



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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DIN- 20240564SW000027732B

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/3461/2024-APPEAL / 5308 - 13

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC- 25 /2024-25**

दिनांक Date : **09.05.2024** जारी करने की तारीख Date of Issue : 09.05.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

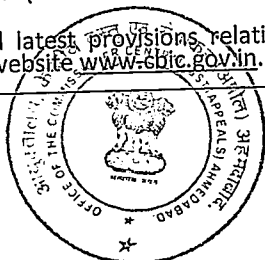
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. 21/CGST/Ahmd-South/AC/BAP/2023-24 dated 03.07.2023, (F.No.GEXCOM/ADJN/GST/520/2023-CGST-DIV-5-COMMRTE-AHMEDABAD (S) /475 issued by the Assistant Commissioner, CGST Div-V, Ahmedabad South.

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

Appellant	Respondent
M/s Sayaji Samruddhi LLP, 155-C, C/o N B Commercial Enterprises Ltd, behind C L High School, Kathwada, Ahmedabad, Gujarat, 382430	The Assistant Commissioner, CGST Div-V, 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) 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 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 .



अपीलिय आदेश/ ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Sayaji Samruddhi LLP, 155-C, C/o. N.B.Commercial Enterprises Ltd., Behind C.L.High School, Kathwada, Ahmedabad Gujarat 382430 (hereinafter referred to as "the appellant") against Order-In-Original No. GEXCOM/ADJN/GST/520/2023-CGST-DIV-5-COMMRTE-AHMEDABAD(S)/475 dated 03.07.2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST, Division-V, Ahmedabad-South Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Facts of the case in brief, are that the appellant were engaged in Construction Services in respect of residential and Commercial or Industrial Buildings and Civil Structures, Transport of Goods by Road and Construction of Residential Complexes. Their Services were classified under Chapter No. 00440290; 00440262; 00440334. They were registered under GST registration 24ACXFS9998JIZP. Audit of the records of the appellant was conducted for the period from July-2017 to March-2020 by the officers of CGST, Audit Commissionerate, Ahmedabad. During the course of audit, a Query Memo was issued to the appellant vide F.No.VI/1(b)-92/GST Audit/Cir-III/AP-18/2022-23 dated 30.08.2022. The appellant had submitted their replies to the queries vide letters dated 02.09.2022 and 22.09.2022. They had agreed to some of the observations of Audit and made partial payment of the dues. However, Final Audit Report was issued by the Audit vide FAR No. GST-629/2022-23 dated 23.09.2022. The objections raised by Audit vide the FAR are as under:

Revenue Para-1: Wrongly availed ITC in GSTR 3B over and above the eligible ITC as per GSTR 2A in contravention to provision of Section 16(2) of CGST Act, 2017 during the period of Audit.

The appellant had availed excess ITC in GSTR-3B in the financial year 2017-18, 2018-19 and 2019-2020 over and above the eligible ITC appeared in GSTR-2A return column No.8B (Pt.III) to GSTR-9 return for the respective period. The appellant was required to reverse a total of Rs.9,192/- IGST, Rs.26,32,537/- CGST and Rs.27,25,025/- SGST totaling to Rs.53,66,754/-. In response to query memo dated 30.08.2022, the appellant had given certain explanations vide their letter dated 02.09.2022 and revised the same, however, even in the revised reconciliation finalized after consideration of their explanation excess availment of ITC over and above the ITC appeared in GSTR-2A to the above extent observed. Therefore, the appellant has wrongly availed the ITC, without



satisfying the conditions prescribed under Section 16 of the CGST Act, 2017. Thus, the aforesaid ITC is to be disallowed and recovered from the appellant under the provisions of Section 74(1) of the Act read with the provisions of Section 20 of the IGST Act. It appears that the supplier would also be liable to pay interest on the non-reversal of ITC, under the provisions of Section 50(3) and liable for penal action under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122(2)(b) of the Act and Section 20 of the IGST Act.

Revenue Para-2: Non-payment of GST, tax under RCM on services received from unregistered person during 2017-18 till 12.10.2017.

The appellant had not/short discharged their liability against [the input / services valuing Rs.1,01,316/- received from unregistered person during 2017-18 as emerged from the labour charges ledger. As per Section 9(4) of the CGST Act, 2017, till 12.10.2017, the tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient. From the ledger, it appears that the tax payer being recipient have not paid the tax under RCM to the tune of Rs. 18,237/-. Therefore, the taxpayer is required to pay GST under RCM along with applicable interest and penalty. Thus, the appellant has contravened the provisions of Sections 39(7) of the CGST Act, 2017 read with Rule 85(3) of the CGST Rules, 2017. The aforesaid demand is required to be recovered from the appellant under the provisions of Section 74(1) of the Act alongwith interest under the provisions of Section 50(1) and penalty under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122(2)(b) of the Act.

Revenue Para-3 – Short payment of Tax under RCM on Security Services during 2019-20;

Upon verification of the Balance Sheet it was observed by Audit that the appellant have not discharged their liability arising in terms of Notification No. 13/2017-CT(R) dated 28.06.2017, as amended. Therefore, the taxpayer is required to pay GST/reverse the excess availed ITC along with interest and penalty.

The GST amount is calculated as Rs.29,874/- and the same is required to be recovered under Section 74 of the CGST Act, 2017 along with interest under Section 50(1) of the CGST Act, 2017 and penalty under the said act.

Revenue Para-4 – Wrong availment of ITC in respect of inputs and input services blocked under Section 17(5) of the CGST Act, 2017 during 2019-2020;

The taxpayer has taken Input tax Credit against invoice No. HOGS/ 10982 dated 06.03.2020 of M/s. Zaveri & Co. for purchase of 24 CT. GOLD BAR (10 Grams) which falls under block credit as per section 17(5) of CGST Act, 2017, which pertains to services for personal use during financial year 2019-20. Vide Section 17(5) of CGST and SGST Act 2017, the goods or services both used for personal consumption or not used in furtherance of business shall not be available for ITC availment. Amount of the above block credit is as under:

Year	IGST	CGST	SGST	Total
2019-2020	0	14962	14962	29924

The aforesaid ITC credit is required to be disallowed and recovered from the appellant under the provisions of Section 74(1) of the Act alongwith interest under the provisions of Section 50(1) and penalty under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122(2)(b) of the Act. The appellant agreed and paid the wrongly availed credit of ITC vide DRC dated 05.09.2022, however did not accept to pay the penalty.

Revenue Para-5: Short payment of tax against the tax payable as perGSTR-9 for the period 2018-2019:

Upon verification of GSTR-9 returns for the period from July.2017 to March,2020, it was observed that taxpayer has not/short discharged their liability as declared in tax payable in table 9 of GSTR-9 during the period 2018-19. However, on pointing out of the observation, the registered person has produced DRC Debit Entry No DC24 12200215626 dated 18.12.2020 evidencing payment of differential amount of tax along with interest during the filling of GSTR-9. Though the appellant paid the differential amount of tax along with interest, the amount was short paid by Rs.2,060/-.

Revenue Para- 6: Short payment of interest against the tax payable as per GSTR-9 for the period 2018-2019 and 2019-20.

Upon verification of GSTR-9 returns for the period from July.2017 to March,2020, it was observed that taxpayer has not/short discharged their liability as declared in tax payable in table 9 of GSTR-9 during the period 2018-19. However, on pointing out of the observation, the registered person has produced DRC Debit Entry No DC24 12200215626 dated 18.12.2020 evidencing payment of differential amount of tax during the filling of GSTR-9. Further, the appellant was also required to pay the leviable interest amounting to Rs. 15,668/- for the short payment which was communicated to them vide query memo dated 30.08.2022, in their reply vide their letter dated 02.09.2022 they informed to have paid the amount of Rs.15,668/- vide DRC dated 18.12.2020 and 24.02.2021. However, on perusal of the said DRC, it was



found that no such amount has been paid by them. Hence, the Interest amounting to Rs.15,668/- stands recoverable.

3. The appellant did not agree to the objections of audit and preferred not to pay the GST and/or Interest, Penalty. Accordingly Show Cause Notice No. 171/2022-23 dated 28.11.2022 was issued to the appellant wherein it was alleged that :

- Input Tax Credit amount to Rs.53,66,754/- [Rs.9,192/- (IGST) + Rs.26,32,537/- (CGST) + Rs.27,25,025/- (SGST)] (Rupees Fifty Three Lakhs Sixty Six Thousand Seven Hundred and Fifty Four only) as stated under Para 3 of the SCN (Revenue Para No. 01) should not be disallowed, demanded and recovered from them, under the provisions of Sections 74(1) of the CGST Act,2017 read with the provisions of Section 20 of the IGST Act 2017 alongwith Interest and penalty;
- Tax amounting to Rs.18,237/- [Rs.9,118/- (CGST) + Rs.9,118/- (SGST)] (Rupees Eighteen Thousand Two Hundred and Thirty Seven only) as stated under Para 4 of this SCN (Revenue Para No. Z) should not be demanded and recovered under the provisions of Section 74(1) of the CGST Act,2017 alongwith interest and Penalty;
- Tax amounting to Rs.29,874/- [Rs.14937/- (CGST) + Rs.14937/- (SGST)] (Rupees Twenty Nine Thousand Eight Hundred and Seventy Four only) as stated under Para 5 of the SCN (Revenue Para No.3) should not be demanded and recovered under the provisions of Sections 74(1) of the CGST Act,2017 alongwith Interest and penalty. Interest amount of Rs.8552/- already paid was proposed to be appropriated.

Input Tax Credit amounting to Rs.29,924/-[Rs.14,962/- (CGST) + Rs.14,962/- (SGST)] (Rupees Twenty Nine Thousand Nine Hundred and Twenty Four only) as stated under Para 6 of this SCN (Revenue Para No. 4) should not be disallowed, demanded and recovered from them, under the provisions of Sections 74(1) of the CGST Act. 2017. and the tax amount of Rs.20,648/- already paid vide DRC-03 debit entry no. DC2409220010298 dated 05.09.2022 should be appropriated against the above demand of tax;

- Tax amounting to Rs.1,58,320/-[Rs.79160/- (CGST). + Rs.79160/- (SGST)] (Rupees One Lakh fifty eight thousand three Hundred and Twenty only) as stated under Para 7 of the SCN (Revenue Para No. 5 & 6] should not be demanded and recovered from them, under the provisions of Sections 74(1) of the CGST Act, 2017 alongwith Interest and Penalty. The tax amount of Rs.1,56,260/- already paid vide DRCR03 debit entry No. DC2412200215626 dated 18.12.2020 and DRC-03 debit entry No, 18 DC2402210268014 dated 24.02.2021 should not be appropriated against the above demand of tax

4. The Show Cause notice was decided by the adjudicating authority vide the impugned order wherein:

- (i) Input tax Credit amount to Rs.53,66,754/- (Rs.9,192/- IGST + Rs.26,32,537/- CGST + Rs.26,32,537/- SGST) was disallowed and ordered

to be recovered under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 alongwith Interest at the applicable rate under the provisions of Section 50(3) of the CGST Act, 2017;

(ii) Penalty of Rs.53,66,754/- was imposed under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Sections 122(2)(b) of the Act, 2017 and Section 20 of the IGST Act, 2017 on the above tax.

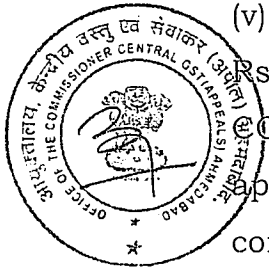
(iii) Tax amounting to Rs.18,237/- was confirmed under the provisions of Sections 74(1) of the CGST Act 2017. However, since the amount of Rs.13,327/- already paid, it is appropriated towards said liability and remaining demand of Rs.7,910/- is to be recovered alongwith Interest at the applicable rate under the provisions of Section 50(3) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017;

(iv) Penalty of Rs.20,614/- was imposed under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Sections 122(2)(b) of the Act, 2017 and Section 20 of the IGST Act, 2017 on the above tax.

(v) Demand of Tax amounting to Rs.29,874/- (Rs.14,937/- CGST + Rs.14,937/- SGST) was confirmed under the provisions of Section 74(1) of the CGST Act, 2017. However the said amount being already paid was appropriated towards the demand. Interest at the appropriate rate was confirmed under the provisions of Section 50(1) of the Act ,2017 on the above tax and the amount of interest Rs.1,360 already paid was appropriated.

(vi) Penal action to be initiated on the above amount of demand was dropped under the provisions of Sections 74(1) of the CGST Act, 2017 read with the provisions of Sections 122(2)(b) of the Act ,2017, as the tax liability was discharged with interest before being pointed out by the department;

(vii) Input Tax Credit (ITC) amounting to Rs.29,924/- (Rs.14,962/- CGST + Rs.14,962/- SGST)(RP-04) was disallowed and ordered to be recovered under the provisions of Section 74(1) of the CGST Act, 2017 interest at the appropriate rate from them, under the provisions of Section 50(3) of the Act, 2017. Tax amount of Rs.20,648/- already paid vide DRC-03 dated 05.09.2022 and Rs.9276/- already reversed while filing their GSTR-3B for the month of December, 2020 was appropriated against the above demand. Interest amount of Rs.8552/- already paid was appropriated towards liability of interest.



(viii) Penalty of Rs.20,648/- was imposed under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Sections 122(2)(b) of the Act, 2017 and Section 20 of the IGST Act, 2017 on the above tax amount.

(ix) Demand of Tax amounting to Rs.1,58,320/- (Rs.79,160/- CGST + Rs.79,160/- SGST) as stated under Para 7 of the SCN was confirmed and ordered to be recovered under the provisions of Sections 74(1) of the CGST Act, 2017. Tax amount of Rs.1,56,260/- already paid vide DRC-03 dated 18.12.2020 and 24.02.2021 was appropriated against the above tax. The remaining amount of Rs.2060/- was to be recovered along with applicable interest and penalty;

(x) Recovery of interest at the appropriate rate was ordered under the provisions of Sections 50(1) of the CGST Act, 2017 and the interest amount of Rs.26,534/- already paid vide DRC-03 dated 18.12.2020 and 24.02.2021 was appropriated against the payable interest;

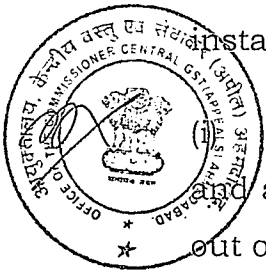
(xi) Penalty of Rs.1,58,320/- was imposed under the provisions of Sections 74(1) of the CGST Act, 2017 read with the provisions of Sections 122(2)(b) of the Act, 2017 and Section 20 of the IGST Act, 2017 on the above tax.

5. Being aggrieved with the impugned order, the appellant preferred the instant appeal on following grounds:-

In respect of Revenue Para-1, Wrongly availed ITC in GSTR-3B over and above the eligible ITC as per GSTR 2A, they have fulfilled three conditions out of four as per Section 16(2); they received goods and / or services which are used by it in the course or furtherance of business. They are in possession of tax invoice for the said supplies and the relevant returns have also been filed by the appellant. As per provision of Section 41 of the CGST Act, 2017 appellant is entitled to take ITC on self assessment basis in the returns filed by it and no restrictions can be imposed on the taxpayer to claim ITC.

(ii) Reliance has been placed on Hon'ble Supreme Court in the case of UOI Vs Bharti Airtel Ltd. and others arising out of SLP('C) No.8654 of 2020 dated 28.10.2021; D.Y Beathel Enterprises Vs State Officer(Data Cell)(Madras High Court); Ranganathar Valves (P) Ltd. Vs The Asst. Commissioner (CT)(FAC)(W.P.No.38488 to 38493/2015 of Madras High Court and some more judgments;

(iii) The appellant has paid all its tax dues to the supplier on time and also done all compliance required under the law. The supplier is the person who has not filed the returns within the due time or has not reported supplies in



the returns filed by him and as a consequence, the demand has been confirmed by the department to the appellant which is not justified;

(iv) Form DRC-07 has been issued to the appellant, who has availed ITC from the suppliers who have not filed their GSTR-3B, the said invoices pertain to the party named Sindhu Cargo Pvt Ltd., whose registration has been suspended by the tax authorities wef 03.06.2022. The appellant has paid all the tax due to the supplier and the supplier has also filed his GSTR-1.

(v) As per 27th Council meeting held on 04.05.2018, GST Council has approved that an appellant can avail credit on self-declarations basis called as provision credit. Also the amount of credit will not be limited to the invoices uploaded by their suppliers which appear in GSTR-2A of the appellant; In accordance to clarification of CBIC vide Circular No.183/15/2022-GST dated 27.12.2022, certification is required only for invoices from suppliers whose ITC is not available in GSTR-2A. They have correctly followed the prescribed procedures outlines in the circular and submitted the required certification in respect of certain vendors;

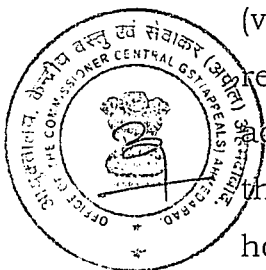
(vi) The adjudicating authority rejected the claim for an ITC amounting to Rs.2,33,982/- citing the absence of payment details and copy of invoices; The appellant has submitted a total certification amount of Rs.4,89,607/- and as per the provisions of CGST Act,2017 the claim of ITC should not be rejected.

(v) In respect of RP-02, non-payment of GST under RCM on services received from unregistered person during 2017-18 till 12.10.2017, the adjudicating authority had raised demand of tax to the tune of Rs.20,614/- in the SCN for which the appellant accepted and paid the tax Rs.12,704/- however, they deny the liability of remaining Rs.7,910/- as the supply of services does not exceed Rs.5000/- per day; the adjudicating authority in the OIO issued has confirmed the demand of Rs.18,237/-without providing any breakdown of how this computation arrived;

(vi) That instead of the remaining liability of Rs.7910/-, their supplies received from unregistered persons are applicable only when the daily transaction value exceeds Rs.5000/-, thus their remaining liability should have been Rs.4,910/- only; the submissions made in reply to SCN was not considered by the adjudicating authority;

(vii) Furthermore, the adjudicating authority in the OIO accepted the payment of Rs.12,704/- however imposed a liability on the entire amount which appears to be inconsistent and contrary the acknowledgement of the payment made by the appellant.

(viii) In respect of RP-04 – Wrong availment of ITC in respect of inputs and input services blocked under Section 17(5) of CGST Act, 2017 during 2019-2020, the appellant had made payment of Tax of Rs.20648/- along with interest Rs.8552/-, however the adjudicating authority has imposed penalty



under Section 74(1) of CGST Act, 2017 ; it is pertinent to note that "suppression" shall mean non declaration of facts by the appellant; that the had submitted the ledgers to the department at the time of Audit.

(ix) The transactions under consideration are booked in a book of accounts, the same has been declared in returns and submitted to the department at the time of GST audit and no single para in order that proved that how appellant has evaded tax; the criminal intend upon the appellant is required to be proved in the OIO and when not proved penal provisions in relation to fraud, misstatement and suppression of facts shall not be imposed on appellant;

(x) In the absence of fraud, suppression or mis-statement by the appellant, the penalty should have been imposed under Section 73(8) and Section 73(9)

(xi) The appellant had reversed the Input Tax credit through DRC-03 before the issuance of DRC-01, hence the penalty cannot be imposed; when the appellant has been imposed penalty under Section 73 or 74, no other penalty on the higher of amount as per Section 74(1) and 122(2)(b) can be imposed on the same matter;

(xii) In respect of Revenue para 5 & 6, the appellants submitted that the liability of short payment of Rs.2060/- has already been discharged by the appellant in the GSTR-3B January'2020, the fact which was disclosed in response to SCN proceedings, however the adjudicating authority has passed the impugned order without considering the same;

(xiii) The interest liability of Rs.42,202/- has been already discharged, Rs.26534 through DRC-03 dated 18.12.2020 & 24.02.2021

at the time of annual reconciliation; the adjudicating authority demanded additional interest of Rs.15,668/- which does not provide a clear computation explaining how the interest amount of Rs.42,202/- arrived at and hence the impugned order is a non speaking order;

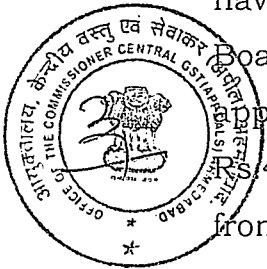
(xiv) The adjudicating authority has imposed equal penalty of Rs.1,58,320/- fro the alleged suppression of facts; imposition of penalties under Section 74 of CGST Act, 2017 the adjudicating authority should demonstrate how there has been a suppression of facts when all liabilities have already been disclosed in the return;

6. Personal Hearing in the matter was held on 14.12.2023. Shri. Rashmin Vaja, Ms Disha Shah and Ms Aayushi Shah all Chartered Accountants appeared before me as authorized representatives on behalf of the appellant. It was submitted that Rs.4.9 lakhs declarations as per Circular No.183/15/2022-GST dated 27.12.2022 have been submitted before the adjudicating authority but the same have not been considered as the same should have been

considered. There is no misdeclaration of facts in the entire issue, hence, penalty under Section 74 can not be imposed. They reiterated the written submissions and requested to allow appeal.

7. I have gone through the facts of the case, written submissions made by the appellant, oral submissions made during Personal Hearing and other documents submitted by them and placed on record. I find that the main issue to be decided in the instant case is whether the amount of GST confirmed alongwith interest as well as ITC's disallowed and ordered to be recovered alongwith interest as well as Penalties proposed vide the impugned order are legal and proper or otherwise. The period of demand is from July, 2017 to March, 2020. I also find that the objections of Audit raised vide Revenue Para-3 stands settled. Also since the appellant have not disputed the same, it is not being taken up for adjudication.

8. Regarding the issue of disallowing Input Tax Credit amounting to Rs. 53,66,794/- [Rs. 9192/- (IGST) + Rs. 26,32,537/- (CGST) + Rs. 26,32,537/- (SGST)] by the adjudicating authority, the appellant have contended that they have fulfilled most of the conditions of Section 16 of the CGST Act, 2017 and as per proviso to Section 41 of the CGST Act, 2017 they have done self assessment of the ITC for which they are eligible. As their supplier had filed only GSTR-1 the ITC was reflecting in their GSTR-2A. However, the supplier have not filed GSTR-3B and discharged the tax liability. In accordance with the Board's Circular 183/15/2022-GST dated 27.12.2022, in these cases, the appellants have furnished the required certification for an amount of Rs. 4,89,607/- in respect of 7 vendors, as required for those invoices received from the suppliers whose ITC is not available in GSTR-2A and have requested to consider the certification .



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"

8.1 A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Accordingly, the the ITC availed genuinely is required to be proved by the appellant.

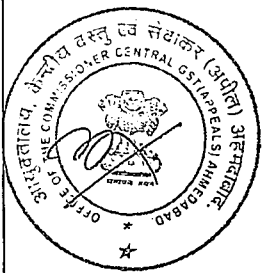
8.2 Upon co-relating the contentions of the appellant with the legal provisions of Section 16 of the CGST Act, 2017 read with Section 41 of the

CGST Act, 2017 and CBIC Circular No. 183/15/2022-GST dated 27.12.2022, I find that the contentions of the appellant fetches merit. The adjudicating authority have erred in following the issue of difference in GSTR-2A and GSTR-3B. Also, during personal hearing the appellants have furnished copy of Certificates in respect of seven vendors amounting to Rs.4,89,601/- which needs to be considered. Therefore, I find that the appellant are eligible for the benefit of Input Tax Credit to the tune of Rs.4,89,601/-. Accordingly an amount of Rs.4,89,601/- is required to be reduced from the total amount of Input Tax Credit disallowed. The amount of ITC disallowed would be reduced to Rs. 48,77,193/- [Rs. 53,66,794/- (-)Rs.4,89,601/-].

9. Regarding the issue of non-payment of GST under RCM on services received from unregistered person during the audit period, I find that the adjudicating authority has confirmed the demand of Rs. 18,237/- which had emerged from the labour charges ledger. As per Section 9(4) of the CGST Act, the tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient.

Section 9. Levy and collection.-

(4) ¹[The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.]



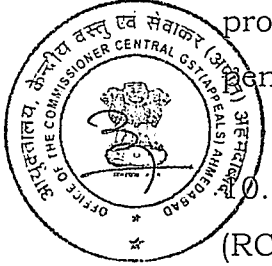
9.1 However, CBIC's Notification No.08/2017 Central Tax (Rate) dated 28.06.2017, clarifies that it exempts intra-state supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section(4) of Section 9 of CGST Act 2017 ; Provided that the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds five thousand rupees in a day.

9.2 In this regard the appellant has submitted that there had been an error in calculating proper tax in this aspect. Although, the total tax liability was calculated as Rs. 18,237/- vide the SCN, they have provided computation t with one vendor Ajitkumar K.Rakhaiya from whom they have had supplies amounting to < Rs.5000/- per day and for the sake of convenience in their

edger they had shown an accumulated figure. Accordingly, their RCM liability should be calculated as Rs.12,705/- and not Rs.18,237/-.I find that vide the impugned order while discussing the issue, the adjudicating authority have accepted the liability of Rs.12,705/-. However, in the order portion the amount has been wrongly confirmed as Rs.18,237/-.

9.3 Further, the appellant have contended that they have discharged the tax liability alongwith interest amounting to Rs. 13,327/-.In this regard, I find that the adjudicating authority has not discussed this aspect properly in the impugned order. He has accepted the contentions of the appellant, however, confirmed the total amount of demand without considering the amount already paid by them alongwith interest. Hence, considering the contentions of the appellant the issue is found to be settled and no further liability of arises on the appellant.

9.4 It is observed that the appellant have made payment of Tax amounting to Rs.12,705/- along with interest amounting to Rs. 10,976/- vide DRC dated 18.12.2020 and 24.02.2021. I further, find that since the tax liability is discharged alongwith interest prior to the date of issuance of FAR by Audit, the provisions of Section 74(1) of the CGST Act, 2017 cannot be invoked and hence penalty is not warranted on the said amount.



10. Regarding the non-payment of GST under Reverse Charge Mechanism (RCM) in respect of Security Services received from a firm other than a body corporate, I find that, the said objection was raised vide audit as the same is leviable in terms of Notification No. 13/2017-CT(R) dated 28.06.2017, as amended. However, the appellant have contended that they have calculated the short payment of GST voluntarily and paid the same alongwith interest. I further find that during the period F.Y. 2019-20 the appellant have received Security Services from M/s Capital Security Solution (not a body corporate) to the tune of Rs. 1,65,963/-.

10.1 From the submissions of the appellant and the documents submitted by them it is also evident that they have calculated the requisite amount of GST payable under RCM basis as Rs. 29, 874/- and discharged the said liability. Further, they have also paid an amount of Rs. 1,360/- as interest alongwith the GSTR-3B submitted on April-2020. Hence, the entire amount of demand of tax was discharged alongwith interest before the issuance of the FAR by Audit. Accordingly, the provisions of Section 74 (1) of the CGST Act, 2017 is not attracted on the said amount.

11. Regarding the availment of ITC in respect of purchase of Gold in contravention to Section 17(5) read with Section 16(1) of the CGST Act, 2017, I find that the appellant have contented that they have reversed/paid the ineligible ITC amounting to Rs.20,648/- through DRC-03 and reversed ITC worth Rs.9,276/- while filing their GSTR-3B for the month of December, 2020 totaling to Rs.29,924/-. Further, they have also submitted that they have paid the leviabale interest amounting to Rs.8,552/- on 05.09.2022. Hence, the repayment/reversal of wrongly availed ITC alongwith leviabale Interest has taken place on 05.09.2022, i.e before the issuance of SCN dated 28.11.2022.

11.1 Referring to the Legal provisions in this regard I find that - in terms of Section 17(g) of the CGST Act, 2017, the appellant was not eligible to avail the ITC on goods purchased for personal consumption. Relevant portion of the legal provision is reproduced below :

Section 17 of the CGST Act, 2017:-

"Section 17. Apportionment of credit and blocked credits.-

(g) goods or services or both used for personal consumption;"

Co-relating the facts of the case with the legal provisions in this regard, I find that, the act of the appellant stands liable for penal action under the relevant provisions of the CGST Act, 2017. However, considering the rectifications made by the appellant in this regard, as detailed in Para-10 above, I find that the appellant have paid/reversed the amount of ITC availed along with Interest before the issuance of FAR on 23.09.2022 and/or before the issuance of SCN On 28.10.2022.

2 Therefore, in view of the above discussions and as per Section 73 (8) of the CGST Act, 2017, I find that the appellant is not liable for any penalty on the above issue, i.e the issue of availing ITC on Blocked Credits, as per Revenue Para - 4 of the FAR No.GST-629/2022-23 dated 23.09.2022.

12. Regarding the issue of "Short payment of tax against the tax payable as per GSTR-9 for the period 2018-2019 and Short payment of interest against the tax payable as per GSTR-9 for the period 2018-2019 and 2019-20", I find that out of the total amount of Rs.1,58,320/- the appellant have paid an amount of Rs. 1,56,260/- along with interest prior to the date of detection by audit. They have also paid the remaining amount of Tax, i.e Rs.2,060/- through GSTR-3B for the month of January'2020 and submitted copy of the same during personal hearing. However, Interest amounting to Rs.15,668/- is required to be recovered from the appellant.

13. Regarding the issue of imposition of penalty in terms of Section 74 read with Section 122(2)(b) of the CGST Act, 2017 for acts of suppression/willful misstatement etc., as imposed by the adjudicating authority, I find that as contended by the appellant and as per the documents submitted by them, the disputed amounts of tax and interest were paid by the appellant. However, in order to re-confirm the dates of detection and date of payment the payments made are tabulated as below :

Table

Revenue Para No. (of FAR)	Amount of Tax detected (as per Audit Para)	Amount of interest (as per Audit Para)	Amount of Penalty (as per Audit Para)	Date of Detection	Amount of Tax and Interest Paid	Date of Payment
2	20,614	10,978	20,614	23.09.2022	12704 + 10976	07.09.2022
3	29,874	1360	NA	23.09.2022	29874 + 1360	05.06.2020
4	29,924	8,552	20,648	23.09.2022	20648 + 9276 + 8552	05.09.2022
5 & 6	1,58,320	26,534	1,58,320	23.09.2022	28746 + 5720	18.12.2020
					2,060	19.12.2020
					127514 + 20814	24.02.2021

13.1 Co-relating the facts of payments made by the appellant with the dates of the objections raised by Audit, it is observed that in respect of the audit objections FAR Para No. 2 to 6, the appellant has discharged their tax liability along with interest before the date of detection by audit. Hence, the invocation of the provisions of under Section 74(1) read with Section 122(2)(b) of the CGST/GGST Act, 2017 do not appear to legal and proper in all these cases. I find it relevant to refer to the legal provisions of Section 74(1) read with Section 122(2)(b) of the CGST/GGST Act, 2017 as reproduced below :

An extract of the relevant Section of the CGST Act, 2017 is reproduced below :

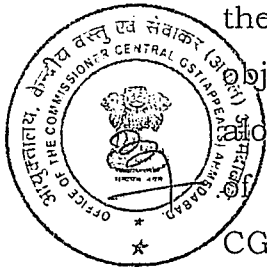
Section 74: *Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful mis-statement or suppression of facts.*

(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 by 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 equivalent to the tax specified in the notice.*

Section 122 – Penalty for certain offences:-

(2) *Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized, ----*

(b) *for reason of fraud or any willful mis-statement or suppression of facts to evade tax, shall be liable to penalty equal to ten thousand rupees or the tax due from such person, which is higher.,*



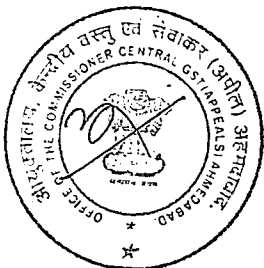
13.2 In view of the above, in case of the demands raised vide Revenue Paras 2 to 6, can be confirmed under Section 73 (1) of the CGST/GGST Act, 2017. Accordingly, the quantum of penalties imposed are also required to be redetermined in terms of Section 73 of the CGST/GGST Act, 2017 and not in terms of Section 74 of the CGST/GGST Act, 2017. Since the demand confirmed has already been paid before initiation of proceedings under Section 73, no penalty is warranted under Section 73(8) of the CGST Act, 2017.

14. In view of the above discussion the appeal filed by the appellant is partially allowed and the impugned order is modified to the extent below :

1.(i) In Revenue Para No.1 the amount of ITC to be disallowed is modified to Rs. 48,77,153/- (Rupees Forty Eight lakhs Seventy Seven thousand One Hundred and Fifty three only) as discussed supra, considering the ITC amounting to Rs.4,89,601/- (Rupees Four Lakhs Eighty Nine thousand Six Hundred and one only) in terms of Circular No.183/15/2022-GST dated 27.12.2022.

1.(ii) I uphold the demand of interest levied by the adjudicating authority under Section 50 of the CGST Act, 2017 on ITC disallowed amounting to Rs. 48,77,153/- only and penalty under Section 74 (1) of the CGST Act, 2017 read with Section 122 (2)(b) of the CGST/GGST Act, 2017 is also reduced to Rs. 48,77,153/- (Rupees Forty Eight lakhs Seventy Seven thousand One Hundred and Fifty three only);

2. In view of the discussions made in the foregoing, it is evident that in respect of the objections raised by Audit vide Revenue Paras 2, 3, 4, 5 and 6 of the FAR dated 23.09.2022, the amounts of GST/ITC was paid alongwith the leviabale interest prior to the date of FAR issued by Audit. Further, no new evidences are forthcoming from the documents in support of suppression of facts/misdeclaration of factual details by the appellant. Therefore, in all these cases the provisions of Section 74 (1) of the CGST Act, 2017 read with Section 122 (2)(b) of the CGST/GGST Act, 2017 is not attracted. Hence, in respect of objections raised by Audit vide Revenue Paras 2, 3, 4, 5 and 6 of the FAR dated 23.09.2022, the demand of duty alongwith interest is confirmed, however, in terms of Section 73 (8) of the CGST Act, 2017 no penalty is attracted. Therefore, penalty imposed against the above said demands are set aside.



15. 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.

Adesh Kumar Jain
09/05/2024

(आदेश कुमार जैन)

(Adesh Kumar Jain)

संयुक्त आयुक्त (अपील्स)

Joint Commissioner (Appeals)

Date: .05.2024

// Attested //

Vijayalakshmi V
(Vijayalakshmi V) 09/05/24
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,

M/s. Sayaji Samruddhi LLP

155-C, C/o. N B Commercial Enterprises Ltd.

Behind C.L.High School, Kathwada,

Ahmedabad, Gujarat 382430

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 Dy/Asstt. Commissioner, CGST, Division-V, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

