



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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DIN NO.: 20240564SW0000818918

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2477/2024 / 5230-36
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-36/2024-25 and 21.05.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	21.05.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/Dem-19/GST/Epson/DC/PMT/2023-24 dated 23-11-2023 (FORM GST DRC-07 Ref. No.: ZD240224031292Z dated 15.02.2024) passed by the Deputy Commissioner, CGST Division- VI, Ahmedabad South Commissionerate.	
(च)	Name of the Appellant	Name of the Respondent
	M/s Epson India Private Limited, Opp Mayors Bunglow, 902 9th Floor, Abhijit IV, Ellis Bridge, Ahmedabad, Ahmedabad, Gujarat, 380006	The Deputy Commissioner, CGST Division- VI, 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) <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 www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .

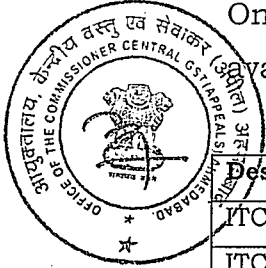


ORDER-IN-APPEAL

Brief Facts of the Case:

M/s. Epson India Private Limited, Opposite Mayoure Bunglow, 902, 9th Floor, Abhijit IV, Ellis Bridge, Ahmedabad, Gujarat-380006 (hereinafter referred to as "the appellant"), holding GST Number 24AAACE7858F1ZM has filed appeal against Order-In-Original (DRC-07) No. ZD240224031292Z, dated 23.11.2023 (OIO No. CGST-VI/Dem-19/GST/Epson/DC/PMT/2023-23, dated 23.11.2023) (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner, CGST & C.Ex., Division- VI, Ahmedabad South (hereinafter referred to as the "adjudicating authority").

2(i). The facts leading to this case are that the appellant is engaged in the sale of goods i.e. printing equipment. During the scrutiny of the GST Returns for the period from July 2017 to March 2018, it appears that the tax payer has availed more ITC in their GSTR-3B than reflected in his GSTR-2A. On the basis of scrutiny of returns, the difference between ITC availed and ITC available to him is tabulated as under:-

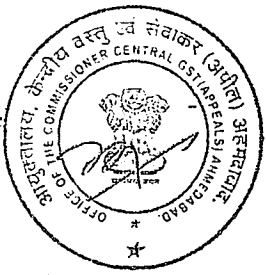


Description	IGST	CGST	SGST	Total Tax
ITC as per GSTR 3B	103437833	1662373	1662373	106762579
ITC of 2017-18 availed in the year 2018-19 before sep 2018	299680	144561	144561	588801
Total ITC of 2017-18 availed in GSTR 3B	103737513	1806934	1806934	107351380
ITC as per GSTR 2A as auto populated in GSTR 9 (table 8A)	99798282	1609279	1609279	103016049
Excess ITC Availed	3939231	197655	197655	4334531

2(ii). Further, ASMT-10 dated 30.06.2022 was issued to the appellant intimating about the discrepancies and seeking explanation of the notice. As reply was not found satisfactory owing to lack of documentary evidences, a Show Cause Notice was issued to the appellant on 27.09.2023. Further, the adjudicating authority passed the impugned order and confirm the demand and order to recover the excess availed and utilized ITC amounting to Rs.43,34,531/- under the provisions of Section 73(1) of the CGST Act, 2017 and Gujarat Goods & Service Tax Act, 2017 alongwith Interest at the applicable rate under the provisions of Section 50(3) of the Central Goods and Service Tax Act, 2017, and penalty of Rs. 4,33,453/- under the provisions of Section 73(1) of the Central Goods and Service Tax Act, 2017, read with the provisions of Section 122(2)(a) of the Act.

3. The adjudicating authority has passed the impugned order and confirmed the demands as mentioned above on the following grounds:

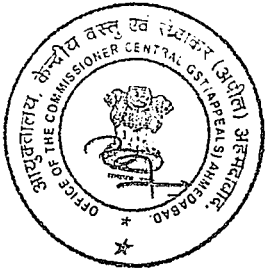
- *the tax payer has not justified the reasons for taking excess credit which was not available in GSTR 2A;*
- *that after gone through GSTR 3B for the month of March 2018, the taxpayer has reversed the ITC of Rs. 4,83,940/- (CGST Rs. 2,41,970/- & SGST Rs. 2,41,970/-) in other category;*
- *the purpose of the reversal of the ITC is not clear as it is shown in other category and it is not co-related with the mount of Rs. 4,51,518/-. Further, this reversed ITC was already accounted for during the scrutiny of the returns;*
- *that the taxpayer has not reversed excess ITC of 2017-18 through GSTR 3B for the month of December 2018;*
- *that ITC for the year 2017-18 can be claimed till the due date of furnishing of the return for the month of March 2019, therefore ITC available, if any, in the month of December 2018 would be lapsed after due date of furnishing annual return;*
- *that the submission of the tax payer that the difference is due to timing differences arising on account of invoice date and accounting date and they have reversed excess ITC is incorrect and misleading to the department;*
- *that the ITC not availed from GSTR 2A to GSTR 3B falls under category of lapsed ITC. The taxpayer has not submitted any documentary evidences to establish legality;*
- *that the taxpayer has wrongly availed and utilized the ITC under the provisions of Section 73(1) of the CGST Act 2017 and hence the same is liable to be recovered alongwith interest and penalty.*



4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 20.02.2024, the grounds of appeals submitted by the appellant are mentioned below:

- *that the impugned order has been passed by the Learned Respondent, without appreciating the factual position in full and without proper application of law on certain matters and therefore the order deserves to be set aside, to the extent inconsistent with law and on facts*
- *that the company has reversed and reduced the credit amounting to INR 44,03,395 in the GSTR-3B filed for periods Mar-2018, Apr-2018, Dec-2018 & Mar-2019;*

- that the subject matter of the appeal is only with respect to not taking into consideration the ITC reversals and reduction (reported on net off basis) made in the monthly GSTR-3B filing, stating that the reduction was shown as net off the ITC and not shown as reversals separately in the GSTR-3B;
- That we are herewith attaching the CA certificate to substantiate that the credits availed on a net off reduction basis in GSTR-3B filed for the month of Dec-2018 and Mar- 2019 as to this appeal;
- that the fact understood by the learned respondent and as noted in Para 8.4 of the impugned order is totally incorrect (it is understood by the learned respondent that the ITC not availed as per 2A of Dec-2018 to be considered as ITC reversal and to be adjusted/set off against the excess ITC availed. However, our submission was that the credit availed in Dec-2018 and Mar-2019 is on a net-off basis, where reduction of ITC is already a part of ITC reported in Table 4(A) (5) and the same fact has been noted in GSTR 9C, which has been certificated by the independent Chartered Accountant;
- that the appellant has not availed and utilized the excess credit and the same has been reversed/ITC reduced subsequently within the specified time limit;
- That we humbly request the Appellate Authority to consider that small procedural lapses should not come in between a reversal/ reduction of credit. It is a well-settled judicial principle that small procedural lapses are condoned to ensure that substantial benefit is not denied in law;
- The relevant judgement under Pre-GST indirect tax law is being relied herein, in case of M/s Wolfra-Tech Private Ltd Vs Commissioner of Central Excise (Appeals), Mangalore 1 it was held that rebate of duty paid on goods exported should not be disallowed merely on account of procedural lapses. In case of Modem Process Printers v Commissioner of Central Excise (Appeals), the rebate application was rejected on the ground that the applicant had filed incorrect declaration (as required under notification 41/2001- CE (NT) dt 26-06-2001) with the jurisdictional Asst. Commissioner of Dy. Commissioner of Central Excise;
- As the Appellant is not liable to any tax dues under the law, the question of payment of interest or penalty does not arise. Consequently, no interest or penalty can be demanded from the Appellant under the provisions of Section 50 or Section 73 of the CGST Act respectively. Similarly, as the demand itself is questionable, the levy of interest and penalty ought not to arise;
- The Appellant humbly submits with the intent to evade payment of taxes being absent, the levy of penalties under the said sections is not provided.



In this connection, the Appellant places its reliance on the judgements issued under earlier indirect tax law on the similar matter:

Reliance is placed on the cases of Tamil Nadu Housing Board v CCE10 and in the case of CCE v Chemphar Drugs & Liniments; Further, the Company also relies on the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs The State of Orissa. In this regard, the Honourable Supreme Court has held that a finding of suppression of facts can be returned only if the assessee has deliberately avoided paying tax though knowing that tax is payable. In view of the factual position, the imposition of penalty under Section 11AC is lacking the basis and liable to be set aside.

In view of the above the appellant requested to allow the appeal by way of setting aside impugned order appealed against and oblige.

VIRTUAL HEARING :

5. Virtual hearing in the present appeal was held on 16.05.2024. Shri Shailes F. Asawa, CA, authorized Representative appeared virtually on behalf of the appellant in the present appeal. During hearing he submitted that they have taken only net-off credit in GSTR 3B. Since we have not availed and utilised any eligible credit. Also submitted ITC credit ledger with appeal memo.

It is submitted that the credit ledger is submitted alongwith GSTR 3B which is matching with ITC credit available. This is repeated in GSTR 9/9C also. As regards interest, the same is not paid so far. He further submitted that in the initial period there was no clarity and practice followed in S.Tax/excise was followed repaying ITC not off reversal. In view of above requested to allow appeal.

DISCUSSION AND FINDINGS:

6. I have gone through the facts of the case, written submissions made by the 'appellant'. It is observed that the main issue to be decided in the instant case is whether the appellant has excess availed and utilized ITC amounting to Rs. 43,34,531/- in GSTR-3B viz-a-viz GSTR-2A, under the provisions of Section 73(1) of the CGST Act, 2017 and Gujarat Goods & Service Tax Act, 2017 read with section 20 of the IGST Act, 2017 or otherwise?

7(i). In the instant case the appellant contended that that they had reversed and reduced the credit amounting to INR 44,03,395 in the GSTR-3B filed for periods Mar-2018, Apr-2018, Dec-2018 & Mar-2019, hence and also availed credit within the prescribed time limit. In view of the above, it is observed that through GSTR-3B for the month of



March 2018 they have reversed the ITC of Rs. 4,83,940/- (CGST Rs. 2,41,970/- and SGST Rs. 2,41,970/-) and through GSTR-3B for the month of April 2018 they have reversed the ITC of Rs. 59,881/- (CGST Rs. 29,941/- and SGST Rs. 29,941/-), however the purpose of the reversal of the ITC is not clear, as these reversal has been done on account of ITC difference between GSTR 3B and GSTR2A or otherwise?.

7(ii). As per GSTR-3B for the month of Dec-2018 & Mar-2019, the appellant contended they have reversed the remaining excess ITC of 2017-18. However as per GSTR 3B for the month of December 2018 it is observed that no reversal of ITC as claimed by the appellant was found. In the instant case, ITC for financial year 2017-18 can be claimed till the due date of furnishing of the return for the month of March 2019. Therefore ITC available if any in the month of December 2018 would be lapsed after due date of furnishing annual return and it is not available to them for setting off as requested by the tax payer.

7(iii). The appellant contended that they have not availed ITC from GSTR 2A to GSTR 3B for the month of December 2018. They further contended that this un-availed ITC has to be considered for setting off the wrongful availed and utilized during 2017-18. However in the instant case ITC for financial year 2017-18 can be claimed till the due date of furnishing of the return for the month of March 2019 which is 23.04.2019. Therefore ITC available if any in the month of December 2018 would be lapsed after due date of furnishing annual return and it is not available to them for setting off. Further the appellant failed to produce any documentary evidence to establish unclaimed ITC which they requested to set off against the wrongful availed and unutilized excess ITC.

8. In view of the above it is observed that the appellant has contravened the provisions of Section 16(2)(C) of the CGST Act 2017, as registered person shall not take ITC in respect of supplies on which the tax has actually not been paid to the government. Further they have also violated the Rule 36 of the CGST Act 2017 as they failed to produce any documentary evidence to establish unclaimed ITC. Accordingly, I find that the appellant has wrongly availed and utilized ITC which was not reflected in GSTR 2A amounting to Rs. 4334531/- and the same is required to be recovered from them under the provisions of Section 73(1) of the CGST Act 2017 alongwith interest under the provisions of Section 50 of the CGST Act 2017 and penalty under the provisions of Section 73(1) of the CGST Act 2017 read with Section 122(2)(a) of the CGST Act 2017.



9. Further the appellant referred various case laws in their grounds of appeals. However, the case laws relied upon by the appellant would not be applicable in the present case, as appellant violated the provision of Section 16, Section 155, Rule 36, of the CGST Act/Rules. Further, the appellant also failed to produce documents to the department to justify that the ITC claimed by them of Rs. 43,34,531/- is respect of difference between GSTR-2A and GSTR 3B. Hence, the contention of the appellant is not legally sustainable.

10. In view of the above discussions, I do not find any merit in the contention of the appellant so as to intervene in the impugned order passed by the adjudicating authority. Accordingly, the impugned order of the adjudicating authority is legal and proper hence upheld.

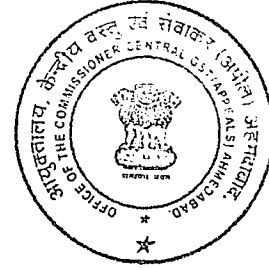
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

Adesh Kumar Jain
21/05/2024
(Adesh Kumar Jain)

Joint Commissioner (Appeals)
Date: 21.05.2024

Attested

Sandheer Kumar
21/05/24
(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

M/s. Epson India Private Limited,
Opposite Mayoure Bunglow,
902, 9th Floor, Abhijit IV, Ellis Bridge,
Ahmedabad, Gujarat-380006.

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 Commissionerate.
4. The Deputy/Assistant Commissioner (RRA), CGST, Ahmedabad South Commissionerate
5. The Deputy/Assistant Commissioner, CGST, Division- VI, Ahmedabad South Commissionerate
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File.

