



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- 20240564SW000022702F

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1136/2024-APPEAL / 15580 - 88ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC- 30 /2024-25**दिनांक **Date :15.05.2024** जारी करने की तारीख Date of Issue : 15.05.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

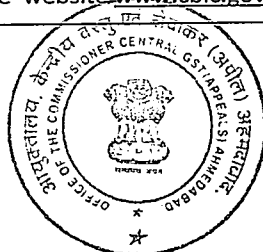
Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. 15/Bharat Color Chem/AC/Div-II/A,bad South/JDM/2023-24 dated 12.07.2023 issued by The Assistant Commissioner, CGST Div-II, Ahmedabad South Commissionerate.

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

Appellant	Respondent
M/s Bharat Colorchem, Plot No.81/1A & 1P, GIDC Estate, Phase-1, Vatva, Ahmedabad, 380021	The Assistant Commissioner, CGST Div-II, Ahmedabad South Commissionerate

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">website www.cbic.gov.in</a> .



## अपीलिय आदेश / ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Bharat Colour Chem, Plot No.81/1A & 1P, GIDC Estate, Phase-1, Vatva, Ahmedabad, Gujarat 380021, (hereinafter referred to as the "appellant") on 10.10.2023 against Order-in-Original No. 15/Bharat ColorChem/AC/Div-II/A'bad-South/JDM/2023-24, dated 12.07.2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Central GST & C.Ex., Division-II, Ahmedabad South Commissionerate, (hereinafter referred to as the "*adjudicating authority*").

2. Brief facts of the case are that the appellant was registered under GSTIN 24AAEFB6775F1ZH and were engaged in the production and supply of goods i.e., Synthetic Organic Colouring Matter falling under HSN-3204. During the course of an investigation conducted by the Directorate General of GST Intelligence (DGGI), Ahmedabad Zonal Unit, the following discrepancies were observed :

(i) One unit M/s. Shikar Impex had issued fake bills/invoices in June'2018 involving total Input Tax Credit (ITC) amounting to Rs.3,49,380/- to the appellant. The appellant reversed the wrongly availed ITC along with interest and penalty and issue has been settled.

(ii) Upon verification of the Sales Ledgers for the F.Y. 2017-18 and F.Y. 2018-19, it was found that the appellant had reported less taxable value of sales in their GSTR-9 compared to their sales register for the aforesaid period. The appellant has short paid tax to the tune of Rs.61,550/- (Rs.30,775/- CGST + Rs.30,775 SGST).

(iii) On scrutiny of the tax liabilities and ITC Comparison generated from the common portal for the year F.Y. 2018-19 and F.Y. 2020-21, it was observed that the appellant had availed and utilized excess ITC in their Return-GSTR-3B compared to the ITC accrued as per Return-GSTR-2A amounting to Rs. 27,35,203/- (Rs.16019/- for F.Y. 2018-19 and Rs.27,19,184/- for F.Y. 2020-21).

(iv) On scrutiny of GSTR2A of the appellant for the months of January'2019 to April 2019 it is found that the appellant has availed ITC on the basis of the invoices issued by the following firms/companies :

(a) M/s. Global Trading, amounting to Rs.22,40,442/- (Rs.11,20,221/- CGST + Rs.11,20,221/- SGST). The declared premises of the said firm was found non-functional during the course of 'Physical Verification', accordingly,

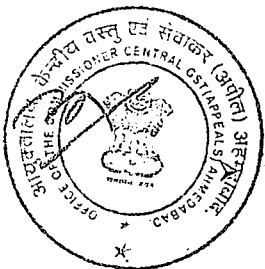
the registration of the said entity was cancelled ab-initio i.e., from the date of registration.

(b) M/s. JBBONS GROUP amounting to Rs. 26,442/- (Rs.13,221/- CGST + Rs.13,221/- SGST), during spot visit of the said premises it was found to be closed since long. Accordingly, the registration of the said premises was cancelled ab-initio.

3. The appellant was intimated vide DRC-01A dated 12.01.2023 wherein the wrongly availed ITC's as detailed above were liable to be recovered under Section 74(1) of the CGST Act, 2017 read with corresponding State GST Act. As the appellant has short paid the tax as well wrongly availed the credit and utilized the said credit, as mentioned in the foregoing paras, they were also considered liable to pay interest under Section 50 of the CGST Act, 2017 and penalty under Section 73(1) and Section 74(1) read with Section 122 of the CGST Act, 2017 read with corresponding State GST Act.

3.1 Upon completion of the investigation a Show cause notice was issued to the appellant wherein it was alleged that :

- The irregular Input Tax credit amounting to Rs. 27,35,203/- availed and utilized by them should not be demanded and recovered under the provisions of Section 73(1) of the CGST Act,2017 read with Section 20 of the IGST Act,2017.
- Short paid GST amounting to Rs. 61,550/- (CGST – Rs. 30,775/- + SGST – Rs. 30,775/-) should not be recovered from them under the provisions of Section 74 (1) of the CGST Act, 2017 Section 74 (1) of the GGST, Act, 2017.



The irregular Input Tax Credit amounting to Rs. 22,66,884/- (CGST – Rs. 11,33,442/- + SGST – Rs. 11,33,442/-) availed on the basis of Invoices issued by non-existent firms and utilized by them should not be demanded and recovered from them under the provisions of Section 74 (1) of the CGST, Act, 2017 read with Section 74 (1) of the GGST, Act, 2017.

- Interest at applicable rates should not be demanded and recovered from them in terms of Section 50 of the CGST Act,2017 read with Section 50 of the GGST Act, 2017 on all the amounts mentioned above.
- Penal

4. The adjudicating authority vide his impugned order dated 12.07.2023 has issued the following order:-

- (i) I order to confirm the demand and recover the excess availed and utilized ITC amounting to Rs. 16,019/- [CGST-8009.5/- + SGST8009.5]

(Rupees Sixteen Thousand Nineteen only) under the provisions of Section 73(1) of the CGST Act, 2017 read with Section 73(1) of the Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017. Rest of the demand worth Rs. Rs. 27,19,184/- (Rupees Twenty-Seven Lakh Nineteen Thousand One Hundred Eighty-Four Only) is hereby dropped.

- (ii) I order to confirm the demand and recover the short paid/not paid GST amounting to Rs. 61550/- [CGST:30,775/- + SGST:30,775/-] (Rupees Sixty-One Thousand Five Hundred Fifty only) under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017.
- (iii) I disallow the irregular Input Tax Credit amounting to Rs. 22,66,884/- [CGST:Rs.11,33,442/- + SGST:Rs.11,33,442/-] availed and utilised by them and to be recovered from them under provisions of Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017. I order to appropriate Rs. 22,40,442/- [CGST-11,20,221/- + SGST-11,20,221/-] paid by them vide DRC-03 ARN no. AD240723005104P dated 05.07.2023 and AD240723005129D dated 05.07.2023.

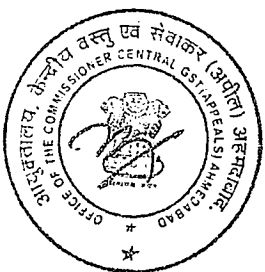
(iv) Interest at the applicable rate should also be charged and recovered from them under the provisions of Section 50 of CGST Act, 2017 read with Section 50 of Gujarat GST Act, 2017 for having availed and utilized irregular ITC as mentioned, Sr. no. (i) and (iii) and for having short-paid tax as mentioned at Sr. no. (ii). I order to appropriate interest amounting to Rs. 8,63,161/- paid by them vide DRC-03 ARN no. AD240723005104P dated 05.07.2023 and AD240723005129D dated 05.07.2023.

- (v) I impose penalty of Rs.1,602/- (One Thousand Six Hundred Two Only) under the provisions of Section 73(1) of the Central Goods and Service Tax Act, 2017, and the corresponding entry of the Gujarat State Goods and Service Tax Act, 2017 read with the provisions of Section 122(2)(a) of the Act and section 20 of the IGST Act on the demand of tax at sr. no. (i) above
- (vi) I impose penalty of Rs. 61550/- [CGST:30,775/- + SGST:30,775/-] (Rupees Sixty-One Thousand Five Hundred Fifty only) under the provisions of Section 74(1) of the Central Goods and Service Tax Act, 2017, and the corresponding entry of the Gujarat State Goods and Service Tax Act, 2017 read with the provisions of Section 122(2)(b) of the Act and section 20 of the IGST Act on the demand of tax at sr. no. (ii) above
- (vii) I impose penalty of Rs. 22,66,884/-; [CGST: Rs.11,33,442/- + SGST: Rs.11,33,442/-] under the provisions of Section 74(1) of the Central Goods and Service Tax Act, 2017, and the corresponding entry of the Gujarat State Goods and Service Tax Act, 2017 read with the provisions of Section 122(2)(b) of the Act and section 20 of the IGST Act on the demand of tax at sr. no. (ii) above;



5. Being aggrieved with the impugned order, the appellant preferred appeal before the Appellate Authority on 10.10.2023 on the following grounds:

1. *Learned assessing authority has wrongly not considered the reply filed by the appellant in response to the SCN issued. Appellant is attaching herewith SCN and reply filed to SCN for sake of convenience,. Learned assessing authority has wrongly disallowed the ITC on the purchases made from M/s. Global Trading Co having GSTIN No. 24BFPJ5393NIZE (hereinafter referred to as "supplier") during the year 2018-19. Appellant has paid GST to the supplier and claim an ITC while filing GST return. The same has been disputed by the department and therefore appellant has made payment of such disputed ITC under protest. It is pertinent to note that if supplier does not pay the tax, then department have to recover the GST from the supplier and not from the appellant. Appellant further humbly submits that Section 16 of CGST Act, 2017 provides for the eligibility and conditions for taking the input tax credit. On perusal of the legal provisions, appellant submit that all the transactions entered into with the supplier mentioned in the summon and DRC-01A received are genuine and supported by the valid documents. Contention of the department that the transactions are undertaken with bogus supplier is invalid and unjustified and unwarranted.*
2. *The appellant relied upon various court judgements, which summary of same is, it cannot be said that that there was any failure on the part of the petitioners in compliance of any obligation required under the statute before entering into the transactions in question and that there was no negligence in verification of the genuineness of the suppliers in question by the petitioner during the relevant period. If it is found upon verification and considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers the petitioners shall be given the benefit of input tax credit in question. To sum up on the basis of various judgements, the transactions entered with the supplier were genuine considering the following grounds:- 1. Appellant has no control over the office of the supplier. Appellant cannot compel the supplier to manage his business according to him. It is the duty of the supplier to upload GST returns within time limit and pay necessary taxes. It is the supplier who is supposed to assess his liability as per provisions of GST Act and file genuine returns and pay taxes to the government.*
3. *Appellant can never be responsible for incorrect returns filed by his supplier. The only responsibility of the appellant is to pay the supplier for the goods or services or both which he has received from the supplier and cannot be held liable for the taxes not paid by the supplier. It is pertinent to know that proviso to Sec.16(2) compelled assessee to make payment within 180 days to the supplier. Therefore the appellant cannot wait till audit proceeding or any other proceeding initiated by the GST department whereby the appellant gets conformity of the transactions. If such restriction of 180 days not in the provision, then appellant will definitely make payment of taxes to the Government instead of making payment to the supplier. Thus, claim of ITC is genuine and as per law. Transaction appearing in the GSTR 2A/2B is a mere confirmation that the supplier*



have filed the GSTR 1 by the due date however it is not the confirmation that taxes have been paid by the supplier to the government.

4. Learned assessing authority has wrongly raised demand of Rs. 26,442/- on the inward supplies of services received from M/s. JBBONS group having GSTIN no. 24AAPFJ0587G1Z4 during the year 2019-20 Appellant has paid tax on Reverse Charge basis ( In short "RCM") on the inward supply of Security Services received from them. Month wise tax paid details is attached herewith for ready reference at annexure D. Appellant is therefore requested to set aside the demand raised on the inward supply transactions of M/s. JBBONS group.
5. Difference in Sales Ledger Vs Sales Declared in GSTR 9 for the year 2017-18 Of Rs. 2241/- and Rs. 3,39,700 in the year 2018-19 is explained in the reply to the SCN which is as under. Difference of Rs. 2,241/- in FY 2017-18 is very minor and is due to rounding of the amount in the annual return and you are therefore requested to allow the appeal considering the present ground. Difference of Rs.3,39,700/- in the year 2018-19 in sales turnover declared in GSTR 9 vs books of accounts. It is pertinent to note that appellant have wrongly punch the figure of Rs.3,39,700/- in table 4(1) of GSTR 9 filed for the year 2018-19. Moreover, it can be seen from table 4(1) that appellant has not deducted any tax from the outward tax liability. Thus, even if difference is their tax liability does not raise for such difference.



6. In my monthly return also appellant have declared the turnover as per books of account. Turnover as per books of accounts is Rs. 32,43,33,360/- is correct and also reported in GSTR 9C. You are therefore requested consider all the details together and ignore the punching mistake occurred while filing GSTR 9 for the year 2018-19 in table 4(1). Alternatively, table 9 of the GSTR 9 is showing excess payment of tax by the appellant thus no tax liability rises for differences of Rs.3,39,700/- vs books of accounts. Appeal is therefore requested to be allowed on this point.

7. Learned assessing authority has wrongly confirmed difference between ITC availed in GSTR 3B in compare to appearing GSTR 2A for the financial year 2018-19 of Rs.16,019. Relevant provisions are mentioned in the SCN and reply filed to SCN for the said submission. As per the portal data of GSTR 2A ITC available to us is of Rs.4,78,36,548/- thus there was no mismatch of availment of ITC in GSTR 3B vs GSTR 2A. Appellant is therefore requested consider the same and allow the appeal on this point.
8. Learned assessing authority has wrongly invoked Sec. 74 to demand tax without considering evidences submitted by the appellant. It is proved on the basis of all other evidences and submission that all transactions are recorded in the books of account and therefore Section 74 is not applicable to the case of the appellant. Sec. 74 is applicable in case of fraud, wilful-misstatement and suppression of the facts. Sec. 74 Explanation II speaks as under Explanation 2.-For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or

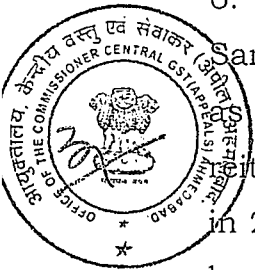
failure to furnish any information on being asked for, in writing, by the proper officer.

9. *Liability of Interest is also not quantified by the assessing authority while passing order in form DRC-07 and therefore it is required to be set aside in the present appeal. Moreover, Interest charged u/s. 50 by quoting the section is non speaking charging of interest. Without prejudice to the above ground, appellant made request to consider the credit ledger while passing the appeal order. It can be derived from the credit ledger that Credit ledger was always having positive balance*
10. *Assessing authority has wrongly imposed penalty u/s.73(1) as well as u/s,74(1) read with sec. 122(2)(b)(ii) of the GST Act,2017. The facts and circumstance discussed herein above is required to be considered before imposing penalty u/s. 122(2)(b)(ii) of the GST Act,2017. Appellant have not taken or utilized ITC under the GST Act, 2017 with intension to evade or to avoid the liability of tax payment as per facts narrated herein above. Therefore, penalty is not attracting in the appellant case u/s 122(2)(b)(ii) of the GST Act,2017.Sec.122(2)(b) is not applicable to appellant case. The said section is applicable in case where ITC has been wrongly availed or utilized. The word availed or utilized is required to be interpreted while imposing penalty u/s.122(2)(b) of the GST Act. Appellant is having excess ITC and therefore criteria laid down in Sec.122(2)(b) is not fulfilled. Therefore, Sec.122(2)(b) of the GST Act,2017 is not applicable to the appellant's case. Moreover, Sec.122(2)(b) is applicable in case of for reason offraud or any wilful misstatement or suppression of facts which is not in existence in our case.*

### **PERSONAL HEARING**

6. Personal hearing in the matter was held on 07.03.2024 whereby Shri Samir I Siddhapuria, Advocate appeared before me on behalf of the appellant authorized representative. He submitted that as regards the point no.3, he reiterated the written submissions. As regards point no.2 regarding mis-match in 2A & 3B, there is no mismatch and how the figures have been taken by the learned adjudicating authority is unexplained. Table-1 point N o.1 mismatch GSTR-9 and Books of account, tax short paid Rs.61,550/-. As regards the difference of Rs.2241/- in Financial Year 2017-18 this is due to rounding off as turnover is more than 26 crores and large number of entries are there. In the year 2018-19 in filing GSTR-9, inadvertent mistake of punching of credit note which has been reported two times in Table 4 and Table 5 both amounting to Rs.3,39,700/- this is no difference between books and GSTR-3B. So the same may be allowed and the demand along with interest and penalty may be dropped.

7. As regards the short payment on Security services from M/s. JBBON's, it is submitted that the credit has been availed on RCM, therefore it is clear that tax have been properly discharged and no violation. Even if registration of the supplies is cancelled, it is proven beyond doubt that tax have been paid. In



view of the above, ITC is admissible and requested to drop the demand along with interest and penalty and requested to allow their appeal.

### DISCUSSION & FINDINGS

8. I have gone through the facts of the case, written submissions made by the 'appellant' and the documents available on record. I observed that in the instant case the "impugned order" is of dated 12.07.2023 and the present appeal is filed on 10.10.2023, which is well within the time limit. The main issue to be decided in the instant case is whether the impugned order confirming the demand/disallowing ITC passed by the adjudicating authority in respect of (i) short payment of tax amounting to Rs.61,550 (Rs.30775/- CGST + Rs.30775/- SGST) (ii) Excess ITC availed Rs. 16,019/- on comparison of GSTR-3B to GSTR-2A (iii) wrongly availed ITC amounting to Rs.22,40,442/- on the invoices issued by M/s. Global Trading whose Registration was cancelled and on the invoices of M/s. JBBONS Group amounting to Rs.26,442/- for the period April'2019-Sept'2019 whose shop found to be closed on spot visit to be recovered/reversed along with interest and penalty under Section 73 and Section 74 of the CGST Act, 2017 is proper and legal.

9. In respect of the excess ITC availed Rs. 16,019/- in comparison of GSTR-3B to GSTR-2A for the period 2018-19, the appellant had stated that there is no mismatch and how the adjudicating authority has taken the figures is unexplained, I would like to draw attention of the appellant to para 21 of the OIO. I observe that, out of the total excess ITC availed of Rs.27,35,203/-, the adjudicating authority has considered the IGST ~~payment~~ of Rs.29,94,739/- in BE No.8366648 dated 04.08.2020 and in respect of Rs.16,019/- it is seen that no supporting documents were provided by the appellant for the accountability of excess ITC of Rs.16,019/-. The appellant in their grounds of appeal, have mentioned that they had done payment to their supplier within 180 days of supply, they possess all the tax invoices, received the goods from the suppliers etc.etc. However, I observe that even at the time of replying to the show cause notice and at the time of appeal, they failed to submit supporting documents to prove their contention. *As per Section 155 of the CGST Act, 2017, the 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.* Accordingly, it appears that the adjudicating authority has rightly disallowed the excess ITC availed by the appellant amounting to Rs.16,019/- and rightly levied interest and imposed penalty.



10. In respect of issue pertaining to short payment of tax amounting to Rs.61,550 (Rs.30775/- CGST + Rs.30775/- SGST), the appellant in their grounds of appeal and in personal hearing have contended that the difference amount for the period 2017-18, is due to the fact of rounding off as their turnover is more than 26 crores and large number of entries are there. Here I would like to refer to Section 170 of the CGST Act, 2017 in respect of rounding off of tax.

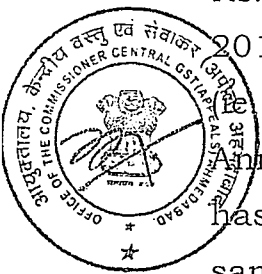
**\* Section 170. Rounding off of tax, etc.-**

*The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.*

The explanation of the appellant though being of practical issue, they should have taken care of in rounding off, while discharging their liabilities and should have been adjusted/regularized during Annual Returns.

10.1 On the other hand, the adjudicating authority in para 20 of the adjudicating order has clearly mentioned that the appellant have not deducted any tax, from their outward tax liability. That they have shown Rs.32,39,93,660/- as total turnover in the table 5N of GSTR-9 for the FY 2018-19 and also the same figure of Rs.32,39,93,660/- in the table 5P (Annual turnover after adjustments) and 5Q (Turnover as declared in Annual Return) of the GSTR-9C. Hence, practically when the appellant has issued Credit Note at any point of time during the FY 2018-19, the same should have reflected in their output tax liability but, as per the adjudicating authority it does not appear so. Hence, in the absence of any supporting documents from the part of the appellant, I do not find any merit in the contention of the appellant and I uphold the demand of short payment of Rs.61,550/- (Rs.30775/- CGST + Rs.30775/- SGST) along with interest and penalty.

11. With regard to wrongly availed ITC amounting to Rs.22,40,442/- on the invoices issued by M/s. Global Trading whose Registration was cancelled ab-inito. The appellant has paid the amount of ineligible ITC of Rs.22,40,442/- along with interest amount of Rs.8,63,161/- vide DRC-03 dated 05.07.2023 ie., after initiation of legal proceedings vide Show Cause Notice dated 03.02.2023. Here I would like to go through the provisions under an ITC becomes ineligible on the invoices raised by a



unit whose registration has been cancelled ab-initio ie., right from the beginning.

AS per Section 37 of CGST ACT 2017 every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or, before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed. As per Section 59(1) of the CGST Rules, 2017, such details have to be furnished in FORM GSTR-1 electronically through the common portal:

Further Rule 59(3) of the CGST Act, 2017 ( as it stood at the material time prior to 01.01.2021) stipulates that the details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in FORM GSTR- 2A, through the common portal after the due date of filing of FORM GSTR-1. In other words, the details of a supply made by a supplier shall automatically get reflected in the GSTR2A of the recipient of the supply, once the supplier uploads the details of Invoices issued by him. This provision is to enable the recipient of services to avail of ITC to the extent of tax declared in the invoices. Therefore, it appears that the GSTR-2A indicates the amounts of eligible credit on supplies in respect of which tax has been paid. If any supplier does not upload details of supplies made by him, the details of invoices do not get reflected in the GSTR2A of the recipient.

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

(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;]

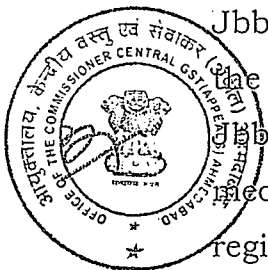
(c) subject to the provisions of 4[section 41 5[\*\*\*]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

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

12.1 Had the appellant had received invoices from a registered person, he also would have had an option of availing the benefit of CBIC has issued Circular No. 183/15/2022-GST dtd. 27.12.2022 wherein a procedure has been prescribed to allow credit of ITC which have been availed by a taxpayer though the same was not reflected in his GSTR 2A for the period 2017-18 and 2018-19. However, in the instant case, as the supplier, whose registration has been cancelled ab-initio, being a non registered firm, the appellant is not eligible to avail the wrongly availed ITC amounting to Rs. 22,40,442/-. Hence, the adjudicating authority has rightly disallowed the inadmissible ITC of Rs.22,40,442/-. As the ITC has been reversed along with interest only after initiation of legal proceedings vide SCN dated 03.02.2023, the penalty imposed upon the appellant by the adjudicating authority is legal and proper.

12.2 Whereas, in the case of availing ITC on the invoices raised by M/s. Jbbons Group amounting to Rs. 26,442/- (Rs.13221 CGST + Rs.13,221 SGST), the appellant has submitted that they had availed Security Services from the Jbbons Group and had discharged their tax liability under reverse charge mechanism and accordingly had availed the ITC. The DGGI found that the registration of the Jbbons Group also found to be non-existent and their registration has been cancelled ab initio ie., from the date of registration. I observe in this case, the appellant themselves had discharged the tax liability under RCM and to vouch their transactions, they had furnished copies of the invoices, ledger and GSTR-3B for the period April'2019 to August'2019, whereby I observed that they had discharged the GST on regular basis..

12.3 Here the scenario reverses, as the person who is receiving the goods and services needs to pay the taxes. If the receiver is purchasing goods from unregistered providers, there needs to be a GST paid on their behalf. A payment voucher needs to be issued from the supplier to the recipient. The recipient must be a registered person as per Section 2(94) of the CGST Act,2017.As per section 2(98) of CGST Act 2017, "Reverse-Charge" means the liability to pay tax by the recipient of the supply of goods or services or both instead of the supplier of such goods or services or both. In view of the same, I



m of the view that it is admissible to avail the credit of ITC of Rs. 26,442/- of the tax paid by him under RCM. Thus, as the appellant had discharged their tax liability before initiation of the proceedings, I drop the penalty imposed upon them specifically on the ITC availed on the invoices of M/s. Jbbons Group.

13. The appellant in their submissions have stated Interest charged u/s. 50 by quoting the section is non speaking charging of interest. Without prejudice to the above ground, appellant made request to consider the credit ledger while passing the appeal order. It can be derived from the credit ledger that Credit ledger was always having positive balance. If tax is payable under Section 73, interest shall also be payable under Section 50 of the CGST Act, 2017. Though the appellant stated that they have enough balance in their Electronic Credit Ledger, however they failed to produce any supporting documents to prove their version. Accordingly, the adjudicating authority has rightly levied interest upon them.

14. Further, as regards to imposition of penalty I find that the appellant has contended that penalty under Section 74(1) read with Section 122(2)(b) of CGST Act, 2017 is not imposable upon them as they had no malafide intention to evade tax. Here, I would like to go through the provisions of Section 73, 74(1) and 122(2)(b);.

***Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-***

***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.,

14.1 In the present case the adjudicating authority has imposed penalty of Rs. 22,66,884/- on the point of claiming ITC on the invoices received from M/s. Global Trading and M/s. JBBONS Group as the GST registration of both the units were cancelled ab-initio, hence the ITC availed by the appellant is inadmissible. However, as discussed in para 12.2 supra, the ITC availed on the invoices raised by M/s. JBBONS Group, the tax has been discharged under RCM of services received, hence, the penalty imposed upon this particular issue needs to be dropped and in respect of the remaining issues, the adjudicating authority has rightly imposed penalty under Section 73(1) and 74(1) read with Section 122(2)(b) of the CGST Act, 2017.

15. In view of the above discussions and findings;-

(i) I allow the ITC amounting to Rs. 26,442/- availed on the invoices raised by M/s. JBBONS Group, therefore also drop the interest and penalty imposed upon them on the said amount.

(ii) As per the discussions at para 12.1 and 12.2 supra, the penalty amount of Rs. 22,66,884/- imposed is modified to Rs. 22,40,422/- in view of the discussions made at para 14.1 supra.

The impugned order is modified to this extent only.

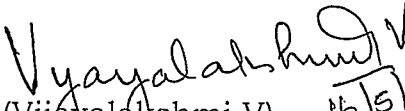
16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)

Date: .05.2024

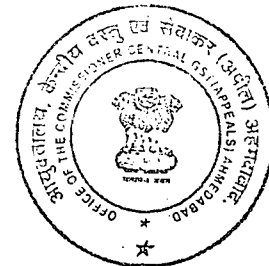
// Attested //

  
(Vijayalakshmi V) 16/5/24  
Superintendent (Appeals)  
Central Tax, Ahmedabad

By R.P.A.D.

To,

M/s. Bharat Colorchem  
Plot No.81/1A & 1P, GIDC Estate,  
Phase-1, Vatva  
Ahmedabad, Gujarat 380021



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-II, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

