



सत्यमेव जयते

## 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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टेलिफैक्स 07926305136



DIN- 20240264SW0000777A53

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/3479/2023 -APPEAL / 2203 - 22PK

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 224 /2023-24

दिनांक Date : 20.02.2024 जारी करने की तारीख Date of Issue : 27.02.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

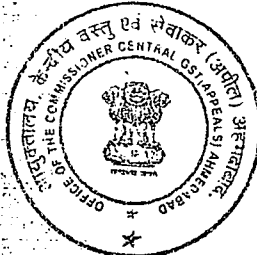
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/01/Supdt./AR-III/ Div-IV/23-24 dated 08.09.2023 issued by The Superintendent, CGST Div-IV, Ahmedabad South.

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

Appellant	Respondent
M/s Ankur Plastic Industries, 229, GF, Ranipur Patiya, Opp Cozy Hotel, Narol, Ahmedabad, Gujarat 382405	The Superintendent, CGST Div-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.
(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> .



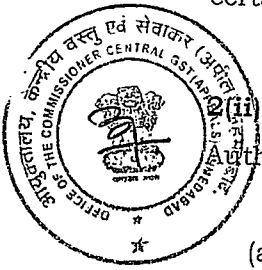
ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s. Ankur Plastic Industries, 2529, GF, Ranipur Patiya, Opposite Cozy Hotel, Narol, Ahmedabad, Gujarat 382405, (hereinafter referred to as the "appellant") has filed the appeal on 16.10.2023 against Order-in-Original No. MP/01/Supdt./AR-III/Div-IV/23-24, dated 08.09.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-III, Division- IV, Ahmedabad South Commissionerate (hereinafter referred to as the "adjudicating authority") for excess claim of ITC in GSTR-3B in the context of ITC appearing in GSTR 2A and Short payment of GST, alongwith interest and penalty.

2(i). Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAFFA4856KIZC, are engaged in the business of "Articles for the Conveyance or Packing of Goods, Of Plastics" falling under HSN Code39. The appellant is also availing the facility of Input Tax credit under the provisions of Section 16 of the Central Goods and Services Tax Act, 2017. During the course of scrutiny of the returns filed by the taxpayer during the year 2017-18 under Section 61 of the CGST Act, 2017 certain discrepancies were noticed and hence an ASMT-10 was issued dtd. 30.06.2022.

In this regard, SCN was issued on 15.11.2022 and accordingly Adjudicating Authority issued impugned order and confirm the following demand:-

- (a) of excess claim of ITC in GSTR-3B in the context of ITC appearing in GSTR 2A amounting to Rs. 9,62,608/- (CGST:- 4,81,304/- and SGST:- 4,81,304/- under Section 74(1) of the CGST Act 2017 alongwith interest under Section 50 of the CGST Act, 2017 and penalty under Section 74 of the CGST Act, 2017.
- (b) of Rs. 11,754/- (CGST 5,877 + SGST 5,877/-) for wrong availment of inadmissible Input Tax credit as per Section 16 of CGST Act, 2017 under 74(1) of the CGST Act, 2017 **and appropriate the tax and interest amount as the same has been paid by the appellant;**
- (c) of short payment of GST as per GSTR returns for the year 2017-18 of Rs. 1,34,998/- (CGST:- 67,499/- and SGST:- 67,499/-) under the provisions of Sections 74(1) of the CGST Act 2017 alongwith interest under Section 50 of the CGST Act, 2017 and penalty under Section 74 of the CGST Act, 2017;
- (d) of Rs. 3,892/- (CGST : Rs. 1,946/- + SGST : Rs. 1,946/-) for interest on late filing of GSTR3B returns under prescribed provisions of CGST Act 2017 & Rules made there under **and appropriate the same as the same has been paid by the appellant;**

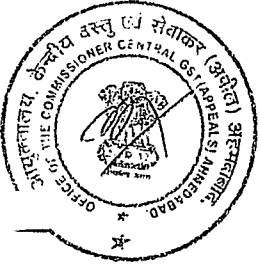


(e) of Rs. 5,900/- (CGST Rs. 2,950/- + SGST Rs. 2,950) of late fees under prescribed provisions of CGST Act 2017 & Rules made there under **and appropriate the same as the same has been paid by the appellant** on the following grounds.

2(iii). So the issue to be decided in the instant case are whether the appellant (i) Claim excess ITC in GSTR-3B in the context of ITC appearing in GSTR 2A amounting to Rs. 9,62,608/- (CGST:- 4,81,304/- and SGST:- 4,81,304/- under Section 74(1) of the CGST Act 2017 alongwith interest under Section 50 of the CGST Act, 2017 and penalty under Section 74 of the CGST Act, 2017; (ii) Liable to pay penalty of Rs. 11,754/- (CGST 5,877 + SGST 5,877/-) for wrong availment of inadmissible Input Tax credit as per Section 74 of CGST Act, 2017 and (iii) Made short payment of GST as per GSTR returns for the year 2017-18 of Rs. 1,34,998/- (CGST:- 67,499/- and SGST:- 67,499/-) under the provisions of Sections 74(1) of the CGST Act 2017 and liable to pay interest under Section 50 of the CGST Act, 2017 and penalty under Section 74 of the CGST Act, 2017.

3. The adjudicating authority passed the impugned order and confirms the demand as mentioned above on the following grounds:

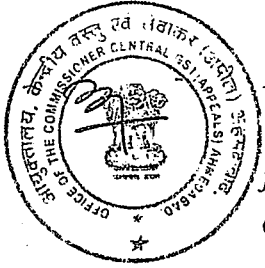
- for point a, the contention of the assessee that they were not asked to produce any books of accounts is in itself false as they were issued the necessary ASMT- 10, dtd. 30.06.2022, DRC-01A dtd. 23.08.2022 and thereafter amended DRC-01 A, dtd. 21.10.2022. These all authorized forms were pre necessities before the issuance of SCN i.e. DRC-01. If the tax payer wanted to, then they could have very well produced all the documentary evidence to support their claim. However, they were unable to produce any such documentary evidence or proof. The fact of the matter remains that the ITC taken by them in GSTR-3B was not available to them as the same was not reflected and available in GSTR-2A. The tax payer not only availed such inadmissible ITC, but also moved on to utilized the same and passed it on to their customers for the period July 2017 to March 2018;
- that the appellant submitted a statement of invoices available with them and ITC available as per GSTR-2A. However, these figures have not been- corroborated with any documents. Even going by their reply, it is clearly seen that the ITC as per books is far more than ITC as per GSTR-2A. Hence in their reply itself, they have committed that the ITC availed is more than what was available in GSTR-2A;
- the inward supplies for which the said taxpayer has wrongly availed ITC of Rs. 9,62,608/- (CGST:- 48130+/- and SGST:- 481304/-) are not reflecting in GSTR 2A of the said taxpayer as their suppliers had not filed and mentioned these supplies in their GSTR I returns. The said taxpayer has also agreed in their submission that they had availed ITC of Rs. 9,62,608/- which is not reflecting in their GSTR 2A returns; that no evidence has been submitted by the said taxpayer/ Authorized Representative that



the tax for these supplies had been paid to the Government. Further, no evidence has been submitted showing that the said taxpayer has made payment to the supplier for these supplies which are not reflecting in GSTR2A return; that no evidence like delivery challan etc. has been submitted as a proof that they had received the said goods;

Thus, the said taxpayer has not fulfilled the conditions of Section 16(2) of the CGST Act, 2017 at the time of availment of said ITC of Rs. 9,62,608/- which was not reflecting in their GSTR 2A return. The said taxpayer has also utilized the said wrongly availed ITC of Rs. 9,62,608/- for payment of tax. The tax payer has also in its reply relied on some judgments and some clarifications etc. However, I find that the Section and Rules shall hold, as the facts and circumstance could have been different;

that the CBIC has issued Circular No. 183/15/2022-GST dated 27.12.2022 issuing there under "Clarification 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 and 2018-19". In the absence of documentary evidences as mentioned supra and detailed reply it is not possible to give any benefit of the Circular dated 27.12.2022 to the said taxpayer. Thus, I hold that the said taxpayer has availed and utilized excess ITC of Rs. 9,62,608/- via GSTR 3B returns than the ITC available to them as per GSTR2A returns and it is required to be recovered from them under the provision of Section 74(1) of the CGST Act, 2017;

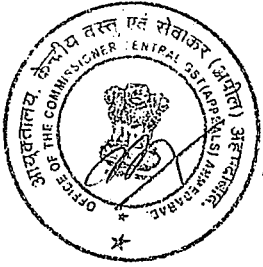


For point b, the matter wrong availment of inadmissible Input Tax Credit as per Section 16 of CGST Act 2017 of Rs. 11,754/- (CGST:- 5877/- and SGST:- 5877/-) which was for supplies taken from M/s. Shiv Plastic (Legal name : Hiteshbhai Babubhai Jogani) GSTIN : 24AGZPJ2670GIZ3, For this supply, the supplier has not filed their GSTR-3B returns as the counter filing status shows 'N'. Therefore the ITC passed on by M/s. Shiv Plastic without payment of GST is admissible to the noticee. I and that the noticee has vide its reply dtd. 14.11.2022 has paid up the inadmissible ITC and produced the Challan and DRC-03 bearing ARN No. AD2411220051620. Hence, the noticee is in agreement with this point and has paid up the dues. I hereby propose to appropriate this amount paid against the corresponding demand in the SCN;

For point c, that the GST payment for the months of August and September 2017 was less to the tune of Rs. 95,566/- and 39,432/- respectively, to that compared to the GST liability declared. The noticee has vide its reply simply produced a comparative sheet in tabular form showing the liability as per books and liability paid as per GSTR-3B. According to the same, there is no unpaid liability and they have paid all the liabilities including for the months stated above. To verify the claim of the notice department gone through the GSTR-3B returns filed by them for the month of August 2017 and September 2017 and find that the claim of the notice is totally false and the unpaid liability for the months is exactly the same i.e. of Rs. 1,34,998/-. In view of the same, I find that in absence of any other evidence produced by the notice, the demand of short payment of GST stands.

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 16.10.2023 for the following reasons:

- that under Section 42(3) of the CGST Act", the department has to go to both supplier and recipient in case of mismatch of GSTR-3B and GSTR- 2A. In M/s. D. Y Beathe/ Enterprises v. The State Tax Officer (Data Cell) [W.P.(MD)Nos.2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177, 2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 of 2021 dated February, 2021], quashed the order passed by the officer levying the entire tax liability on the purchasing dealer without involving the seller, where the payment of tax has been made by the purchasing dealer, but the same has not been remitted to the Government by the Seller. Held that, the omission on the part of the Seller to remit the tax should have been viewed very seriously and strict action ought to have been initiated against the seller;
- As per Section 16(2)(c) of the CGST Act, if the supplier fails to file the return from his side, the benefit of ITC cannot be denied to the recipient for the same. That's because the recipient does not have any control on the omissions and errors committed by the supplier;
- We would like to bring to your attention CBEC circular No. 766/82/2003 dated 15.12.2003, in which it has been clarified that cenvat credit should not be denied to user-manufacturer as long as bonafide nature of the consignee's transaction is not doubted. Further, if the supplier has received the payment from the buyer in respect of goods supplied including excise duty, action should be initiated against the supplier;
- The Appellant places the reliance on a Press Release issued by the Government on 18.10.2018 and it was clarified in para-4 that, "It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GS7R-3B for the month of September 2018 is unfounded as the same exercise can be done thereafter also;
- the recent judgment in the case of Diya Agencies v. The State Tax Officer [WP(C) No. 29769 of 2023 dated September 12, 2023], the Hon'ble Kerala High Court has held that the denial of ITC merely on ground that in Form GSTR-2A said tax was not reflected to petitioner was not sustainable and matter was to be remanded back. Also, the Court directed Revenue to give opportunity to petitioner to give evidence in respect of his claim for Input Tax Credit;
- Rule 36(4) was inserted with effect from. 09.10.2019. Therefore, effectively no matching of ITC was required up to 08.10.2019;
- The adjudicating authority has grossly erred in finding made at Para-22 of the impugned order regarding confirming the demand of Rs. 1,34,998/-. The appellant vide its reply dated 27.02.2023 has clearly stated in Para-4.4 that Rs. 1,34,998/- worth of tax has been paid through debiting the electronic cash ledger vide entry no.



DC2411170238973 and DC2411170239207 both dated 21.11.2017. We further rely on and reiterate Para-4.4 of our reply dated 27.02.2023 for the sake of brevity. Thus, there is no short payment of tax and entire tax liability has been discharged by the appellant;

- The demand of interest in the present case is unsustainable in view of unsustainability of the demand of ITC as explained in above mentioned paragraphs. Moreover, interest is chargeable only in cases where there is wrong availment of ITC or short payment of tax. Whereas in the present case, such demand of ITC or short payment of tax cannot be sustained. Therefore, question of payment of interest does not arise. Under the circumstances, imposition for levy of interest deserves to be quashed;
- the proposal to levy penalty under section 74 is untenable in the eyes of law in the absence of any material evidence to support the intention to evade tax, either by way of fraud or through wilful misstatement or through suppression of facts. Every additional tax liability does not fit into the frame of section 74. This being degrading the integrity and honesty of taxpayers are to be invoked with judicious mind with cogent evidence. Thus, in the present case the penal provisions are not invocable when there is no malafide suppression or intention to evade tax on part of the appellant.

**PERSONAL HEARING :**

5. Personal hearing in the present appeal was fixed/held on 13.12.2023, 20.12.2023 and 04.01.2024. Shri Kunal V. Desai, C.A., Authorized Representative appeared in person on behalf of the appellant in the present appeal. During P.H. they have submitted that the provisions of Section 16(4) came into effect w.e.f. October 2019 and the instant case is prior to that, therefore taxpayer cannot be held responsible and legitimate benefit of ITC cannot be denied for non compliance of supplier. He further reiterated the additional submissions dated 04.01.2024 and requested to allow appeal.



**DISCUSSION AND FINDINGS:**

6. I have gone through the facts of the case, written submissions, additional submission made by the 'appellant'. I find that the main issue to be decided in the instant case whether:

(i) the appellant claim excess ITC in GSTR-3B in the context of ITC appearing in GSTR 2A amounting to Rs. 9,62,608/- (CGST:- 4,81,304/- and SGST:- 4,81,304/- under Section 74(1) of the CGST Act 2017 alongwith interest under Section 50 of the CGST Act, 2017 and penalty under Section 74 of the CGST Act, 2017;

(ii) the appellant liable to pay penalty of Rs. 11,754/- (CGST 5,877 + SGST 5,877/-) for wrong availment of inadmissible Input Tax credit as per Section 74 of CGST Act, 2017;

(iii) the appellant made short payment of GST as per GSTR returns for the year 2017-18 of Rs. 1,34,998/- (CGST:- 67,499/- and SGST:- 67,499/-) under the provisions of Sections 74(1) of the CGST Act 2017 and liable to pay interest under Section 50 of the CGST Act, 2017 and penalty under Section 74 of the CGST Act, 2017.

7(i). For point a, the appellant contended that the outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September 2018 is unfounded as the same exercise can be done thereafter. The appellant further contended that as per Section 16(2)(c) of the CGST Act, if the supplier fails to file the return from his side, the benefit of ITC cannot be denied to the recipient for the same. That's because the recipient does not have any control on the omissions and errors committed by the supplier.

7(ii). In the instant case adjudicating authority is contending that the appellant has contravened the provisions of Section 16 and Section 38 of CGST Act 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 utilisation of input tax credit admissible in respect of the said supply; and

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

**Section 38. Communication of details of inward supplies and input tax credit.\***

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

(i) by any registered person within such period of taking registration as may be prescribed; or

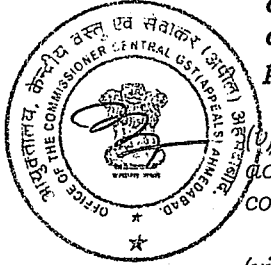
(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or

(vi) by such other class of persons as may be prescribed.]



7(iii). In this regard, it is observed that the appellant were asked to produce books of accounts and necessary documents to support their claim. For that the appellant were issued ASMT- 10, dtd. 30.06.2022, DRC-01A dtd. 23.08.2022 and thereafter amended DRC-01 A, dtd. 21.10.2022. These all authorized forms were pre necessities before the issuance of SCN i.e. DRC-01. However it appears that the appellant could not produced all the documentary evidence or proof to support their claim. The appellant submitted a statement of invoices available with them and ITC available as per GSTR-2A. However, these figures have not been- corroborated with any documents. Even going by their reply, it is clearly seen that the ITC as per books is far more than ITC as per GSTR-2A. The fact of the matter remains that the ITC taken by them in GSTR-3B was not available to them as the same was not reflected and available in GSTR-2A. Further it is observed that the adjudicating authority have tried to give the benefit of the Circular No. 183/15/2022-GST dated 27.12.2022 issued by the CBIC regarding "Clarification 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 and 2018-19". However, in the absence of documentary evidences as mentioned supra and detailed reply it is not possible to give any benefit of the Circular



dated 27.12.2022 to the appellant. Further, the appellant had not submitted any evidence like delivery challan, as a proof that they had received the said goods and had made the payment to their supplier for these supplies which are not reflecting in GSTR 2A returns.

7(iv). Furthermore, as per the provision of Section 155 of the CGS Act, 2017, it is the responsibility of the availer of ITC, to prove that he was eligible to avail ITC on a supply. The said provisions stipulate:

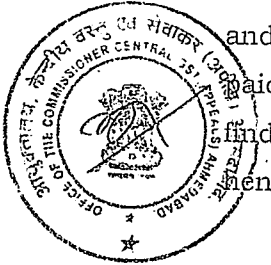
**"Section 155: Burden of proof:**

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."

Thus, I found that the appellant has availed and utilized excess ITC of Rs. 9,62,608/- via GSTR 3B returns than the ITC available to them as per GSTR2A returns and it is required to be recovered from them under the provision of Section 74(1) of the CGST Act, 2017 alongwith interest under Section 50 of the CGST Act, 2017 and penalty under Section 74 of the CGST Act, 2017.

8. For point b, it is observed from GSTR 2A return of the appellant that their supplier i.e. M/s. Hiteshbhai Babubhai Jogani having GST No. 24AGZPJ2670G1Z3, had not filed their GSTR-1 returns and passed on the fraudulent ITC to M/s. Ankur Plastic Industries (appellant). In view of the above it is observed that the appellant has contravened the provisions of Section 16(2)(c) of CGST Act 2017. Further the appellant has paid up the inadmissible ITC alongwith interest. Hence, the appellant is in agreement with this point and has paid up the dues, accordingly the adjudicating authority appropriated this amount paid against the corresponding demand in the SCN. In respect of imposition of penalty I find that the appellant has contravened the provisions of Section 16(2)(c) of CGST Act 2017 hence they are liable to pay penalty under Section 74 of the CGST Act, 2017.

9. For point c, it is observed that the appellant have short paid GST of Rs. 1,34,998/- during the month of August 2017 and September 2017 as per GSTR 3B returns. It is noticed that during the month of August-2017, the appellant have declared his tax liability of Rs. 5,38,954/- but they have discharged their tax liability of Rs. 4,03,956/- only from ITC. Therefore, it is found that the appellant have short paid GST of Rs. 1,34,998/- in their GSTR-3B returns during the said period and contravened the provisions of Section 39 of CGST Act 2017. Further the appellant has not produced any evidentiary documents that proves that they have not made short payment of GST of Rs. 1,34,998/- in their GSTR-3B returns. Further as per the additional submission the appellant stated that they have Paid the demand of Rs. 1,34,998/- through debiting the electronic cash ledger vide entry no. DC2411170238973 and DC2411170239207 both dated 21.11.2017. For that the appellant rely on and reiterate Para-4.4 of their reply dated 27.02.2023 for the sake of brevity. Thus, it is observed that there is no short payment of tax and entire tax liability has been discharged by the appellant.

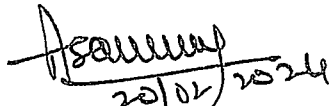


10. In view of the above, I, order as under:

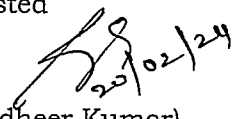
- (i) In respect issue in para 2(ii) (a), I confirm the demand of Rs. 9,62,608/- alongwith interest under Section 50 of the CGST Act 2017 and penalty under Section 74 of the CGST Act 2017.
- (ii) In respect issue in para 2(ii) (b), I impose the penalty of Rs. 11,754/- under Section 74 of the CGST Act 2017 as demand of Rs. 11,754/- alongwith interest has already been paid.
- (iii) In respect issue in para 2(ii) (c), I drop the interest imposed upon Rs. 1,34,998/- under Section 50 of the CGST Act 2017 and penalty imposed under provisions of Section 74(1) of the CGST Act 2017 as there is no short payment of tax and entire tax liability has been discharged by the appelliant.

Accordingly, I modify the Order-in-Original to above extent.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appelliant stands disposed of in above terms.

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: 20.02.2024

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To

M/s. Ankur Plastic Industries,  
2529, GF, Ranipur Patiya,  
Opposite Cozy Hotel, Narol,  
Ahmedabad, Gujarat 382405.

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(RRA), CGST & C.Ex, Ahmedabad South
5. The Dy./Assistant Commissioner, CGST & C.Ex, Division-IV, Ahmedabad South Commissionerate.
6. The Superintendent, CGST & C.Ex, Range-III, Division- IV, Ahmedabad South Commissionerate.
7. The Supdt.(Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File
9. P.A. File.

