



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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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2969/2023 19462-34
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-180/2023-24 and 12.12.2023
(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	14.12.2023
(ङ)	Arising out of Order-In-Original No. MP/GST/04/BBG/Superintendent/AR-IV/22-23 dt. 28.03.2023 passed by The Superintendent, CGST & CX, Range-IV, Division IV, Ahmedabad South.	
	Name of the Appellant	Name of the Respondent
(च)	M/s Wipro Enterprises Pvt. Ltd., Sy. No. 390, 330, NH No.8, Opp. GEB Office, Jetalpur, Ahmeabad - 382427	The Superintendent, CGST & CX, Range-IV, Division IV, Ahmedabad South


(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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
(i)	(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 <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-APPEAL

BRIEF FACTS OF THE CASE:

M/s. Wipro Enterprises Private Ltd., Sy.No.390, 330, N.H.No.8, Opp. GEB Officer, Jetalpur, Ahmedabad Gujarat 382 427, (hereinafter referred to as the "appellant") has filed the appeal on 11.07.2023 against Order-in-Original No. MP/GST/04/BBG/Superintendent/AR-IV/22-23 dated 28.03.2023 (date of communication of order is 25.04.2023) (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST &C.Ex., Range-IV, Division- IV, Ahmedabad South Commissionerate, (hereinafter referred to as the "adjudicating authority") for excess claim of ITC in GSTR-3B/9 in the context of ITC appearing in GSTR 2A, amounting to Rs. 15,02,111/- under Section 73(1) of the CGST Act, 2017 and corresponding State GST Act, Section 20 of the IGST Act along with interest under Section 50 (3) of the CGST Act, 2017 and penalty under Section 74(1) read with Section 122(2)(a) of the CGST Act, 2017.



Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAJCA0072C1ZB, are engaged in the activity of Trading and Wholesale Distributorship of Soap, Organic Surface-Active Products and preparations for use as soap in the form of Bars, Cakes, Molded Pieces or Shapes falling under HSN 34011190, Lamps and Lighting Fittings including Search Lights and Spotlights and Parts thereof falling under HSN 94051090, Other Furniture and Parts thereof - Wooden furniture of a kind used in offices falling under HSN 94033090. The appellant is also availing the facility of Input Tax Credit. During the scrutiny of returns of the appellant for the Financial Year 2017-2018, it was observed that the appellant had availed and utilised Input tax Credit in GSTR 3B return/Table 4(A)(5) to GSTR 9 return which was in excess to what was available to them under GSTR 2A return/Table 8A of GSTR 9 return. The appellant has taken Input tax Credit amount to Rs.15,02,111/- (Rs.94500/- (IGST) + Rs.703823/- (CGST) + Rs.703823/- (SGST)) on the basis of invoices, which were not reflected in concerned GSTR-2A.

3. The appellant was further issued show Cause Notice dated 20.09.2022 and confirm the said demand. Further, the adjudicating authority vide his impugned order confirmed the demand to recover the ITC of amounting to Rs. 15,02,111/- under the provisions of Sections 73(1) of the CGST Act read with the SGST Act, 2017 along with interest under Section 50(3) of the CGST Act read with the SGST Act, 2017 and 10% penalty amounting to

Rs.1,50,211/- under Section 73(1) read with Section 122(2)(b) of the CGST Act read with similar provision of SGST Act, for the following reasons :

- ❖ That the tax payer has availed ineligible ITC in contravention to Section 16(2) of the CGST Act, 2017 and SGST Act;
- ❖ That the appellant instead of following the procedure as mentioned in Para 4.1.1 of Circular No.183/15/2022-GST dated 27.12.2022 has not produced any certificate for the concerned supplier from the Chartered/Cost Accountant certifying that supplies in respect of the said invoices have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR-3B. Instead relied upon the judgements of High Courts;
- ❖ That the appellant did not turn up for personal hearing inspite of giving them ample opportunity; and neither submitted additional documents/information;
- ❖ Further, the appellant have contravened the provisions of Sections 39(7) of the CGST Act, 2017 read with Rule 85(3) of CGST Rules, 2017;

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 10.10.2023 for the following reasons:



- i. The Ld. Respondent failed to appreciate that the mismatch between ITC availed in GSTR-3B and ITC appearing in GSTR-2A is inherent and the conditions of Section 16 prevailing during FY 2017-18 were not practically possible;
- ii. It is submitted that there is always a timing differences in reporting of transactions by the suppliers on the GST portal and booking of the said invoices in the books of accounts of the Appellant. The Appellant as a matter of practice, avails ITC as per input tax register pursuant to the goods/services being supplied by the suppliers which are received by the Appellant and invoices of the suppliers being booked in the books of accounts of the Appellant. On the other hand, the suppliers comply with their requirement to report their periodic liability in their respective GSTR-1 returns which gets reflected as GSTR-2A for the Appellant on periodic intervals.
- iii. It is submitted that the Ld. Respondent while alleging the mismatch in ITC availed by the Appellant have compared the GSTR-3B returns filed during FY 2017-18 with the respective GSTR-2A generated on the portal for the said period without considering the fact that there could be timing difference in booking of the supplier's invoices in Appellant's records as compared to the compliance done by the supplier on their due dates, which could clearly result in difference in the credit availed as per Input tax credit / purchase register vis-a-vis GSTR-2A appearing on the GST portal. 1.3 Further, the Appellant submits that the main ground for rejecting the differential ITC availed while GSTR 3B in comparison to ITC

available as per GSTR 2A is that the Appellant did not comply with provisions laid down under Section 16 (2) of the CGST Act.

iv. It is submitted that the Appellant has complied with the conditions stipulated at clauses (a) & (b) of the Section 16(2) of CGST Act. However, there were no mechanism on the GSTN portal during FY 2017-18 in order to verify whether the supplier has paid the underlying taxes and filed their GST returns. Since, it was not practically possible for a taxpayer to ascertain the same, it is not possible to comply with the condition mentioned at clause (c) and (d) of Section 16(2) of the CGST Act. The Appellant wishes to submit that upon realizing the practical challenges being faced by the taxpayers & based on learnings obtained, the GSTN portal was further upgraded/amended from time to time and added multiple other functionalities & features. On these lines, later on, the GSTN initiated a mechanism of highlighting GSTR 1 filing status of the vendors in taxpayers GSTR 2A. Now these days, the taxpayer can see whether the vendor/supplier has filed its GSTR 1 as well as GSTR 3B by downloading its GSTR 2A.

v. The Appellant submits that no such mechanism was available in FY 2017-18 to ascertain whether the supplier has paid the taxes to the Government and filed their GST returns, it is not possible to comply with conditions laid down under Section 16(2). When there is no mechanism to comply with the conditions mandated by the Government, then, the Appellant strongly submits that they should not be punished by denying ITC so availed based on complying with clauses (a) and (b) of Section 16(2) of the CGST Act and imposing interest & penalties.

vi. Apart from the above, it is submitted that considering the above practical challenge, the Government has issued a circular regarding mismatches between GSTR 3B vs GSTR 2A specifically for FY 2017-18 & FY 2018-19. As per Circular No. 183/15/2022-GST dated 27.12.2022 issuing clarification to deal mismatches between ITC as per GSTR 3B and GSTR 2A for FY 2017-18 & FY 2018-19, the proper officer will only ensure the following three aspects:

- (i) The recipient is in possession of tax invoice/debit note;
- (ii) The taxpayer has received the goods/ services; and
- (iii) The taxpayer has made the payment to the supplier.

vii. Further, the circular mentions that in case the mismatch for a particular vendor is upto INR 500,000/- (tax amount), the taxpayer may give a self-declaration on complying the above parameters, and in case the difference is more than INR 500,000/- (tax amount), certificate from a Chartered Accountant may be produced.

viii. The Appellant submits that the Circular was issued on 27.12.2022 and the Appellant had filed its reply to the SCN on 13.10.2023 (i.e. much after filing its reply to the SCN). Since the notice for attending the personal hearing was not received, the Appellant could not attend the hearing and represent the matter. The Appellant could not take the benefit of Circular issued by CBIC. The Appellant humbly prays that they are in the process of obtaining the required certificates from the



vendor and craves leave to submit the self-declaration as well as a certificate from the Chartered Accountant in relation to the mismatch between ITC availed in GSTR 3B vs ITC available as per GSTR 2A for FY 2017-18 before your Honours at the time of hearing of the appeal. Accordingly, it is submitted that the Appellant has availed the ITC in line with the provisions laid down under the GST laws, and there is no instance

- ix The Hon'ble Punjab and Haryana High Court in the matter of HSIL limited vs. Union of India and others [TS-525-HC-2020], where in the Petitioner argued that input tax credit was a vested right and the procedural law prescribed by the Rules cannot override or curtail the benefit envisaged by the substantive law prescribed by the parent act (i.e. GST Act)
- x The Ld. Respondent failed to issue a well-reasoned speaking order and the demand of the alleged tax liability has been confirmed without any basis whatsoever
- xi. It is submitted that the Ld. Respondent at Para 13.4 of the OIO simply stated that the Appellant did not meet the condition stipulated at clause (c) of Section 16(2) of the CGST Act. However, the Ld. Respondent did not appreciate the fact that in practice or on the ground, adherence to Section 16 (2)(c) of the CGST Act is not feasible. During FY 2017-18, the taxpayers were not provided with any mechanism to identify whether the vendor or supplier has discharged the underlying tax liability to the Government. In the absence of any mechanism to ascertain tax payment, no ITC should be denied on account of non-compliance or non-adherence to condition mentioned at Clause (c) of Section 16(2) of the CGST Act. Hence, the said demand should be liable to be dropped off. It is submitted that a speaking order ensures that the principles of natural justice are followed which reduces arbitrariness and it is obligatory on the part of the judicial or quasi-judicial authority to pass a reasoned order while exercising statutory jurisdiction. In the instant case the Ld. Respondent merely passed the impugned order upholding the demand on account of the alleged tax liability (on account of disallowance of ITC) without stating a clear and reasoned order.
- xii Levy of interest u/s 50 and Penalty under Section 73 of the CGST Act cannot be sustained in absence of any liability to pay the tax. The Appellant further submits that the question of interest will not arise in the present case as the levy of interest arises when there would be any liability of tax. In order to attract Section 50(1) of CGST Act, there must be a situation where there is a liability to pay tax. In other words, if there is no liability to pay tax, no interest u/s 50(1) should be payable.
- xiii Similarly, penalty can be imposed only when there is a short payment of tax or excess availment of tax/credit by the Appellant. In the instant case, the Appellant has sufficient balance in the GSTR 2A (i.e. excess ITC available in the GSTR 2A in comparison to GSTR 3B), there is no instance of short payment or excess availment of any tax. Therefore, the Appellant submits that the penalty should be liable to be set aside. With



the above submissions, the appellant has prayed to set aside the impugned order.

- xvii The appellant had furnished additional submissions dated 09.11.2023 vide which it has been stated that an amount of Rs.5,45,278/- has been reversed by them by paying the amount vide GST DRC-03 AD240120020774P dated 30.01.2020, however due to oversight copy of the DRC-03 was not submitted at the time of adjudication of the show cause notice.
- xv Further, Certificates from their vendor M/s. Ideal Lighting Systems Pvt. Ltd., in terms of Circular No. 183/15/2022-GST dated 27.12.2022 has also be obtained, whereby it has been certified by the vendor that they had, incorrectly reported transactions in GSTR-1 but have paid the tax to the Government treasury.
- xvi. That as they have enough balance in their Electronic Credit ledger till March 2022, and hence interest under Section 50(3) of the CGST Act 2017 cannot be demanded till March'2022.

PERSONAL HEARING :

5. Personal hearing in the present appeal was held on 08.12.2023. Shri Ankaj Agarwal, Authorised representative appeared before me on behalf of the appellant. It has been stated by him that Rs.5,45,278/- has been already paid. In respect of Rs.8,37,582/-, Certificate as per Circular No. 183/15/2022-GST dated 27.12.2022. The remaining amount of Rs.1,19,759 which they are ready to pay. As regards the interest, since they have sufficient balance therefore no interest is payable till March'2022 as per Rule 82B(3) of CGST Rules, 2017 and to support their claim balance of ITC credit ledger is submitted. In view of the above, requested to allow appeal accordingly.

DISCUSSION AND FINDINGS:

6. I have gone through the facts of the case, written submissions made by the 'appellant'. The main issue to be decided in the instant case whether the appellant had wrongly availed Input Tax Credit in comparison to GSTR-2A with GSTR-3B/9, amounting to Rs. 15,02,111/-along with interest and penalty.

7. At the foremost, I observed that in the instant case the "impugned order" is of dated 28-04-2023 and the present appeal is filed on 28.07.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

8 In the instant case, adjudicating authority is contending that the appellant has contravened the provisions of Section 16 and Section 39(7) of CGST Act 2017 read with Rule 85(3) of the CGST Rules, 2017. In this regard, I hereby refer the relevant provisions as under:

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

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

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

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

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

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

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

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

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

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

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

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

***Section 39. Furnishing of returns.-**

3[(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:



[Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,—

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed]

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.]

9. In this aspect, I would also like to discuss Rule 36 of the CGST Rules, 2017 which clearly mentions about the Documentary requirements and conditions for claiming input tax credit extract of which is reproduced as under:-

Rule 36 : Documentary requirements and conditions for claiming input tax credit.-

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31,

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made there under for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed [10 per cent]43 of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

10. In this regard, it is observed that the appellant had availed excess credit of input tax credit in comparison of GSTR-3B/9 with that of GSTR-2A. The contentions of the appellant in their grounds of appeal stating that due to time differences in reporting of transactions by the suppliers on the GST portal and booking of the said invoices in the books of accounts of the appellant. On the other hand, the suppliers comply with their requirement to report their periodic liability in their respective GSTR-1 returns which gets reflected as GSTR-2A for the Appellant on periodic intervals.

11. Restrictions regarding ITC availment by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A as provided under Rule 36(4) of the CGST Rules, 2017 was only with effect from 19th October, 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of the Act. Circular No.183/15/2022-GST dated 27.12.2022 clarifies and issues guidance in the following scenario.

S. No	Scenario	Clarifications
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
d.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.



12. In the instance case, the appellant falls under the 'd' category, I find that as per the clarification in the Circular No.183 to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18. The difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 of the said Circular which is as under:

"4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;

ii) that he has received the goods or services or both;

iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier. Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019."

13. From the above clarification, I am of the view that the adjudicating authority is required to follow the above procedure for handling the difference in GSTR-2A Versus GSTR-3B. During personal hearing they had furnished copy of such Certificate in respect of one Vendor named M/s. Ideal Lighting Systems Pvt. Ltd. for an amount of Rs.1,98,139.50/, whereby it has been reported that they incorrectly reported the transactions in their GSTR-1 but have paid the Government treasury. Accordingly, the appellant in their written submissions have agreed that they would submit Certificates from others their vendors also for the remaining amount. Hence, the demand under provisions of Sections 73(1) of the CGST Act, 2017 with the corresponding State Act read with the provisions of Section 20 of the IGST Act, 2017 along with interest and penalty needs to be set aside in terms of Circular No.183/15/2022-GST dated 27.12.2022. to the tune of Rs. 15,02,111/- subject to verification of relevant documents as envisaged under Circular No.183/15/2022-GST dated 27.12.2022.

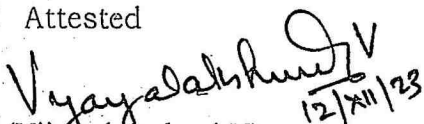
14. In view of above discussions, I allow the appeal of the "Appellant" to the above extent, with a direction to submit all the relevant documents/submissions before the adjudicating authority for verification of the facts, who shall verify the facts as directed above and pass order accordingly. The adjudicating authority may also take up the matter with concerned jurisdictional officer as provided in Circular No.183/15/2022-GST dated 27.12.2022.

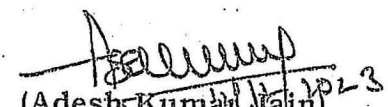
15.. The impugned order passed by the adjudicating authority is modified to the above extent.

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

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

Attested


(Vijayalakshmi V)
Superintendent (Appeals)
Central Tax, Ahmedabad.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 12.2023



By R.P.A.D.

To

M/s. Wipro Enterprises Pvt Ltd.,
Sy No.390, 33,NH No.8, Opp GEB Office,
Jetalpur
Ahmedabad, Gujarat- 382427.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST &C.Ex, Ahmedabad South Commissionerate.
4. The Dy. / Assistant Commissioner, CGST & C.Ex, Division-IV, Ahmedabad South Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad,
6. Guard File

