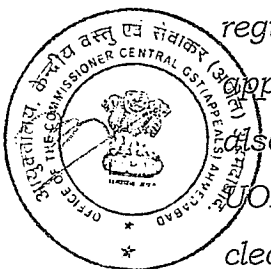
- " it is submitted that the show cause notice is issued only on the basis of returns filed by the appellant. It has taken date of filing of return as the date of taking credit accordingly, has denied ITC. Which is not correct position of the facts. It is submitted that the ITC available to any dealer under provision of Section 16(1) and 16(2) of the CGST Act.
- it is submitted that the appellant had fulfilled all the conditions prescribed in section 16(2) of the CGST act. Such as he is in possession of invoices, he actually received goods, tax charged must have to be paid in government by the supplier by ITC or in cash, Supplier has filed return U/s 39 of the CGST act. In such facts ITC is clearly admissible and there cannot be any question mark pertaining to eligibility of credit.

- it is submitted that the appellant has correctly claimed ITC and notice does not say question the admissibility aspect of the ITC. Hence ITC cannot be denied and show cause notice issued for denial of ITC is de hors the provision of section 16(1) and section 16(2) of the act.
- it is submitted that the appellant has maintained records and registers in the manner as prescribed U/s 35 of the CGST act . Further the credit was already taken in the register maintained by the appellant. The Register is akin to cenvat credit registered maintained under excise law. The same is also referred in Section 35(1)(d) of the CGST Act. Hence, The appellant has taken credit in their register immediately upon the receipt of the goods in their premises. The appellant has also maintained register of output tax payable and as prescribed under section 35(1)( e) of the CGST Act. In the register the appellant has shown month wise output tax liability and its payment either from ITC register i.e Electronic Credit Ledger or from making payment through banking channel i.e Electronic cash ledger. The adjustment of ITC is also done every month and balance amount of ITC is carried forward. Hence, the observation in the order that ITC is not taken, is incorrect and show cause notice and order passed on presumptive observation which is against the law. Further once, the Credit is availed and entered statutorily maintained registers, it cannot be said the credit was not availed within time frame prescribed U/s 16(4) of CGST Act.
- it is submitted that the appellant is relying on judgment of the Honorable Apex court in case of UOI & Bharti Airtel ltd reported at AIR 2021 SC 5659 have held that the filing of return and availment of credit are two different aspects. The credit is availed on the basis of Invoices which are recorded in the statutory records and it has no relevance with the returns which are filed. Hence, Relying on the Apex court judgment the appellant has not violated section 16(4) of the act due to he has claimed ITC on the basis of Invoices and duty paid documents and also availed immediately upon the receipt of goods in the registered premises.
- it is submitted that the provision of amended Section 50 of the GST Act which provides for charging interest on late payment of GST. The provision prescribe that the interest is required to be paid on amount which is paid in cash and not on the amount which is paid through utilization of ITC. Therefore the appellant had also paid interest on cash payment at the time of filed returns for the year 2017-18 and 18-19. Hence, the order is passed on wrongly assuming the provision of Section 16(4) of CGST act.



- it is submitted that the appellant was facing the acute financial crisis at the relevant point of time. His account had become NPA with the bank and proceedings under SERFAISI Act were also initiated by the bankers. In such facts, GST number of the appellant was cancelled due to not filing GST returns for 6 consecutive periods. Hence, The appellant had filed all GST returns for the year 2017-18 and 2018-19 on Very same date on 10/01/2020 and 11/01/2020 after restoration of GST number. However, when the returns of the entire financial year were not filed at all due to aforesaid reasons by the appellant, hence ITC shall not be refused. However, in that case Section 16(4) shall not be applicable.
- it is submitted that the Learned Adjudicating Authority had issued Show cause notice and passed an order by invoking U/s 74 of the CGST Act, However, Section 74 applies when the ITC is wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts. In that case there is no any fraud or wilful misstatement or suppression of facts. The suppliers are having active GST registration and there is no dispute pertaining to non payment of GST. In Such case credit is legally admissible and cannot be said wrongly availed. It is further submitted that goods were admittedly supplied on duty paying documents and credit availed was utilized towards the payment of GST. In such case it can never be said that credit was utilized by reason of any fraud or willful misstatement or suppression of facts.
- it is submitted that the appellant has filed GST returns belated and .the registration is also restored. Hence, the credit, which is accrued right of the appellant, cannot be denied merely because returns were not filed. Reliance is also placed on Supreme court judgment in the case of Eicher Motors Ltd V/s UOI reported at 1999 (106) ELT (3) where in the Honorable Apex court have clearly held that credit is accrued right and the same cannot be disallowed by any subsequent act of the assessee.
- it is further submitted that the Section 47 of the act permits filing of return U/s 39 of the act on payment of late .fees. The government is also entitled to take interest on payment of tax beyond due date. Therefore it would be arbitrary and unreasonable to allow filling return on payment of interest and latefees without entitlement of ITC.”

The appellant has further prayed that the order passed with demand, interest and penalty for denial of ITC U/s 16(4) of the CGST Act is not sustainable and requires to be quashed.



**5. Personal Hearing:**

Personal Hearing in the matter was held on 06.05.2024, wherein Shri Naitik N. Shah, Advocate appeared in person on behalf of the 'Appellant' as Authorized Representative before the appellate authority. It has been submitted that all the conditions of Section 16(2) have been fulfilled, therefore they are eligible for ITC. He further submitted synopsis of their ground during P H and reiterated the written submissions and requested to allow the appeal. Further, no penalty under Section 74 is imposable as no suppression.

**6 Discussion and Findings:**

6.1. I have carefully gone through the facts of the case and the submissions made by the Appellant and observe that the appellant is mainly contesting with the impugned order confirming the of demand of ITC amounting to Rs.22,37,406/- along with interest and penalty under Section 122(2)(b) of the CGST Act, 2017.

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

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

At the foremost, I observe that in the instant case the "impugned order" is dated 17.11.2023 and as per the appellant the same has been received by them on 07.12.2023. It is observed that the impugned order has been uploaded on the portal on 26.02.2024 and the present appeal is filed online on 29.02.2024. 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 I observe that, the appellant has contested that they had availed and entered the ITC alleged in the SCN, in their statutorily maintained registers and therefore cannot be said that the credit was not availed within time frame prescribed under Section 16(4) of the CGST Act, 2017. Further, that the appellant was facing acute financial crisis at the relevant point of time. Their account had become NPA with the bank and proceedings under SERFAISI Act were also initiated by the bankers and their GST number was cancelled due to not filing GST returns for 6 consecutive periods. Hence, the appellant had filed all GST returns for the year 2017-18 and 2018-19 on 10/01/2020 and 11/01/2020 after restoration of GST number. However, when the returns of the entire financial year were not filed at all due to aforesaid reasons by the

appellant, hence ITC shall not be refused. However, in that case Section 16(4) shall not be applicable.

6.5 Further, relying on the judgment of the Honorable Apex court in case of UOI & Bharti Airtel ltd reported at AIR 2021 SC 5659 wherein it has been held that the filing of return and availment of credit are two different aspects. The credit is availed on the basis of Invoices which are recorded in the statutory records and it has no relevance with the returns which are filed. Hence, Relying on the Apex court judgment the appellant has not violated section 16(4) of the act due to he has claimed ITC on the basis of Invoices and duty paid documents and also availed immediately upon the receipt of goods in the registered premises.

6.6 To decide the issue, I refer the following provisions of the CGST Act, 2017:

**\*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.

.....  
(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 <sup>6</sup>[thirtieth day of November] following the end of financial year to which such invoice or <sup>7</sup>[\*\*\*\*] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

<sup>8</sup>[**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.]

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

6. Substituted (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) for "due date of furnishing of the return under section 39 for the month of September".

7. Omitted "invoice relating to such" (w.e.f. 1st January, 2021 vide Notification No. 92/2020-C.T., dated 22nd December, 2020) by s. 120 of The Finance Act, 2020 (No. 12 of 2020) .

8. Inserted vide Order No. 02/2018 -Central Tax dated 31st December, 2018.

**\*Section 41. [Availment of input tax credit]**

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

\* Enforced w.e.f. 22nd June, 2017.

1. Substituted (w.e.f. 1st October, 2022 vide Notification No. 18/2022 - CT) by s. 106 of The Finance Act 2022 (No. 6 of 2022) for

"Section 41. Claim of input tax credit and provisional acceptance thereof.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(2) .....

6.7 From the plain reading of the above provisions, it is clear that Credit of eligible Input Tax as self assessed is to be taken/availed by a Taxpayer in his return and shall be credited to his electronic credit ledger. It is not that the

said credit can be availed in the return and credited in electronic credit ledger after the due date as prescribed in the provisions *ibid*. Therefore, the contention of the appellant that they had availed and entered the said ITC in their statutorily maintained registers and therefore cannot be said that the credit was not availed within time frame prescribed under Section 16(4) of the CGST Act, 2017, is not tenable.

6.8 Further, the judgment of the Hon'ble Apex Court relied upon by the appellant in case of UOI & Bharti Airtel Ltd. is regarding the challenge to the Circular No. 26/26/2017-GST dated 29.12.2017 regarding Filing of Returns under GST, which is not applicable in the present case. Another judgment relied upon of the Hon'ble Apex Court in case of Eicher Motors Ltd Vs Union of India relating to erstwhile Modvat Scheme, I do not find it relevant to the present case.

6.9 Further, I refer the following judgment of the Hon'ble High Court of Patna wherein sub-section (4) of Section 16 of the CGST/BGST Act has been held constitutionally valid.

The Hon'ble HIGH COURT OF JUDICATURE at Patna in the case of M/s GOBINDA CONSTRUCTION Versus UNION OF INDIA reported in 2023 (77) G.S.T.L. 483 (Pat.) held as under:



33. Referring to the Supreme Court's decision in case of *Godrej & Boyce Mfg. Co. Pvt. Ltd. & Ors. v. Commissioner of Sales Tax & Ors.* reported in (1992) 3 SCC 24 the Supreme Court in case of *ALD Automotive Private Limited (supra)* has held that the ITC is in the nature of benefit/concession extended to a dealer under the statutory scheme and the concession can be received by the beneficiary only as per the scheme of the statute.

.....

“37. For the reasons noted above, we are of the considered opinion that sub-section (4) of Section 16 of the CGST/BGST Act are constitutionally valid and are not violative of Articles 19(1)(g) and Article 300A of the Constitution of India. The said provision is not inconsistent with or in derogation of any of the fundamental right guaranteed under the Constitution of India.

38. We accordingly do not find any merit in these writ applications, which are accordingly dismissed.”

6.10 Further I observe 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.”

In view of the foregoing, I am of the view that the order passed by the adjudicating authority confirming the demand of ITC is legal and proper.

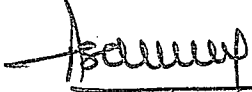
6.11 As regards the confirmation of the demand of ITC along with interest under Section 50 and penalty under Section 122(2)(b), of the CGST / GGST Act, 2017, I observe that the appellant has not taken the ITC of Rs.22,37,405.64/- within the prescribed time limit, thereby violated the provisions of the CGST / GGST Act, 2017 as explained above. The same is also evident from the suo moto cancellation of registration of the appellant as the appellant failed to file returns for continuous period of six months. Therefore the ITC so availed of Rs.22,37,405.64/- is required to be reversed along with interest under Section 50(3) of the CGST/GGST Act, 2017 read with Section 20 of the IGST Act, 2017 and penalty under Section 74(1) read with Section 122(2)(b) of the CGST/GGST Act, 2017 read with Section 20 of the IGST Act, 2017 as the appellant has knowingly availed inadmissible credit of ITC with intention to evade Tax and contravened the provisions of Section 16 of the

CGST Act, 2017 as the eligibility conditions as laid down under sub section (4) of Section 16 of the CGST Act, 2017 are not fulfilled by them.

7. In view of the above discussions and findings, I do not find any infirmity in the order passed by the adjudicating authority. Therefore the impugned order is upheld.

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

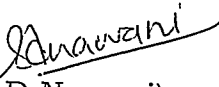
8. The appeal filed by the appellant stands disposed of in above terms.

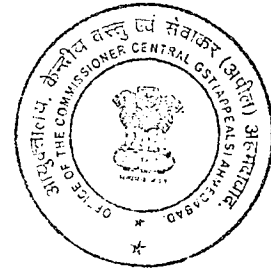
  
21/05/2024

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

Date: .05.2024.

Attested

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



By R.P.A.D.

To:

M/s VALLABH AGENCIES (GSTIN-24AAHFV7329L1ZP)  
FF-108, SIGMA BALAJI, NR.NAVARANG SCHOOL,  
DARPAN SIX ROAD, Ahmedabad,  
Gujarat, 380009 (GSTIN-24AAHFV7329L1ZP)

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

