आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20221064SW0000213523

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/67/2022 -APPEAL /4300 - 4305

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-141/2022-23**
दिनाँक Date : **31-10-2022** जारी करने की तारीख Date of Issue : **31-10-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **23/AC/Div-1/RBB/2021-22 DT. 26.08.2021** issued by Assistant Commissioner, CGST, Division-I, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. Soma Textiles & Industries Ltd,
Rakhiyal Raod,Rakhiyal, Ahmedabad-380023

(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) **Full amount of Tax, Interest, Fine, Fee and Penalty** arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to **twenty five per cent** of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइटwww.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. Soma Textiles & Indusries Ltd., Rakhial Road, Rakhial, Ahmedabad – 380023 (hereinafter referred as *'Appellant'*) has filed the present appeal against Order No. 23/AC/Div-I/RBB/2021-22 dated 26.08.2021 (hereinafter referred as *'impugned order'*) passed by the Assistant Commissioner, CGST, Division – I, Ahmedabad South (hereinafter referred as *'adjudicating authority'*).

2(i). Briefly stated the facts of the case is that the *'Appellant'* is holding GST Registration - GSTIN No.24AADCS0405R1ZB has filed the present appeal on 04.10.2021. During the course of audit, it was observed that the *'Appellant'* has claimed balance ITC of Cenvat as on 30.06.2017 amounting to Rs.36,83,768/- in TRAN-1. The said Cenvat balance was comprising of Additional Duty of Excise on Textiles and Textile Articles – TTA amounting to Rs.36,44,333/- and National Contingent Calamity Duty amounting to Rs.39,435/-. The assessee had been claiming exemption of duty under Notification No. 30/2004-CE dated 09.07.2004 since 2004. The assessee, however, kept on showing the above Cenvat balance in ER-1 returns, despite being lapsed as per Rule 11(3) of Cenvat Credit Rules, 2004, after opting for benefit of Notification 30/2004-CE issued under Section 5A of the Central Excise Act, 1944. Though the above Cenvat credit was not eligible to be carried forward in GST era, the taxpayer carried forward the same irregularly. This resulted in to irregular claiming of ITC to the tune of Rs.36,83,768/-.

2(ii). In view of above observations of CERA Audit, a Show Cause Notice was issued to the appellant, wherein it was proposed that as to why - *the Total transitional credit of Rs.36,44,333/- i/r. Additional duty of excise on textiles and textile articles – TTA and Rs.39,435/- i/r. National Contingent Calamity Duty wrongly availed in Form TRAN-1 should not be demanded and recovered under Section 73(1) of the CGST Act, 2017 ; Penalty should not be charged under Section 73(9) of the CGST Act, 2017 ; Interest at appropriate rate on amount of Input Tax Credit wrongly availed or utilized should not charged and recovered as per Section 50 of the CGST Act, 2017.*

The said SCN has been adjudicated by the adjudicating authority and issued the impugned order vide which confirmed the demand of wrongly availed Input Tax Credit along with interest under Section 50 of the CGST

Act, 2017 as alleged in the SCN. The adjudicating authority has also imposed penalty of Rs.3,64,434/- and Rs.3,944/- on the appellant and ordered for recovery of same under Section 73(9) of the CGST Act, 2017.

2(iii). Being aggrieved with the *impugned order* the *appellant* has filed the present appeal on 04.10.2021 wherein stated that –

- *the department has referred the Rule 11(3) of Cenvat Credit Rules, 2004 and concluded that the appellant is not eligible for Cenvat Credit on any input or capital goods and they were liable to reverse the Cenvat Credit taken after opting for exemption Notification No. 30/2004 CE dated 09.07.2004. Thus, according to the department the cenvat credit availed by them was liable to lapse. Accordingly, they have wrongly availed transitional ITC amounting to Rs.36,83,768/- in the Form TRAN-1, in contravention of Section 140(3) of the CGST Act, 2017 read with Rule 117 of CGST Rules, 2017.*
- *As regards to appellant eligible for transfer of TTA & NCCD cenvat credit under GST regime by filing TRAN-1, the appellant submit that the CGST came into effect on 01.07.2017 and the appellant had availed accumulated credit as against its tax liability.*
- *The provisions of Section 140(8) entitle it to avail utilization of the credits carried forward in a return relating to period ending with the day immediately preceding the appointed day. The provisions of Section 140(1) use the expression Central Value Added Tax (CENVAT) credits as having same meaning as assigned in the Central Excise Act, 1944 and connected rules. The appellant wants to state that for the purpose of Central Excise Act and Rules, TTA & NCCD are 'credits' and thus, in the light of explanation to Section 140, such credits would also be eligible to be credited, transitioned and utilized.*
- *The proviso to Section 140(1) specifically delineates those circumstances/conditions under which credit availed may not be utilized and there is nothing there under, to militate against the availment in question. The appellant relies on the following cases :*
  - *Union of India V. Ind-Swift Laboratories Ltd. [2012(25) S.T.R. 184]*
  - *Eicher Motors Ltd. V. Union of India [1999 (106) ELT 3]*
  - *SML Isuzu Ltd. V. Union of India [2016 (340) ELT 643]*
  - *Commissioner of C. Ex., Bolpur V/s. Ratan Melting & Wire Industries [2008 (231) ELT 22]*
  - *J. K. Lakshmi Cement Ltd. V. Commercial Tax Officer, Pali [2018 (14) G.S.T.L. 497]*

- *Commissioner of C. Ex., Bhopal V. Minwool Rock Fibres Ltd. [2012 (278) ELT 581]*

- *GST was introduced with much fanfare in 2017 with discussions preceding the enactment nearly from 2009 onwards. The scheme of GST was to provide a comprehensive indirect tax levy subsuming various indirect tax enactments that had been in force prior thereto.*
- *In the present case, admittedly, there is no notification/circular/instruction that has expressly provided that the credit accumulated would lapse. Not only this, the credit has been carried forward manually and reflected in the returns from time to time and such accumulated credits stare the Revenue in the face. Having permitted the appellant to carry forward the credit, the authorities cannot now take a stand that such credit is unavailable for use. The provisions of sub-section (1) read with sub-section (8) of Section 140, and the explanation there under make it more than clear that all available credit as on the date of transition would be available to the appellant for set off. In support referred case of Eicher Motors Vs. Union of India and Others [1999 (106) ELT 3].*
- *Appellant relies on case laws – 2019 (30) GSTL 628 (Mad.) in the High Court of judicature at Madras Dr. Anita Sumnath, J. Sutherland Global Services Pvt. Ltd. V/s. Asstt. Commr. of CGST & C. Ex. Chennai writ petition No. 4773 of 2018 and W.M.P. Nos. 5916 & 13148 of 2018, decided on 05.09.2019.*
- *Input Tax Credit (ITC) – Transition to GST – Accumulated credit of Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess – Credit continues to be available till such time it is expressly stated to have lapsed – No notification/circular/instruction expressly provided that credit accumulated would lapse. The language of Section 140 (1) and (8) both make it clear that an appellant to GST is entitled to transition of 'the amount of cenvat credit carried forward in the return relating to the period ending with the date preceding the appointed date' and this in the present case includes accumulated credit of EC, SHEC and KKC [1999 (106) ELT 3 (SC) applied, 2018 (14) GSTL 522 (Decl.), 2015 (319) ELT 598 (SC), AIR 2016 SC 4443 distinguished] [para 22, 23, 24, 27, 34, 35, 36, 37, 40, 41, 42, 43, 44, 47, 48, 49, 50] Petition allowed.*
- *So, from the above it is clear that the appellant has rightly availed cenvat credit of TTA & NCCD and thus the appellant hereby request to stop proceedings initiated in this case.*

- *The SCN covers period of December 2017 and SCN issued on 04.12.2020 by invoking the extended period of limitation. In the SCN it has badly alleged that the appellant has suppressed the information from department. The appellant is filing GST Returns regularly from time to time hence, extended period cannot be invoked as there is no suppression, willful misstatement on the part of appellant. The SCN is liable to be dropped on this ground also.*
- *Since, the appellant has not suppressed any information from department and there is no willful misstatement the penalty imposed under Section 73(9) of the CGST Act, 2017 is not justified. In this regard relied upon the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. V/s. The State of Orissa reported in AIR 1970 (SC) 253. Also referred case of Kellner Pharmaceuticals Ltd. Vs. CCE reported in 1985 (20) ELT 80.*

3. Personal Hearing in the matter was held on 13.07.2022 and 27.09.2022 wherein Sh. Vipul Khandhar, CA appeared on behalf of the '*Appellant*' as authorized representative. During P.H. he has informed that they want to give additional submission/information, which was approved and 5 working days period was granted.

Accordingly, the appellant has submitted the additional submission on 17.10.2022 wherein the appellant has reiterated the submission made till date. The appellant has submitted that they have rightly transferred the TTA & NCCD Cenvat credit in TRAN-1 under the GST Regime. The appellant in the additional submission has referred the Section 140 of the CGST Act, 2017 and same case laws as were referred in the appeal memorandum. According to appellant the TTA & NCCD Cenvat Credit were carried forward manually and reflected in the returns from time to time, accordingly they have rightly transferred the said credit by filing TRAN-1 in GST Regime. Hence, the imposition of penalty in present case is not justified. The demand is also time barred as SCN is issued on 04.12.20 covering period of December'2017, though there was no suppression of facts or misstatement. Hence, extended period of limitation cannot be invoked in the present case.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the '*Appellant*' in the Appeals Memorandum as well as through additional submission. I find that the

'Appellant' had claimed the ITC of Rs.36,83,768/- through TRAN-1 which comprises Additional Duty of Excise on Textiles and Textile Articles – TTA of Rs.36,44,333/- and National Contingent Calamity Duty of Rs.39,435/-. In this regard, the audit has pointed out that the appellant was availing benefit of exemption under Notification No. 30/2004-CE dated 09.07.2004 since 2004 and after opting for benefit of same, the Cenvat credit in question were lapsed as per Rule 11(3) of the Cenvat Credit Rules 2004. However, the appellant kept showing the above Cenvat balance in ER-1 Returns. Accordingly, the audit has pointed out that though the above Cenvat Credit was not eligible to be carried forward in GST era, the taxpayer carried forward same irregularly and claimed same by filing TRAN-1.

4(ii). In view of above, I find it pertinent to refer the provisions of Rule 11(3) of the Cenvat Credit Rules, 2004 and Notification No. 30/2004-CE dated 09.07.2044. The relevant provisions are reproduced as under :

Notification No. 30/2004-CE dated 09.07.2004 :

> *G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of* ***section 5A of the Central Excise Act, 1944*** *(1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 07/2003-Central Excise dated the 1st March 2003, published in the Gazette of India vide number G.S.R. 137 (E), dated 1st March 2003, the Central Government, being satisfied that it is necessary in the public interest so to do,* ***hereby exempts the excisable goods*** *of the description specified in column (3) of the Table below and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table,* ***from whole of the duty of excise leviable thereon under the said Central Excise Act: Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken*** *under the provisions of the CENVAT Credit Rules, 2002, -*

Rule 11. Transitional provision.-

(1) Any amount of credit earned .....

(2) A manufacturer who opts for exemption ....

(3) ***A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is***

lying in stock or in process or is contained in the final product lying in stock, if,-

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a ***notification issued under section 5A of the Act****; or*

(ii) ***the said final product has been exempted absolutely under section 5A*** *of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit,* ***the balance, if any, still remaining shall lapse and shall not be allowed to be utilized*** *for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.*

In view of above provisions, I find that the taxpayer who opts for exemption benefit under Notification No. 30/2004-CE were not eligible for Cenvat Credit on any input or capital goods. They were also liable to pay equal amount of Cenvat Credit if any taken on inputs received for manufacture of said final product and is lying in stock or in process or contained in final product lying in stock, after opting for exemption under Notification No. 30/2004-CE.

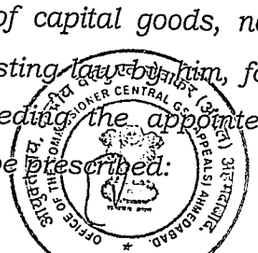
4(iii). On carefully going through the submissions of appellant, I find that the appellant is not disputing about the fact that they were availing benefit of exemption under Notification No. 30/2004-CE dated 09.07.2004 and simultaneously, carrying forward the balance of Cenvat Credit in ER-1 Returns. I find that the appellant is mainly contending that no notification/circular/instruction that has expressly provided that the credit accumulated would lapse. Further, according to appellant the credit was carried forward manually and reflected in the returns from time to time and thus having permitted the appellant to carry forward the same, the authorities now cannot take a stand that such credit was not available for use. Further, I find that the appellant has referred the provisions of sub-section (1) read with sub-section (8) of Section 140 and contended that all available credit as on the date of transition would be available to them for set off.

4(iv). In the view of foregoing, I find that in GST Regime the appellant has claimed Input Tax Credit (ITC) of the Cenvat Credit balance of June 2017 comprises of Addition Duty of Excise on Textile and Textile Articles – TTA and National Contingent Calamity Duty total of

Rs.36,83,768/- through TRAN-1. I find that the appellant was availing the exemption benefit of Notification No. 30/2004-CE which was issued by the Government by exercises the powers conferred under Section 5A of the Central Excise Act, 1944. Therefore, in view of foregoing discussions I find that the appellant was not eligible for Cenvat Credit on any input or capital goods. Further, in light of Rule 11(3) of the Cenvat Credit Rules, 2004 they were also liable to pay equal amount of Cenvat Credit taken on inputs received for manufacture of said final product and is lying in stock or in process or contained in final product lying in stock, after opting for exemption under Notification No. 30/2004-CE. Thereafter, after deducting the said amount the balance, if any, still remaining shall lapse and shall not be allowed to be utilized. Accordingly, I find that the appellant has transferred the balance of cenvat credit in TRAN-1 which was actually lapsed and not available to them.

4(v). In this regard, I find it pertinent to refer the relevant provisions of Section 140 of the CGST Act, 2017, the same is reproduced as under :

> * ***Section 140. Transitional arrangements for input tax credit.-***
>
> *(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [1][of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [2][within such time and] in such manner as may be prescribed:*
>
> ***Provided** that the registered person shall not be allowed to take credit in the following circumstances, namely:-*
>
> *(i) where the said amount of credit is not admissible as input tax credit under this Act; or*
>
> *(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*
>
> *(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.*
>
> *(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day [2][within such time and] in such manner as may be prescribed:*



***Provided** that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.*

On carefully going through the above provisions, I find that the provisions are very much clear that the registered person are entitled to take, in their electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by them. Provided that registered person shall not be allowed to take credit where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government. I find that in the present case the appellant has claimed the ITC of amount of CENVAT credit carried forward in return relating to period ending with day immediately preceding the appointed day, however, I find that the said amount of credit relates to goods manufactured and cleared under exemption notification. Hence, I find that it is not according to the provisions of Section 140 of the CGST Act, 2017.

Further, it is also provided that the registered person shall be allowed to take credit which was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under CGST Act, 2017. In the present case I find that the appellant was availing the exemption benefit of Notification issued under Section 5A of the Central Excise Act, 1944 and therefore in terms of Rule 11 of the Cenvat Credit Rules, 2004 no cenvat credit on any inputs or capital goods was admissible to the appellant. However, the appellant has kept on showing the Cenvat balance in ER-1 returns of such credit. Though the above Cenvat credit was not eligible to be carried forward, the Appellant has carried forward the same irregularly and claimed the same by filing the TRAN-1 in present case. Therefore, I find that this is not according to the provisions of Section 140 of the CGST Act, 2017.

4(vi). Considering the foregoing facts, I hereby referred the provisions of Section 73 of the CGST Act, 2017, the same is as under :

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than 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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

***(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.*

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

In view of above, it is very much clear that in the matter of Input Tax Credit wrongly availed or utilized, as per section 73 of the CGST Act, 2017 the proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order. As per sub-section (10) the proper officer shall issue the order within three years from due date for furnishing annual return. It is obvious that due date for furnishing annual return for F.Y. 2017-18 falls after 31.03.18 and in the present case the appellant has filed said annual

return on 31.01.2020 and demand in question is issued by proper officer on 04.12.2020. Therefore, on carefully reading the above provisions, I do not find any force in appellant's contention that the demand is time barred.

In view of above, it is also very much clear that in the matter of Input Tax Credit wrongly availed or utilized, as per section 73 of the CGST Act, 2017 such person is liable to pay such ITC with interest under Section 50. Penalty is also leviable under the provisions of CGST Act, 2017. Therefore, I do not find any force in appellant's contention that penalty is not justified in present case.

5. In view of the foregoing facts I do not find any force in the contentions of the *'appellant'*. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is legal and correct and as per the provisions of GST law.

6. Accordingly, I do not find any reason to interfere with the decision taken by the *adjudicating authority* vide *"impugned order"*. In view of above discussion, I reject the appeal filed by the *'appellant'*.

7. 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.

31/10/22

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 31.10.2022

Attested
31/10/2022
(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.
To,
M/s. Soma Textiles & Indusries Ltd.,
Rakhial Road, Rakhial, Ahmedabad – 380023

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-I, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File