


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>3574</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फ़ा.सं./F.No. GST/15-01/OA/2023

DIN-20231064WT000000E780
आदेश की तारीख/Date of Order: - 04.10.2023
जारी करने की तारीख/Date of Issue :- 04.10.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 37/JC/ LD /GST/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाडी, अहमदाबाद-380015 को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उम पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GADT/TECH/SCN/GST/173/2022-Tech & Legal dated 30.12.2022 issued to M/s Finar Limited, having GSTIN 24AAACF3217D1ZC, 184, 185, Chacharwadi Vasana, Sarkhej Bavla Highway, Ahmedabad, Gujarat.

Brief Facts of the Case:-

M/s. **Finar Limited**, Goods and Service Tax Identification (GSTN) No:- **24AAACF3217D1ZC** having their principal place of business situated at 184,185, Chacharwadi Vasana, Sarkhej Bavla Highway, Ahmedabad Gujarat (herein after referred as the "taxpayer" for the sake of brevity) are engaged in the outward supply of goods, such as, Nitrile-Function Compounds Acrylonitrile, Acyclic Alcohols and their Halogenated, Sulphonated, Nitrated or Nitrosated Derivatives, Ketones and Quinones, Chlorides, Chlorides Oxides, Bromides Oxides, etc., etc. falling under HSN 29261000, 29261000, 29051100, 29141100 and 28273100., etc.

2. The audit of the records of the said taxpayer was conducted for the period from July, 2017 to March, 2020 and subsequently Final Audit Report No.:- GST 209/2022-23 dated 23.06.2022 in the Form GST-ADT-02 was issued to the said taxpayer. In the said Final Audit Report, out of the total paras raised, 05 unsettled revenue paras were raised regarding Non-payment of Tax, Interest and Penalty, on various counts. The said un-settled revenue paras are discussed in detail in subsequent paras. In this show cause notice wherever the provisions of the CGST Act, 2017 (hereinafter referred to as "the said Act") have been referred, it includes reference to the parallel provisions under the Gujarat GST Act, 2017 and provisions of IGST Act, 2017 as made applicable vide Section 20 thereof. The revenue paras detected are as follows:

3. Revenue Para - 7: Ineligible ITC taken on the items which are not eligible for ITC under Section 17 of the CGST Act 2017 and on services which were not utilized for furtherance of business of Gujarat unit and hence not eligible for ITC under Section 16 of the CGST Act 2017:

3.1 During the course of Audit it was found that the taxpayer has taken Ineligible ITC on the items like "***gardening services, food & beverages, Rent-a-cab, service for motor car, gift items (shirts, mugs, umbrella, et), health/life/car insurance, wall panels, flooring works, wooden ceilings, carpet tiles, sand, false ceiling, interior designing works of office, catering/light sound system, HVAC(immovable), Apple I-watch, water cooler, promotional items distributed (free of cost), etc.***" which are not eligible for ITC under Section 17(1)/17(5) of CGST Act 2017. Further, they have also availed Ineligible ITC on inputs/ input services which were not utilized for furtherance of business for this unit like credit availed on ***(i) services rendered to their other units, (ii) goods purchased and transferred to other units without payment of GST etc*** and hence not eligible for ITC under Section 16(1) of CGST Act 2017 read with Section 2(59) & 2(60) of the CGST Act, 2017. The details of the goods and services, credit in respect of which are blocked/ineligible have been detailed in the Annexure "A" to the SCN alongwith the reasons thereof.

3.2 The total ineligible ITC availed by the taxpayer amounts to Rs 1,09,16,528/- (CGST- Rs. 30,60,392/-, SGST- Rs. 30,60,392/- & IGST -Rs. 47,95,743/-). Out of the total amount of Rs 1,09,16,528/-, the taxpayer has paid an amount of Rs. 67,131/- (CGST Rs 33,565.50/- + SGST Rs 33,565.50/-) vide DRC -03 dated 06.02.2022 towards the Blocked/ineligible credit taken in respect of the following suppliers.

Name of the supplier	2017-18			2018-19			2019-20			GRAND TOTAL
	CGST	SGST	TOTAL	CGST	SGST	TOTAL	CGST	SGST	TOTAL	
CODE CABS PVT LTD			0	3241	3241	6482	9138	9138	18276	24758
MUKESH TRAVEL COMPANY	0	0	0	0	0	0	187.5	187.5	375	375
PERAL LEASURE	4063	4063	8126	0	0	0	0	0	0	8126
SWAGAT CATERERS	8381	8381	16762	0	0	0	0	0	0	16762
CAR CARE	450	450	900	0	0	0	0	0	0	900
KRISHNA SWEETS	868	868	1736	0	0	0	0	0	0	1736
GO DIGIT	0	0	0	0	0	0	4876	4876	9752	9752
UNICORN SOLUTIONS	0	0	0	0	0	0	2361	2361	4722	4722 (part payment)
TOTAL										67131

3.3 It is pertinent to note that the taxpayer has paid only a part of the amount in the case of invoice raised by M/s Unicorn Solutions. The total ITC wrongly availed is Rs 5,262/- (CGST Rs 2631/- + SGST Rs 2631/-). However, the taxpayer has only paid the amount of Rs 4,722/- (CGST Rs 2361/- + SGST Rs 2361/-). Further the taxpayer has also paid an amount of Rs 39,054/- towards interest on the above tax paid by them. While not agreeing to the wrong availment in respect of the remaining amount, the taxpayer vide their letter dated 28.04.2022 has informed that *"in GST regime, the scope of inputs, capital goods and input services is very wide and covers almost all the imaginable inputs and services that are directly or indirectly used in course of furtherance of business. Section 16(1) of the CGST Act, 2017 provides that any registered person can avail credit of tax paid on the inward supply of goods or services or both, which is used or intended to be used in the course of furtherance of business."*

3.4 Since the invoices were voluminous, the tax calculations have been done based on the ledgers provided by the taxpayer on email. Invoices in respect of some of the suppliers were also obtained from the taxpayer which are also attached with the ledger of the respective suppliers. The copies of the same are attached as per.

3.5 It appears that the said taxpayer has contravened the provisions of Section 2(59), 2(60), Section 16(1), Section 17(1) and 17(5) of the CGST Act, 2017 as made applicable to the IGST Act 2017 & SGST Act, 2017 in as much

as they have availed credit which are blocked under Section 17 of the CSGT Act, 2017 and also availed credit in respect of inputs/input services which are not used for furtherance of their Gujarat unit as detailed in Annexure "A" to the SCN.

3.6 In light of the facts discussed hereinabove and the material evidences available on records, it appears that the taxpayer appears liable to pay tax amount of **Rs.1,09,16,528/-** (CGST- Rs. 30,60,392/-, SGST- Rs. 30,60,392/- & IGST – Rs. 47,95,743/-) (as detailed in Annexure "A" to the SCN) which was wrongly availed by them as discussed in the foregoing paras and the same is required to be demanded and recovered from them under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017. It appears that they are also required to pay applicable interest under Section 50(1)/50(3) of the CGST Act, 2017, read with Rule 88B of the CGST Rules, 2017 & Penalty under Section 74 read with Section 122(2) (b) of the CGST Act, 2017, and provisions of Section 20 of the IGST Act, 2017. The amount of **Rs. 67,131/-** (CGST Rs 33,565.50/- + SGST Rs 33,565.50/-) already paid by them also needs to be appropriated against their total liability of **Rs Rs.1,09,16,528/-** under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017. Interest amount already paid by them amounting to **Rs 39,054/-** also needs to be appropriated against their total interest liability on the aforesaid tax demand of **Rs 1,09,16,528/-** under Section 50(1)/50(3) of the CGST Act, 2017, provisions of Section 20 of the IGST Act read with provisions of Rule 88B of the CGST Rules, 2017.

4. Para No08 : Regarding Non payment of GST on supplies made by the head office to branch office (Cross Charge)

4.1. Whereas, during the course of audit and on scrutiny of financial records of the said taxpayer it was observed that the taxpayer is having their head office at Gujarat and five other branch offices at Hyderabad, Gazhiabad, Bhiwandi, Vijayawada and Kolkatta. It was also found that their Head office has incurred certain expenses for the said branch. It was also observed that the said taxpayer was mostly accounting for /incurring expenses for their branches in the books of account of their Gujarat unit. It appears that the taxpayer has provided services for the certain below mentioned activities from their Head Office to their different branches located in states other than Gujarat. It appeared that the taxpayer and its branches are distinct persons and that the taxpayer had supplied services from different departments of their head office to their branches, in terms of the provisions of law. It appears that they were liable to pay the Integrated Goods and Services Tax (IGST) on the supply of services from their Head Office to their branch office by incurring expenses on their behalf. These supplies appear liable to GST as they were supplies between distinct persons as per Section 25(4) & 25(5) of the CGST

Act, 2017, without consideration, as per Section 7 (1) (c) of the CGST Act, 2017 read with point No. 2 of Schedule 1.

4.1. Whereas, it appeared that the said taxpayer is a unit registered in Gujarat and has the Head Office at Ahmedabad, Gujarat. It has other branch office located outside Gujarat with different registration numbers based on the same PAN. It appeared that, for all collective expenses incurred at the Head Office level, the expenses are required to be distributed among the individual branch offices registered at different locations other than Gujarat in proportion of their sale. It appeared from the above that the said taxpayer being the Head Office, is incurring expenditure on behalf of their branch located elsewhere in the country, outside Gujarat, for activities to be treated as supply even if made without consideration to distinct persons (hereinafter referred as "deemed supply"). The expenditure made by the Head Office such as *Salary of persons working in various section of the taxpayers unit viz. accounts, taxation, HR, Management, purchase/ sale, Director's service etc, sales team expenses, Director sitting fees, Advertisement expenses, Placement and recruitment expenses, internet expenses, Tel & mobile expenses, legal expenses, Consultancy charges, etc.* are collective and common for Head Office and its branches. It appeared that the relationship between the Head Office and their branch fall within the ambit of 'distinct persons', as laid down under the provisions of Sections 25(4) and 25(5) of the CGST Act, 2017. Accordingly, as per the provisions of Sections 7(1)(c) of the Act read with the provisions of clause (2) of Schedule I to the CGST Act, 2017, it appeared that the nature of expenditure incurred by the Head Office for deemed supply to their branch by the taxpayer would fall within the ambit of 'supply'. It appeared that the term 'business' has been given a wide ambit and therefore, would cover the words 'when made in the course or furtherance of business' mentioned in clause (2) of Schedule I to the CGST Act, 2017. It appears that clause (a) to Section 2(17) of the said Act defines "business" to include any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.

4.2. Whereas, it appeared that there was no consideration received by the said taxpayer from their branch, therefore, the valuation of the supply appears to be done in terms of the provisions of Rule 28 of the Central Goods and Services Rules, 2017. The relevant text to Rules 28 of the CGST Rules, 2017 reads as under:

"28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;*
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order”*

The text of Rules 30 and 31 of the said Rules is reproduced below:

“30. Value of supply of goods or services or both based on cost.-Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

31. Residual method for determination of value of supply of goods or services or both.-Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of Section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30”.

4.3. Scope of supply as defined under Section 7 of the CGST Act’2017 :

Section 7. (1) For the purposes of this Act, the expression “supply” includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- (b) import of services for a consideration whether or not in the course or furtherance of business;*
- (c) **the activities specified in Schedule I, made or agreed to be made without a consideration;***

4.3A. As per Section 9(1) of the CGST Act, 2017, tax is levied on the goods and services supplied by the taxpayer. The same is reproduced herewith :-

“9. Levy and collection.— (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.”

4.3B As per Section 5(1) of the IGST Act, 2017, tax is levied on the goods and services supplied by the taxpayer. The same is reproduced herewith :-

“5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.”

4.4. As per the provisions of Section 25(4) of the CGST Act' 2017, “distinct person” is defined as follows :-

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

4.5. As per Schedule-I of the said Act, any supply between different GST registrations having the same PAN (distinct persons) shall be treated as “supply” even when made without consideration.

SCHEDULE I.
[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(1) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

(2) **Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:**

4.6. Whereas, it appeared that the value is not available in terms of the provisions of Rules 28(a) and 28(b) of the Rules. Further the taxpayer has not made any provision of service in their books of account. Hence it appears that the valuation cannot be ascertained under Rule 30 of the CGST Rules, 2017. It, therefore, appeared that the residual method for determination of value of

supply of services has to be employed, in terms of the provisions of Rules 31 of the CGST Rules, 2017 as the cost of provision of service is not available.

4.7. A query memo in this regard was issued to the taxpayer vide F. No. VI/1(b)-65/IA/AP-36/C-VI/19-20 dated 09.03.2022. The taxpayer was requested to provide the details of GST on cross charge services provided by them along with proportionate value of services given to the branches of M/s Finar Limited. The taxpayer vide email dated 20-04-2022 provided the details of these expenses.

4.8. In reply to the above query memo, the taxpayer vide their letter dated 28.4.2022 furnished reply as under:-

"It is pertinent to note that, we do not provide any service to our branches. We are in the business of Lab Chemicals & Excipients and supply goods through 5 branches across India. The value goods supplied to branches are on market value and similar to the rate we have supplies to other entities. We evaluate the market rate depending upon the production cost. This production cost covers all direct and indirect expenses, cost of services etc. Therefore, there is no element of "Supply of service" between head office and branches (i.e Distinct person)"

4.9 it appeared that in this case the tax payer has not booked expenses incurred for their Gujarat unit and the other units (i.e distinct persons) separately in their books of accounts. It therefore appeared that the following expenses, obtained from their books of account (through their email dated 20.04.2022), can be considered as services attributable to their five branches (distinct persons). Accordingly, it is construed that the taxpayer has supplied services to their branches which are distinct entity as per Section 25 of the CGST Act, 2017 and accordingly tax is leviable on the said service as per Section 9(1) of the CGST Act, 2017

Salary
Sales Team Expenses
Sitting Fees
Advertisement Expenses
Placement & Recruitment expenses
Internet Expenses
Telephone & Mobile Expenses
Legal Expenses
Consulting Charges (Factory)

4.10 Further, as per the data provided by the taxpayer in respect of the turnover of the Gujarat unit and the other five units the percentage of turnover of the other five branches was ascertained year wise and the same is as under and also mentioned in the Annexure "B" to the SCN.

Year	Gujarat	Hyderabad	Ghaziabad	Bhiwandi	Vijayawada
2017-18	56.48 %	21.40 %	9.19 %	7.75 %	5.17 %
2018-19	59.32 %	17.47 %	9.35 %	6.10 %	7.76 %

2019-20	54.80 %	15.54 %	10.27 %	6.44 %	9.38 %
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4.11 Thus, on the basis of turnover of the other five units in comparison with total turnover, the expenses in regard to services provided by their head office along with IGST payable by the taxpayer was calculated and the taxable value for the purpose of levy of IGST was ascertained as Rs 24,59,84,353/- and IGST payable comes to Rs 4,42,77,184/- as detailed in Annexure "B" to the SCN.

4.12 The business model of the taxpayer is such that all the activities related to the branches are being controlled by the head office and only as per the directions of the head office, the goods are despatched from the branches. Only the invoice is generated by the branches. Accordingly, all the other activities of the branches are being done by the head office.

4.13 Thus, it is appeared that the Gujarat unit of the said taxpayer, which has incurred various expenses for the company on the whole and accounted in the books of account of HO, is not exclusive expenses for Gujarat unit, but it is a collective / combined expenses being incurred for and on behalf of the other 5 branches also, as the nature of expenses on such heading itself suggests. This activity is also considered as a supply of service by the Gujarat unit to their branches which fall under the category of distinct persons under Section 25 of the CGST Act, 2017 and accordingly tax is leviable on the same under Section 5(1) of the IGST Act, 2017 read with Section 9(1) of the CGST Act, 2017

4.14. Thus, in light of the facts discussed hereinabove and the material evidences available on records, it appeared that an amount of Rs. 4,42,77,184/- IGST short/not paid by taxpayer, as mentioned above, is required to be recovered under Section 74(1) of the CGST Act, 2017 along with interest under Section 50(1) of the said Act and penalty under provisions of Section 74 of the said Act read with Section 20 of the IGST Act, 2017.

5. Revenue Para -09 :Non-reversal of ITC taken on raw materials which were used for Exempted supply under Section 17(2) read with Rule 42 of CGST Rules 2017:

5.1. The audit proceedings and verification of records/documents etc. of the taxpayer during the period of audit revealed that the taxpayer has not reversed the ITC availed in respect of such inputs/goods which were utilized for Exempted supply of goods. As per Section 17(2) of CGST Act 2017 read with Rule 42 of CGST Rules, 2017, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies. Section 17(2) of CGST Act 2017 is reproduced here for the sake of clarity.

"17. (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the

said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.”

5.2 On inquiry with the taxpayer has provided the items which were cleared at Nil rate of tax viz AquaLiv, Boost C 1 Kg, DropH, Jalpro 1 Kg, Neutral 1 LT, Nitro ease 1 LT, NitroRid 1 LT, Sodium Chloride, Soil Care, TaQat 1 Kg, Thiamine Hydrochloride etc. They have also provided a list of raw materials which were used in the manufacture of the exempted final goods. The names of the raw materials are Ascorbic Acid & Dextrose Anhydrous, Jalpro, Formic Acid, Nitro ease, Nitro Rid, Sodium, Soil care, Yucca Extract, Zeolite etc. Further they have also provided details of month-wise exempted sale and also a list of invoices of the raw materials which were used exclusively in the manufacture of exempted goods email dated 25.04.2022.

5.3 The taxpayer has also informed that out of the above raw materials most of the raw materials are being exclusively used for the manufacture of the final product whereas some raw materials are mixed with other duty paid raw materials. The taxpayer has not provided invoice wise details of the raw materials used exclusively in the supply of exempted goods and raw materials which were used with other duty paid goods for supply of exempted goods. Hence the total input tax credit availed on the raw materials used in the supply of exempted goods has been demanded in the SCN.

5.4. The year wise demand of the input tax credit is as under :-

Period	IGST	CGST	SGST
2017-18	181575	30990	30990
2018-19	115455	28478	28478
2019-20	50902	5323	5323
TOTAL	347932	64791	64791

5.5. The taxpayer in their reply dated 28.04.2022 have provided a chart for calculation of reversal under Rule 42 of the CGST Rules, 2017, however they have not taken into account the restriction of credit under the provisions of Section 17(2) of the CGST Act, 2017, wherein the credit in respect of raw materials which are used exclusively for effecting exempt supplies is restricted and only that portion of the credit (of raw material) which is attributable to the taxable supply is allowed to them. Accordingly, the reply/ calculations provided by the tax payer does not appear to be correct as the same has been done without applying the provisions of Section 17(2) of the CGST Act, 2017.

5.6. The taxpayer has paid an amount of Rs 2,29,297/- (IGST-Rs 1,14,840/- + CGST- Rs 57,228/- & SGST- Rs 57,228/-) and interest Rs. 1,25,630/- vide GST DRC-03 dated 06.05.2022 and have not paid the remaining Tax amount i.e. Rs 2,48,217/- (IGST- Rs 2,32,692/- + CGST- Rs. 7563/- + SGST- Rs. 7563/-) alongwith interest and penalty.

5.7. Thus, in light of the facts discussed hereinabove and the material evidences available on records, it appeared that an amount of **Rs. 4,77,514/- (IGST-Rs 3,47,932/- + CGST- Rs. 64,791/- + SGST Rs 64,791/-)** was availed as input tax credit by the taxpayer, whereas the said goods were used for manufacture of exempt supplies. As per Section 17(2) of the CGST Act,2017,the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies. Since the said goods have not been used for the manufacture of taxable supplies, no credit appears to be allowed to them. Accordingly, the said tax amount of **Rs. 4,77,514/- (IGST-Rs 3,47,932/- + CGST- Rs. 64,791/- + SGST Rs 64,791/-)** is required to be restricted and since the same has been availed by the taxpayer, the said amount is required to be recovered from them under Section 74(1) of the CGST Act, 2017 along with interest under Section 50(1)/50(3) of the said Act, read with Rule 88B of the CGST Rules, 2017 and penalty under provisions of Section 74 of the said Act read with Section 20 of the IGST Act, 2017. Further the payment of **Rs 2,29,297/- (IGST-Rs 1,14,840/- + CGST- Rs 57,228/- & SGST- Rs 57,228/-)** and interest **Rs. 1,25,630/-**vide GST DRC-03 dated 06.05.2022 also needs to be appropriated against their tax / interest liability arising in the SCN.

6. Revenue Para - 10: Excess IGST credit availment was noticed on reconciliation of credit available as per GSTR-2A and availed as per GSTR-3B (As per Sr. No. 8 of GSTR-9)

6.1 In the said Final Audit Report, Revenue Para No.10 was raised regarding excess availment of ITC due to difference between GSTR2A vis-à-vis GSTR-3B as per provisions of Section 16(2)(c)(d) of CGST Act read with Rule 36 (4) of the CGST Rules, 2017 inserted vide Notification No. 49 / 2019-Central Tax dated 9th Oct, 2019 as amended by Notification No. 75/ 2019 -Central Tax dated 26th Dec, 2019.

7.1. Whereas, during the course of audit, on verification of GSTR2A vis-à-vis GSTR-3B Returns, it was observed that the said taxpayer has availed excess ITC in GSTR 3B as compared to that available in GSTR-2A.

7.2. The audit proceedings and verification of records/documents etc. of the taxpayer revealed that the taxpayer has availed excess *IGST credit* (as detailed below) during the audit period. On reconciliation of credit available as per GSTR-2A and availed as per GSTR-3B, excess availment of *IGST credit* of Rs 2,15,93,180/-was noticed (Please refer Sr. No. 8 of GSTR-9 for the audit period).

7.3The details of the difference for the Audit period i.e 2017-18 to 2019-20 is as under

2017-18	IGST (Rs.)	CGST (Rs.)	SGST (Rs.)
Total of GSTR 2A	6,77,30,053	3,04,69,940	3,04,69,940
Total of GSTR3B	7,54,95,320	2,94,00,745	2,94,00,745
Difference (2A-3B)	-77,65,267	(+) 10,69,195	(+) 10,69,195

2018-19	IGST (Rs.)	CGST (Rs.)	SGST (Rs.)
Total of GSTR 2A	7,89,81,635	4,98,00,670	4,98,00,670
Total of GSTR3B	8,13,67,958	4,68,53,971	4,68,53,971
Difference	-23,86,323	(+) 29,46,699	(+) 29,46,699

2019-20	IGST (Rs.)	CGST (Rs.)	SGST (Rs.)
Total of GSTR 2A	10,53,32,129	5,50,29,540	5,50,29,540
Total of GSTR3B	11,67,73,719	5,25,78,403	5,25,78,403
ITC availed in the next FY	-	24,51,137	24,51,137
Difference	-1,14,41,590	(+) 0	(+) 0

7.4 From the GSTR-3B returns filed by the taxpayer and the details provided by the taxpayer, it is seen that the taxpayer has reversed the following amounts of IGST for the audit period in the others category. The details of the same are as under:-

Period	ITC reversed(IGST) under the head others (in Rs)
2017-18	NIL
2018-19 (June 18 and July 18)	7,176,392
2019-20 (April 19)	7,03,881
Total	78,80,273

7.5 Further during the course of audit, the taxpayer has informed that they have wrongly mentioned the IGST relating to import as Rs 1,00,46,956/- (in the col no 8(G) & (H) of GSTR 9 for the year 2019-20), instead of the actual import IGST of Rs 1,99,55,262/- as per the bills of entry available with them. When the difference between GST-2A & GSTR-3B was communicated to the taxpayer they have in their reply dated 28.04.2022 stated that the amount of Rs 1,15,67,616/- paid as IGST against import was shown in col 8(B) of GSTR-9. However on verification of the Bills of entry it was found that the amount paid as IGST for import was Rs 99,08,306/- and not Rs 1,15,67,616/- as claimed by the taxpayer. Accordingly, the amount of Rs 99,08,306/- was reduced from col 8(B) of GSTR-9 for calculating the difference between GST-2A & GSTR-3B.

7.6. On going through the reply dated 28.4.2022 of the taxpayer, it was found that they have claimed the reversal for the year 2017-18 as Rs 71,23,287/-, for the year 2018-19 as Rs 1,32,552/- and for the year 2019-20 as Rs 9,69,771/- apart from bifurcating the amounts excess claimed under the head "Supplier not uploaded invoice"/"ITC mismatch - seller uploaded erroneous data"/ Import short declared in GSTR-9". On verification of the reversal amounts with the GSTR 3B filed by the taxpayer, it was found that there were two types of reversals i.e reversal under Rule 42/43 and reversal under category "others". The amounts claimed as reversed by the taxpayer does not match with the amounts shown as reversed in the "others" category of GSTR-3B filed for the respective period. Also, they could not provide any documentary proof for the amounts claimed under the other heads as

discussed above. Accordingly, the reply of the taxpayer does not appear to answer the difference in GSTR-2A-GSTR-3B.

7.7. Further, the taxpayer could not produce any valid documents/details in support of excess claim of IGST credit as mentioned above. On considering the above reversal which has been taken from the GSTR-3B, the following differences could not be clarified by the taxpayer alongwith proper documents. Further the taxpayer has also been now and again providing various datas relating to availment of ITC and changing their stance relating to the documents. As and when a query is raised, a new set of data is provided without substantiating it with the credit taking documents. Accordingly, the difference is arrived at by taking into account the final data provided by them. The same is as under :-

	Amount in Rs
Total difference between GSTR2A-GSTR3B as per GSTR 9	21593180
Total reversal in all the three years per GSTR 3B	(-)7880273
IGST on imports which was declared at wrong place	(-) 99,08,306
Net Difference in ITC between GSTR2A-GSTR3B	38,04,601

7.8. The year wise difference between GSTR2A-GSTR3B is as under :-

Period	ITC Availed (Integrated)
2018-19	22,71,317
2019-20	15,33,284
DIFF.(3B-2A)	38,04,601

7.9. Sub Rule 4 to Rule 36 of Central GST Rules,2017 was inserted vide para 3 of Notification No. 49/2019-Central Tax dated 9th Oct, 2019 which reads as under:-

3. In the said rules, in rule 36, after sub-rule (3), the following sub-rule shall be inserted, namely: - "(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility."

7.10. The said Sub Rule (4) of Rule 36 of Central GST Rules,2017 was amended vide Para 2 of Notification No. 75/2019-Central Tax dated 26th Dec, 2019 which reads as under:-

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), with effect from the 1st January, 2020, in rule 36, in sub-rule (4), for the figures and words "20 per cent.", the figures and words "10 per cent." shall be substituted.

7.11 Proviso to sub Rule 4 of Rule 36 of Central GST Rules,2017 was inserted vide para 3 of Notification No. 30/2020-Central Tax dated 3rd April, 2020 which reads as under:-

3. In the said rules, in sub-rule (4) of rule 36, the following proviso shall be inserted, namely:- "Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above."

7.12 The said Sub Rule (4) of Rule 36 of Central GST Rules,2017 was further amended vide Para 2 of **Notification No. 94/2020-Central Tax dated 22nd Dec, 2020** interalia substituted the figure and words "5 per cent "for the figures and words "10 per cent."

7.13 Section 16 of Central GST Act,2017 provides for the eligibility and conditions for taking input tax credit.

16. Eligibility and conditions for taking input tax credit.

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
- (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—*
- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
- (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 matter specified under Section 37,*
- (b) he has received the goods or services or both. [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;*

(c) subject to the provisions of section 41, 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

7.14. On combined reading of above provisions, if the ITC taken by the taxpayer as per GSTR-3B is more than the amount of credit auto populated in his GSTR2A returns and the tax has not been paid to the government , the return has not been filed, then the said taxpayer shall be denied the differential ITC availed by him in his GSTR 3B Returns vis-à-vis corresponding GSTR-2A returns as per the above provisions of Section 16(2) (c),(d) of CGST Act,2017 read with sub Rule 4 of Rule 36 of CGST Rules,2017. The reason for not reflecting of details of inward supply in GSTR-2A appears to be that the suppliers of the raw materials have not filed their GSTR1 returns or have not mentioned these invoices in his GSTR-1 Returns filed or have mentioned wrong GSTIN No. (instead of GSTIN No. of the said taxpayer may have mentioned GSTIN No. of someone else) in their GSTR-1 Returns or the taxpayer has taken excess credit on their own. In absence of the outward liability of the supplier not being auto-populated in the GSTR 2A , it is not ascertainable as to whether the tax has been paid to the government or not.

7.14.1. **Section 39 of the CGST Act, 2017** lays down that every registered person should file a return giving details of the outward supply made by them, inward supply received by them including the ITC available with them. Section 39 of the CGST Act, 2017 reads as under:

“39. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as

may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.”

7.14.2 Rule 61 of the CGST, Rules, 2017, as amended reads as:

61. Form and manner of submission of monthly return.-(1) Every registered person other than a person referred to in Section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

7.14.3 From conjoint reading of Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, it appears that M/s Finar Ltd. should have filed correct GSTR-3B returns, however they have knowingly failed to file correct GSTR-3B returns. They should have declared wrongly availed credit in the appropriate column of GSTR3B viz. Ineligible ITC and should not have availed the ineligible credit in their GSTR 3B returns.

7.15 In light of the facts discussed hereinabove and the material evidences available on records, and since the Annual Return in form GSTR 9, is filed for the period July'17 to March'18, 2018-19 and 2019-20 by the taxpayer, it appears they are required to pay **Rs.38,04,601/- IGST** towards excess availment of ITC as per the provisions of Section 74(1) of CGST Act, 2017 along with interest under Section 50(1)/50(3) of CGST Act, 2017 read with Rule 88B of CGST Rules, 2017 and penalty under Section 74(1) thereof read with Section 20 of IGST Act, 2017.

Legal Provisions

8. In light of the facts discussed hereinabove and the material evidences available on records, it appears that the said taxpayer have contravened the following provisions of the CGST Act, 2017/CGST Rules, 2017 :

- (i) Section 2(59) & Section 2(60) read with Section 16(1) and Section 17(1)/ 17(5) of the CGST Act, 2017
- (ii) Section 9(1), Section 25(4)/Section 25(5) readwith Section 15 (5) of CGST Act, 2017 readwith Section 7 of the CGST Act, 2017 and Rule 30 and 31 of CGST Rules, 2017 in as much as they have failed to treat their five branch Offices as distinct Person and failed to discharge GST liability thereon.
- (iii) Section 17(2) of the CGST Act, 2017.
- (iv) Sub Rule (4) of Rule 36 of Central GST Rules,2017/Gujarat State GST Rules,2017 readwith Section 16(2)(c)(d) of CGST Act, 2017/ Gujarat State GST Act,2017 in as much as they have availed excess credit in GSTR3B vis-à-vis GSTR2A, as discussed above;
- (v) Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017 in as much as they failed to file correct GSTR-3 returns, failing which the wrong availment of ITC/ non payment of GST with an intend to evade payment of tax was unearthed;
- (vi) Section 50 of the CGST Act, 2017 read with Rule 88B of the CGST Rules, 2017, in as much as they failed to discharge their GST liability in due time /not paid interest/ wrongly availed ITC;
- (vii) Section 59 of the CGST Act, 2017, in as much as they failed to self assess their tax liability with an intend to evade payment of tax;
- (viii) Proviso to Section 5(1) of the IGST Act read with the provisions of Section 5(3) of the IGST Act and Sr. No. 10 to Notification No 10/2017-Integrated Tax (Rate) of 28.6.2017 as they have failed to pay tax to the Government account, as discussed above;

INVOCATION OF SECTION 74 OF THE CGST ACT, 2017

9. Section 74 of the CGST Act, 2017 :

"Section 74 (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.

(2) to (6)

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded."

10. The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the payer.

11. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act' 2017 /Gujarat GST Act'2017which reads as "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for the tax period as specified under section 39." It appeared that the said

taxpayer suppressed the short payment of GST; wrong availment of ITC; non-payment of interest and thereby it appears that they have knowingly failed to correctly self assessed tax payable / interest payable with an intent to evade payment of proper tax. In the scheme of self-assessment, the Department comes to know about the supplies made and ITC availed only during the scrutiny/Audit of the statutory returns filed by the taxpayers under the statute. Therefore, the government places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns.

11.1 Explanation 2 to Section 74 of the CGST 2017 has defined suppression 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"

12. From the Information/data of the taxpayer verified during the course of audit, it appears that the taxpayer have short paid GST; wrongly availed ITC; not paid the wrongly availed ITC and not discharged the interest liability and it appeared that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax/ Interest liabilities is utter disregard to the requirements of law and breach of trust deposited on them and outright act in defiance of law by way suppression, concealment & non-furnishing value of taxable supply/ wrong availment of ITC with intent to evade payment of tax. The above said short payment of GST; wrong availment of ITC ; non payment of interest is unearthed after audit was conducted by officers of Central Tax Audit, Ahmedabad and had the same not been detected during audit, it would have remained unnoticed leading to loss of government revenue. All the above facts of contravention on the part of the Taxpayer have been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded from them under Section 74(1) of the CGST Act,2017/Gujarat GST Act'2017 readwith Section 20 of IGST Act'2017 by invoking extended period of five years.

13. Since the said taxpayer was liable to self-assess the liability to pay tax, they had an obligation to furnish the correct and complete information.

13.1. It appeared that the taxpayer had not paid the tax within the prescribed due dates on the outward supplies made by them/wrongly availed ITC. Further, it appeared that they had wrongly availed ITC of CGST/SGST/IGST. These supplies/ wrongly availed ITC were not shown in their GSTR 3B returns filed for the respective period. It, therefore, appears that there is a case of suppression of facts with intent to evade the payment of tax, wrong availment of ITC etc. It appeared that short paid IGST/CGST/SGST

and wrongly availed IGST/CGST/SGST is to be demanded/ recovered from the said taxpayer under the provisions of Section 74(1) of the Act. Similarly, short paid IGST, wrongly availed ITC of IGST/CGST/SGST appears liable to be demanded/ recovered from them under the provisions of Section 74(1) and interest liable to be recovered under Section 50 of the CGST Act, 2017 /Gujarat GST Act, 2017, provisions of Section 20 of the IGST Act,2017readwith Rule 88B of the CGST Rules, 2017.

13.2. By their various acts discussed above, the said taxpayer appears to have rendered themselves liable for penal action under Section 74 (1) of the CGST Act, 2017 for failure to file proper statutory GST returns, duly discharging the proper tax liability, failure to pay tax, failure to self assess the tax liability, wrong availment of ITC and suppression of facts and contravention of various provisions of the CGST Act, 2017 and Rules made there under with intent to evade payment of Goods and Services Tax; thereby it appears that the taxpayer is also liable for penalty under Section 74(1) of the CGST Act, 2017.

14. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC-01 A was issued to the said taxpayer on 16.12.2022 2022 intimating their liability under Section 74(5) of the CGST Act, 2017 or to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 26.12.2022 2022.

14.1 The said taxpayer vide DRC-01 A Part B dated 27.12.2022 has filed the reply.

14.2 The submissions made by the said taxpayer as stated above regarding revenue payable are not found tenable. These submissions are nothing but repetition of the reply given by them to the Query Memo raised by the auditors. The contentions raised by them do not appear to have any merit so as to drop the proposal of issuing the show cause notice.

15. **Therefore, M/s. Finar Limited**, Goods and Service Tax Identification (GSTN) No:-**24AAACF3217D1ZC** having their principal place of business situated at 184,185, Chacharwadi Vasana, Sarkhej Bavla Highway, Ahmedabad Gujaratare called upon to show cause to the Additional Commissioner, Central GST & Central Excise, Ahmedabad North Commissionerate, 1st floor, Customs House, Near All India Radio, Navrangpura, Ahmedabad- 380 009,as to why:

- (i) Total GST amounting to **Rs.1,09,16,528/-**(CGST- Rs. 30,60,392/- ,SGST- Rs. 30,60,392/- & IGST – Rs. 47,95,743/-) (Rupees One Crore nine Lakhs Sixteen Thousand and five Hundred Twenty Eight only), should not be demanded from them under the provisions of

Section 74(1) of the CGST Act, 2017 read with provisions of Section 20 of IGST Act, 2017. Since the taxpayer has paid an amount of Rs 67,131/- (CGST Rs 33,565.50/- + SGST Rs 33,565.50/-), why the said amount should not be appropriated against their demand of Rs 1,09,16,528/- mentioned hereinabove;

- (ii) Interest under Section 50(1)/50(3) of the CGST Act, 2017 read with Rule 88B of the CGST Rules, 2017, as made applicable to IGST Act, 2017 should not be demanded and recovered from them on the amount mentioned at (i) hereabove. Since the taxpayer has paid an amount of Rs 39,054/- towards interest leviable,, why the said amount should not be appropriated against their total interest liability demanded;
- (iii) Penalty should not be imposed upon them, under the provisions of Section 74(1) of the CGST Act, 2017/ Gujarat GST Act, 2017 on tax amount mentioned at (i) above.
- (iv) Integrated Goods and Service Tax (IGST) amounting to **Rs. 4,42,77,184/- (Rupees Four Crores, Forty Two Lakhs Seventy Seven Thousand One Hundred Eighty Four only)**, not paid on supplies made by the Head Office to Branch Office, as discussed above, should not be demanded and recovered from them, under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017;
- (v) IGST Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at (iv) above, under the provisions of Section 50 of the CGST Act, 2017/ Gujarat GST Act, 2017 read with Rule 88B of the CGST Rules, 2017, as made applicable to IGST Act 2017;
- (vi) Penalty should not be imposed upon them, under the provisions of Section 74(1) read with Section 122(2)(b) of the CGST Act, 2017/ Gujarat GST Act, 2017 on tax amount mentioned at (iv) above.
- (vii) Integrated Goods and Service Tax (IGST) amounting to **Rs. 38,04,601/- (Rupees Thirty Eight Lakhs Four Thousand Six Hundred and One only)**, availed by the taxpayer in their GSTR-3B which is in excess of the amount reflected in GSTR -2A, as discussed above, should not be demanded and recovered from them, under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017;
- (viii) Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at (vii) above, under the provisions of Section 50 of the CGST Act, 2017/ Gujarat GST Act, 2017 read with Rule 88B of the CGST Rules, 2017, as made applicable to IGST Act, 2017;

- (ix) Penalty should not be imposed upon them, under the provisions of Section 74(1) read with Section 122(2)(b) of the CGST Act,2017/ Gujarat GST Act,2017 on tax amount mentioned at (vii) above.
- (x) Integrated Goods and Service Tax (IGST) amounting to Rs. 7,76,804/- (Rupees Seven Lakhs Seventy-Six Thousand Eight Hundred and Four Only), not paid on expenses towards freight for the goods transported by way of vessel in ocean, should not be demanded and recovered from them, under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017;
- (xi) Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at (x) above, under the provisions of Section 50 of the CGST Act,2017/ Gujarat GST Act,2017readwith Rule 88B of the CGST Rules, 2017, as made applicable to IGST Act, 2017;
- (xii) Penalty should not be imposed upon them, under the provisions of Section 74(1) of the CGST Act,2017/ Gujarat GST Act,2017 on tax amount mentioned at (vii) above.

15.1. A corrigendum dated 11.09.2023 issued by the Additional Commissioner (Audit) CGST, Ahmedabad to the show cause notice in para 15 with effect that due to typographical error, sub para (x), (xi) & (xii) of para 15 is required to be amended and these para is substituted with following paras read as under:-

- (x) Input Tax Credit total amounting to Rs. 4,77,514/- (Rupees Four Lakhs Seventy Seven Thousand Five Hundred Fourteen only) as per revenue para 9, should not be disallowed, demanded and recovered from them under the provisions of Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 and payment of Rs. 2,29,297/- (IGST of Rs. 1,14,840/- + CGST of Rs. 57,228/- + Rs. 57,228/-) made by the taxpayer should not be adjusted and appropriated towards the proposed demand;
- (xi) Interest at appropriate rate should not be charged from them on the tax mentioned at (x) above, under the provisions of Section 50(1)/50(3) of the CGST Act,2017/ Gujarat GST Act,2017 readwith Section 20 of the IGST Act, 2017 readwith Rule 88B of the CGST Rules, 2017;
- (xii) Penalty should not be imposed upon them, under the provisions of Section 74(1) of the CGST Act,2017/ Gujarat GST Act,2017 readwith Section 20 of the IGST Act, 2017.

DEFENSE SUBMISSIONS OF THE TAXPAYER

16. The taxpayer has submitted their written submission to notice vide letter dated 13.07.2023 wherein they have stated that

Demand under Section 74 of the CGST Act cannot be invoked in the instant case

Without prejudice to the above, it is submitted that alleged demand of GST under Section 74 of the CGST Act, is without any merit and ought to be dismissed. It is further submitted that there are certain pre-requisites to be fulfilled before invoking the provisions of Section 74 of CGST Act.

Section 74 of CGST Act clearly provides the events which would trigger invocation of demand under by reasons of fraud, wilful misstatement etc. and cannot be arbitrarily extended to any other scenario. Further, Section 74 of CGST Act casts the onus of proving wilful misstatement or suppression of facts with intention to evade payment of taxes on Revenue. Reliance in this regard is placed on following judicial pronouncements:

- (i) *Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay MANU / SC/ 1239 / 1995*
- (ii) *Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut MANU/SC/ 0641 /2005*
- (iii) *Cosmic Dye Chemical vs. Collector of Central Excise, Bombay MANU/SC/0791/1995*
- (iv) *Easland Combines, Coimbatore vs: The Collector of Central Excise, Coimbatore MANU/SC/ 0016 / 2003*

It is also relevant to refer Master Circular No. 1053/2017-CX dated 10.03.2017 wherein CBEC (now CBIC) provided guidelines for invocation of extended period under the erstwhile laws. The Company has duly discharged its tax liabilities and made necessary disclosures in GST returns including annual returns, there is no short payment of tax liability on part of Taxpayer. Accordingly, it is submitted that rigours of Section 74 of CGST Act have not been met. Any such allegation without proof of suppression or underlying basis would also be considered as violative of principles of natural justice.

1. ITC AVAILED ON SERVICE; NOT PROVIDED IN GUJARAT

In fact, the service providers are C & F Agents (Clearing & Forwarding) appointed by Finar Ltd-Gujarat. ITC involved in both C&F Agents.

M/s Lorven Enterprises is located in Hyderabad, Telengana state, and M/s Sri Tripura Agencies is located in Vijaywada, Andhra Pradesh State. Both the C &F Agents have entered into agreement with Finar Ltd- Gujarat for providing clearing and forwarding services, warehousing services, sales related services, SAP system handling etc. Thus vide this agreement both the entity becomes agent of Finar Ltd-Gujarat to act and perform events as stipulated in the C &F Agreement.

Finar-Gujarat dispatches goods to godown of their C & F Agent and thereafter, entire supply chain is managed by respective C & F Agents. The C&F Agents issues separate invoice on monthly basis for the service rendered to Finar-Gujarat.

Further, to determine Place of Supply (POS) of "Clearing & forwarding Agency" referred sub clause (a) of sub section (2) of section 12 under IGST Act,

Herein this case, the supplier has provided service to registered person, situated in Gujarat. Therefore, IGST Credit is rightfully availed in the "location of recipient" i.e. in the state of Gujarat. Therefore, the service by C & F Agents are categorically provided to Finar Ltd-Gujarat and claim of IGST ITC is admissible.

2. ITC AVAILED ON BUSINESS PREMISES NOT A REGISTERED UNDER GST

The company had two additional places an administrative office at 1407, Shapath IV, S.G.Road, Ahmedabad. This office is owned by Finar Ltd. another additional place is the factory cum godowns situated at S.No. 115 & 118 Paiki MoujeChancharwadi VAsna, Sanand. These places are occupied for the period from April - 2018 to March-2021. they have accounted the expenses in their books and claimed ITC.

The company SAGAR KHANCHANDANI is godown rent. The godown is used to store the goods and further distribution of the goods therefore, the expenses entitled for Input as laid down u/s 16(1) of the CGST act.

The expenses referred in Sr.NO. 2 &3 SHREE EMPIRE STATE SHOP & GENIUS TELECOM ENTERPRISES above are INPUTS related to EPABX system and accounted in books of accounts of the company. This system is installed in office premises for internal communication purpose. Therefore, the expenses entitled for Input as laid down u/s 16(1) of the CGST act.

It has been alleged that, the intimation of this additional places are not uploaded in GST portal due to inadvertent mistake and we admit that mistake. However, the INPUT cannot be disallowed merely on reason of non-intimation of additional business place. It is pertinent to note that the company has fulfilled all conditions laid down u/s 16 of CGST Act, therefore entire ITC is admissible.

3. ITC ON PROMOTIONAL ITEMS :

It is been perceived by the authority that ITC is not admissible on promotional items such as 'shirts/mugs/ water bottles/ tea pots/ umbrella/ calendar/ stationery items / catalogue/ brochures etc. list of such ITC disallowance

The authority alleged that such items are not used in furtherance of business therefore, does not fall under definition of "Input" u/s 2 subsection (59) of CGST Act.

They are manufacturer of chemicals, re-agents, laboratory chemicals etc. and sale our products through branches across India.

They are doing various promotional activities to promote their brand and products at various events for this purpose they are procuring items such as shirts/mugs/ water bottles/ tea pots/ umbrella/ calendar/ stationery items / catalogue/ brochures etc all this items are under logo of "FINAR" we supply these to customers as well as the distributors, C &F Agents appointed across India. All this items their logo distributed with purpose to make aware of products at customer level and to help the customers in identifying the exclusive brand operator and to enhance the brand in the market. The company designed uniforms for their staff with their brand logo that to help customers in recognizing sales girls and boys of their brands at the point of purchase, the company prints brochure & catalogue with detailed description of the product & their credentials to enhance market and goodwill of their brands and maintain customer loyalty, they procured pens, diaries, table calendars, etc with affixation of their brand and distributes the same as gifts to their vendors & C &F Agents.

The company submit that they are procuring all of the above on payment of applicable GST and the same are distributed under delivery challans to their vendors & C & F Agents in furtherance of their business, the company is treating the said promotional items as 'input' and availing GST paid on the same as input tax credit in terms of Section 16 of the CGST Act. It is submitted that in terms of Section 16 of the said Act, the substantial condition is that the goods or service should be used in the course of or in furtherance of business; that the phrase "used in the course or furtherance of business" has a very vast meaning; that it is not necessarily only goods or services or both procured in relation to their "output" but also includes any goods or services used in the course or furtherance of business which will qualify as "inputs" or "input service".

In this regard, they relied on the decision of the Hon'ble Supreme Court in the case of Mazagon Dock Ltd vs CIT and Excess Profit reported in 1958 (5) TMI 2- SUPREME COURT, the Bombay High Court decisions in the case of Coco Cola India Pvt Ltd vs CCE, Pune III reported in 2009 (15) STR 657 (Born) and CCE, Nagpur vs Ultratech Cement Ltd reported in 2010 (260)ELT 369 (Born).

It is submitted that the principle laid down in the above judgments equally applies to Section 16 of the CGST Act and therefore, the promotional/ marketing items sent to their vendors and to their distributors/dealers' to use in promoting their brands and marketing their products, will form integral part of their business and same amounts to use of such goods in business or furtherance of the Appellant's business; that therefore, the same qualifies as "input" in terms of Section 2(59) of CGST Act and GST paid on the same is entitled to be availed as input tax credit in terms of Section 16 of the said Act.

4. ITC IN RESPECT OF ACCIDENT/LIFE/HEALTH INSURANCE/CARINSURANCE

The Authority has proposed to disallowed ITC claimed on accident/life/health insurance/car insurance which are blocked under Section 17 of the CGST ACT, 2017. It is pertinent to note that, ITC on general insurance are not covered under Sec.17(5)i.e. list of "Block Credit" therefore, ITC to the extent of Rs 4,51,372/- is wrongly disallowed by the authority in ADT-02.

The company is manufacturer of hazardous chemicals in the factory situated at Changodar, Ahmedabad. The manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode ignition. Due to the hazardous chemicals substance there is high risk of accident in the vicinity of the factory as well as there is high risk of health of employees. The company has to adhere strict laws and its compliances laid down under the Factories Act'1948

As per section 41 C of the factories Act' 48 "**Specific responsibility of the occupier in relation to hazardous processes**" it is mandatory for the company to strictly maintain up-to-date health records of the employee, therefore the company has availed insurance of employees under obligation of the factory act' 1948.It is evident under Sec.17(5)(b) of the CGST Act'2017 that credit of health insurance will not available. However, the proviso further stipulates that if such insurance is obligatory under any law then ITC is admissible. Reliance of recent judgment of AUTHORITY FOR ADVANCE RULING, West Bengal, in case of NIPHA EXPORTS PVT. LTD Case No. 02 of 2019 Order No. 43/WBAAR/2018-19 Dt.26/02/2019.

5. ITC ON WALL PARTITION & FLOOR WORK/WOODEN CEILING/ CARPET TILES

The authority has alleged that wall panels are "Immovable Property" the and therefore, covered under list of blocked credit u/s 17(5). This allegation is factually incorrect. ITC claim of Rs.27916/- as referred above on Sr.NO 4 &5 has been disallowed alleged that this are "carpet tiles" &"work of falls ceiling" and therefore, covered under list of blocked credit u/s 17(5). This allegation is factually incorrect

During FY 2017/18 to FY 2019/20 the company had undertaken several expansion in their factory building and constructed separate floor for seating of administrative & accountings financial staff. This newly constructed floor, has several wooden partition/cabin which has been bought from AJNI TECHNOLOGIES and others as referred above. This specialized partition designed scientifically to curtail sound echo effect as well as durability. These

partitions are not permanently affixed with RCC building but can be dismantled. Therefore, it cannot be termed as "Immovable Property". The company has accounted this expenses as "revenue expenditure"

6. ITC ON CIVIL WORK/INTERIOR DESIGNING/ INSTALLATION OF HVAC

The company is manufacturer of hazardous chemicals in the factory situated at Changodar, Ahmedabad. The manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode ignition. Due to the hazardous chemicals substance there is high risk of accident in the vicinity of the factory as well as there is high risk of health of employees. The company has to adhere strict laws and its compliances laid down under the Factories Act'1948.

During FY 2017/18 to FY 2019/20 the company had undertaken several expansion in their factory building and constructed separate floor for seating of administrative & accountings financial staff. For this purpose we have higher skilled architect to design the site plan and floor plan of the manufacturing plant as well as & interior of administrative office from M/. Unique Interior & HCP Interior. This are exclusive services received from the supplier. Therefore, cannot be construed as "Immovable Property". Therefore, the ITC is admissible on this expenses.

As referred above, the manufacturing plant is situated in industrial area where the air quality level are highly polluted and not breathable. The company has to installed equipment's with purpose to safeguard their health and to maintain suitable air quality for their inhouse workers and admin staff. It is mandatory for company under the factories Act'48 to provide healthy and sustainable environment. With this purpose company has installed HVAC system to maintain indoor air. As per section 41 C of the factories Act' 48 "**Specific responsibility of the occupier in relation to hazardous processes**" the company has availed insurance of employees under obligation of the factory act'1948.

It is evident under Sec.17(5)(d) of the CGST Act'2017 that credit of goods or serviced used for "Immovable Property" will not available. However, in this case HVAC system are not immovable property. This system never permanently fixed with any structure or building, but can be dismantled and may be moved from once place to another as and when required.

7. ITC ON GARDENING SERVICE-LIGHT SOUND SYSTEM-WATER COOLDER

'Factory premises' means plant area where manufacturing activity is carried out and administrative building. The services of maintenance & upkeep of gardens that are located within the factory premises therefore, it should be considered part of factory premises.

Further the maintenance garden, operational expense of lights and sound

system and water cooler used for staff and employee should be considered to be an "input service" as per section 2(60) of the CGST Act, 2017 and should also be considered to be "used or intended to be used in the course or furtherance of business" as per section 16(1) of the CGST Act, 2017. Input Tax Credit should be available in respect of expenditure done on such services on the following counts:

- (i) Gardening, Lightening & sound system & watering is essential & mandated by Gujarat Pollution Control Board & Factory Act' 48 to maintain quality of ambient air & prevent air& water pollution and also a condition precedent as laid down by the said Board.
- (ii) Garden, Lighting & Sound System, Watering in cooler plant, creates better atmosphere and environment which increases working efficiency and thus its maintenance is essential in the course of business for better running & furtherance of business.
- (iii) Cost of such 'Input Services' forms part of the cost of the final products and thus forms part of the value of taxable supply.
- (iv) Reliance is placed on the following judicial pronouncements of the Tribunal (CESTAT) & various High Courts, wherein it was adjudged that CENVAT Credit of Service Tax was allowable on expenditure related to maintenance & upkeep of gardens in the factory:

In M/s. Rane TRW Steering System Ltd. vs The Commissioner of Central Excise and Central Tax {2018}, the Hon. Madras High Court = 2018 {2} TM/ 1745 - MADRAS HIGH COURT held that garden maintenance service would fall within the definition of input service, in terms of Rule 2 (I) of the Cenvat Credit Rules, 2004.

8. Non-payment of IGST on service supplied to distinct person i.e. expenses incurred for and on behalf of branches out of Gujarat (Cross Charge)

It has been alleged that we are providing services to the distinct person and also incurred certain expenses such as, Salary, sales team expenses, sitting fees, advertisement expenses, placement & recruitment expenses, internet expenses, telephone and mobile expenses, legal expenses, consulting charges (factory) etc. on behalf of our distinct units.

It is further alleged that, the company having centralized expenses module in respect of above mentioned expenses. Only the sales being carried out by their distinct persons and all other activities like accounting return filing, HR recruitment, director services etc. are being carried by the Gujarat unit. Therefore, the authority construed as service being provided by Gujarat unit to its branches/ distinct person and derived tax liability

They have manufacturing factory in the state of Gujarat and operates under 5 branches across India. However, it is pertinent to note that all branches are operated through Carrier & Forwarding Agent (C &F Agent). The company has

obtained separate GST NO in each state and tax has been paid on goods sold by respective C & F Agents.

STATE	Name of C &F Agent	GST NO.
Gujarat	Parijat Distributors	24AAEFP7528E1ZC
Maharashtra	Parijat Distributors	27 AAEFP7528E1Z6
Uttar Pradesh	Afgus Logistics Pvt	09AAKCA9322N1Z4
Telangana	Lorven Enterprises	36AGVPA2832P1ZW
Andhra	Sri Tripura Agencies	37ADMFS4415JIZP
West Bengal	Argus Logistics Pvt	19AAKCA9322N1Z3

The entire operations and logistics of a branches are controlled by respective C & F Agent. The company has no role in any operations. As referred above in para 7.1, the C &F Agents have entered into agreement with Finar Ltd-Gujarat for providing clearing and forwarding services, warehousing services, sales related services; SAP system handling etc. Finar-Gujarat dispatches goods to godown of their C &F Agent and then after, entire supply chain is managed by respective C &F Agents. The C&F Agents issues separate invoice on monthly basis for the service rendered to Finar-Gujarat.

The branches are independently run by C & F Agents, the expenses incurred in the branches are born by C &F Agent. Therefore, it is evident that the expenses incurred by Finar Ltd-Gujarat such as, Salary, sales team expenses, sitting fees, advertisement expenses, placement & recruitment expenses, internet expenses, telephone and mobile expenses, legal expenses, consulting charges (factory) etc. are exclusively for its Gujarat unit and not for other branches/units therefore, tax cannot be leviable under "distinct person".

VALUATOIN IN CASE OF DISTINCT PERSON

The company sale the goods at same value at which we supply to other buyer/vendor. There is no distinction of sale price for branch/distinct person, the supply prices is based upon market value. The sale price derived after evaluating all costing of a product covering all manufacturing expenses, administrative expenses, distribution expenses etc. This expenses also cover Salary, sales team expenses, sitting fees, advertisement expenses, placement & recruitment expenses, internet expenses, telephone and mobile expenses, legal expenses, consulting charges (factory) etc. It means that the sale price at which Finar Gujarat supplying to its branches are already factored cost of all this expenses and recovered from distinct person. Therefore, the cost of expenses which covers "Cross charge "expenses as alleged by authority are already recovered under sale prices recovered from branch/distinct person. Sample copy of Sales Invoices from Finar Gujarat to Distinct person &Finar Gujarat to third parties. there is no element of supply of service or supply of Goods between Finar Gujarat & other branches as alleged by the learned authority. Therefore, it is required to remove the liability derived under "Cross Charge"

9. NON REVERSAL OF ITC, ON EXEMPT SUPPLY:

The authority, under ADT 02 has determined total reversal of ITC by Rs.477514/- u/s 17(2) read with rule 42. Out of this we have paid Rs.229297/- under DRC 03 balance amount of Rs.248217/-is unpaid.

The company has already discharged liability on non-reversal of ITC on account of Exempt Goods. The tax paid details under DRC-03 are already provided to the authority. They have provided the year wise calculation of ITC reduction.

10. EXCESS IGST CREDIT AVAILMENT DURING WITHOUT ELIGIBLE DOCUMENTS:

They have already provided detailed reconciliation through letter and personal hearing before concerned authority on 17/5/2022, however we once again explain reasons of ITC mismatch for FY 2018/19 & FY 2019/20.

REASONS OF ITC MISMATCH:

- a. **Short amount of ITC in GSTR 2A-** There has been factual mistake in amount derived in GSTR 2A pertains to FY 2018-19 as mentioned in notice and as downloaded from GST portal total ITC available for EY 2018/19 is Rs. 7,96,20,067/- while amount as per notice is Rs.7,89,81,635/- accordingly final mismatch amount would be reduced, copy of GSTR 2A has already been provided on 15/5/2022.
- b. **ITC Reversal in GSTR 3B** -There has been factual mistake in amount of IGST as per GSTR 3B for FY 2019-20. They have already reversed IGST to the tune of Rs.9,69,771/- which required to be considered in this working.
- c. **Seller has not uploaded invoice in GSTR 1** : We have identified certain suppliers in who has not uploaded their Invoices or uploaded erroneous invoices in GSTR 1 due to this reason there is mismatch in GSTR 2A and as per GSTR 3B. for FY 2018-19 such amount is Rs.11,33,623/- and for FY 2019-20 Rs.1592667/-.
- d. **IMPORT IGST short declared in GSTR 9** : in the FY 2019-20, total IGST on Import is Rs.2,16,14,572/- while filing GSTR 9 they have inadvertently declare Import IGST as Rs.1,00,46,956/- therefore, total short declaration of Import IGST in GSTR 3B is Rs.1,15,67,616/-. However the concerned authority has allowed IGST to the tune of Rs.99,08,306/-. Therefore, balance amount of IGST Rs.1659310/- is eligible claim.

PERSONAL HEARING

17. Personal hearing in this matter has been offered on 13.07.2023 & later on mutual agreement personal hearing held on 27.07.2023 and shri Sangam K. Shah (C.A.), authorized representative of the said taxpayer appeared for hearing. He retreated their written submission s dated 27.12.2022 and submitted additional written submission dated 24.07.2023. Another PH in respect of corrigendum dated 11.09.2023 is held on 25.09.2023 wherein shri Sangam K. Shah (C.A.) is appeared for hearing and he requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

18. I have carefully gone through the show cause notice, records available/ placed, the submissions made by M/s in their written submissions and at the time of personal hearing.

19. I find that there are four revenue points/ paras raised based on audit of the records of the taxpayer which remain unsettled. I take up the issues for discuss in chronologically as below and other aspects like penalty would be discussed at later.

- (1) **Revenue Para-7 :- Ineligible ITC of Rs. 1,09,16,528/- taken on the items which are not eligible for ITC under Section 17 of the CGST Act 2017 and on services which were not utilized for furtherance of business of Gujarat unit and hence not eligible for ITC under Section 16 of the CGST Act 2017;**
- (2) **Revenue Para-8 :- Non payment of GST of Rs. 4,42,77,184/- on supplies made by the head office to branch office (Cross Charge);**
- (3) **Revenue Para-9 :- Non-reversal of ITC of Rs. 4,77,514/- taken on raw materials which were used for Exempted supply under Section 17(2) read with Rule 42 of CGST Rules 2017;**
- (4) **Revenue Para-10 :- Excess IGST credit of Rs. 38,04,601/- availment was noticed on reconciliation of credit available as per GSTR-2A and availed as per GSTR-3B (As per Sr. No. 8 of GSTR-9);**

20. As regards **Revenue Para-7**, I find that the SCN alleges that the ITC of Rs. 1,09,16,528/- (Rs. 67,671/- paid alongwith Interest) was availed towards blocked/ineligible credit and also in respect of inputs/input services which are not used for furtherance of business of their Gujarat Unit and thereby contravened the provisions of Section 2(59), 2(60), Section 16(1), Section 17(1) and 17(5) of the CGST Act, 2017 as made applicable to the IGST Act, 2017 and SGST Act, 2017.

20.1. Before going in to discuss the issue, I would like to take a proper look in the relevant legal provisions of CGST Act which deals with eligibility of ITC of the present case:-

Section 2(59) - "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

Section 2(60) - "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;

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

Section (1) - Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be

entitled to take credit of input tax charged on any supply of goods or services or both to him which are **used or intended to be used in the course or furtherance of his business** and the said amount shall be credited to the electronic credit ledger of such person.

Section 17. Apportionment of credit and blocked credits.—

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) to (4)

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(a)

(āb) ~~...~~

(b) [the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, **life insurance and health insurance:**

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness center; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, **where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]**

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) **goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.**

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) to (f) ...

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

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or fee samples;

Explanation.— For the purposes of this Chapter and Chapter VI, the expression “**plant and machinery**” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports **but excludes—**

- (i) **land, building or any other civil structures;**
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

From conjoint reading the provisions of Section 16(1) & 17(1) of the Act, the Input tax credit is admissible only on inputs and input service which are used or intended to be used by a supplier in the course or furtherance of business and the amount of credit to be restricted to so much of the input tax as is attributable to the purposes of such business.

On perusing the provisions of Section 17(5)(b)(i) of the Act with its proviso, the input tax credit shall not be available in respect of **life insurance and health insurance** where an inward supply of such goods or services or both is not used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

Further, on perusing the provisions of Section 17(5)(d) of the Act with its explanation-I regards “**construction**” & II regards “**Plant & Machinery**”, the input tax credit shall not be available in respect of goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) including when such goods or services or both are used in the course or furtherance of business.

21. I find, from the reply of the taxpayer and details of SCN, the bifurcation of ITC of Rs. 1,09,16,528/-as under :-

Sr. No.	Description	Amount of ITC
1	ITC AVAILED ON SERVICE; NOT PROVIDED IN GUJARAT	47,80,158/-
2	ITC AVAILED ON BUSINESS PREMISES NOT A REGISTERED UNDER GST	2,91,612/-
3	ITC ON PROMOTIONAL ITEMS	2,68,645/-
4	ITC IN RESPECT OF ACCIDENT/LIFE/HEALTH INSURANCE/CAR	4,51,372/-
5	ITC ON WALL PARTITION & FLOOR WORK/WOODEN CEILING/ CARPET TILES	9,45,680/-
6	ITC ON CIVIL WORK/INTERIOR DESIGNING/	40,99,949/-

	INSTALLATION OF HVAC	
7	ITC ON GARDENING SERVICE-LIGHT SOUND SYSTEM-WATER COOLDER	11,440/-
8	Total ITC reversed before issuance of the SCN	67,672/-
Total		1,09,16,528/-

21.1. As regards **Sr. No.1:-** availment ITC of Rs. 47,80,158/- towards services which were not received by them i.e. Finar Ltd. (Gujarat Unit). I find that the SCN alleged that they have availed said amount of ITC on inputs /input services which were not utilized in this unit (**Gujarat Unit**) and the said input/input services were utilised in service rendered to their other units in respect of goods purchased and transferred to other units without payment of GST hence they have not eligible for ITC under Section 16(1) of the CGST Act, 2017 readwith Section 2(59) & 2(60) of the CGST Act, 2017.

The taxpayer's have submitted that the service providers are their C & F Agents appointed by them and the said ITC is available as per provisions of Section 12(2) of the IGST Act, 2017 as Place of Supply (POS) is "location of recipient" i.e. in the state of Gujarat as they are registered person. Therefore, the service provided by C & F Agents are categorically provided to Finar Ltd. - Gujarat Unit and claim of IGST is admissible and submitted copy of C & F Agent agreement.

On perusing both the C & F (A) agreements of the taxpayer, I find that both the agreements were entered into 1st day of April, 2020 ("Effective Date") whereas the period under dispute pending before me pertains to July, 2017 to March, 2020 only, hence without going into depth of the said contract, I come to an agreement with the allegations of ineligible ITC of SCN. Further, from reply tendered by the said taxpayer, I find that the input or input service or both were used by their other units located in different part of the country through their respective C & F Agents and not used in course or furtherance of business of the Gujarat Unit and as per the agreements these activities can be considered for their Gujarat Unit at the materials time.

21.2. As regards **Sr. No. (ii)** ITC Rs. 2,91,612/- availed on business premises not registered under GST, I find from the show cause notice as well as from the reply of the taxpayer that the said taxpayer has availed credit of Rs. 2,91,612/- towards invoices issued to different address premises/additional business places. I find that regards the said premises, the said taxpayer has neither intimated to the department in any manner nor the same was uploaded in GST Portal. As per provisions of Section 16 of the CGST Act, 2017, the documents which does not containing the prescribe details of a taxpayer are not eligible for availing ITC thereon.

21.3. As regards **Sr. No. (iii)** ITC of Rs. 2,68,645/- availed regards promotional items such as shirts/mugs/water bottles/tea

pots/umbrella/calendar/stationery items/catalogue brochures etc. claiming as inputs and supply the same free of cost to their vendors and C & F Agents in terms of furtherance of business. I find that the SCN alleges that such items are not used in furtherance of business and the same does not fall under definition of "Input" as per Section 2(59) of the Act.

I find that Section 17(5)(h) expressly bars input tax credit in respect of disposal of goods by way of gifts or free samples. The relevant provision is reproduced as under :-

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

ii. Purchase and distribution of promotional items for the purpose of business promotion cannot be termed as an activity carried out in the course or furtherance of business by any stretch of imagination. The taxpayer itself has submitted that they have distributed these items free of cost to its vendors and their C & F agents and employees. Therefore, the taxpayer is not eligible for credit of input tax against the inward supply of such promotional items which were not used or intended to be used in furtherance of business and supplied free of cost and the taxpayer's submission is not tenable in above terms.

21.4. As regards **Sr. No. (iv)** ITC Rs. 4,51,371/- I find that they have received supply of goods or services or both in respect of life insurance and health insurance/car insurance service and availed ITC on these service. I find that as per proviso to Section 17(5)(b)(i) of the Act, as detailed above, the ITC of service of life insurance and health insurance/car insurance is not eligible to the said taxpayer as they are not engaged in making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

I find the said taxpayer engaged in the business of manufacturing of goods falling under HSN 29 & 28 and not in the business of provision of supply of life insurance and health insurance service therefore credit of such insurance service is not admissible to the said taxpayer.

The taxpayer's submissions regard availing of service of insurance of employees under obligation and compliance laid down under the Factories Act, 1948 is not tenable. As the credit of input services is only restricted in respect to service used or intended to be used in the course or furtherance of business, it would be mandate of the Factories Act to provide insurance to employees, it does not mean that such provision is in the course or furtherance of business. I find that moreover, express bar provided under Section 17(5)(b)(i) of Central Goods and Services Tax Act, 2017 in respect of life insurance and health insurance and proviso applicable only with regard to the provision contained in Section 17(5)(b)(iii) and not Section 17(5)(b)(i) ibid

as discussed herein above. Therefore, the said taxpayer is not eligible for input tax credit with respect of receipt of insurance service for accident/life/health/car in above terms.

21.5. As regards **Sr. No. (v & vi)**, I find that ITC Rs. 50,45,629/- (Rs. 9,45,680/- + 40,99,949/-) were availed towards wall partition/ Floor Work/Wooden Ceiling/Carpet Tiles/Civil Work/Interior Designing/Installation of HVAC etc. by the said taxpayer.

i. I find that as per expression to Section 17 of the Act for chapter VI, the land, building or any other civil structures are excluded from "plant and machinery" and further, as per explanation for purpose of clause (c) & (d) of Section 17(5) "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization to the said immovable property.

ii. Further, I find from the reply tendered by the said taxpayer that they had undertaken several expansions in their factory building and construction separate floor for seating of administration and accounting financial staff with several window partition /cabin and for such work they have arranged higher skilled architect to design and installed air HVAC equipment system. The entire works could be termed as construction or civil construction to the building or office premises (as construction of an immovable property) but the same cannot be considered as construction of plant and machinery.

iii. Now, at this junction, I find that as per Section 17(5)(d) of the CGST Act, 2017 readwith it's explanation-I regards "construction" & explanation- II regards "Plant & Machinery", the Input tax credit of goods or services or both received for construction of an immovable property (other than plant or machinery) are not available to the said taxpayer and their submissions in this regards is not tenable in any manner.

21.6. As regards **Sr. No. (vii)** ITC of Rs. 11,440/- availed towards gardening service -light sound system-water cooler. I find from show cause notice as well as from reply tendered by the taxpayer that the said ITC was availed towards maintenance of garden, operational expenses of lights and sound systems and water cooler used for staff and employee. I do not find any relevance and nexus of these services with the manufacturing activity carried out or outward supply of goods made by the said taxpayer and even I do not find any reply from the taxpayer that as to how the gardening service - light sound system-water cooler has a nexus with the activity of the business of them. Therefore, the said activity cannot be considered as "input or Input Service" used in the course or furtherance of business by the said taxpayer.

21.7. In light of the facts discussed hereinabove and the material evidences available on records, the ITC on the items like *“gift items (shirts, mugs, umbrella, et), health/life/car insurance, wall panels, flooring works, wooden ceilings, carpet tiles, interior designing works of office, gardening services /light sound system, HVAC(immovable), water cooler, etc.”* which are not eligible for ITC under Section 17(1)/17(5) of CGST Act 2017. Further, they have also availed Ineligible ITC on inputs/ input services which were not utilized for furtherance of business for this unit like credit availed on *(i) services rendered to their other units, (ii) goods purchased and transferred to other units without payment of GST etc* and hence not eligible for ITC under Section 16(1) of CGST Act 2017 read with Section 2(59) & 2(60) of the CGST Act, 2017. Thus, I find that amount of **Rs.1,09,16,528/-** (CGST- Rs. 30,60,392/-, SGST- Rs. 30,60,392/- & IGST – Rs. 47,95,743/-) availed by the said taxpayer as discussed in the foregoing paras and the same is required to be demanded and recovered from them under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 alongwith applicable interest under Section 50(1)/50(3) of the CGST Act, 2017, read with Rule 88B of the CGST Rules, 2017.

22. As regards Revenue Para :- 8, I find that the SCN alleges regards non payment of GST of Rs. 4,42,77,184/- on Supplies made by the Head office of the said taxpayer to their branch offices. During the course of audit and on scrutiny of financial records of the company (Head Office), it was observed that the tax payer has provided services to their distinct identity and also incurred certain expenses such as Salary, sales team expenses, sitting fees, advertisement expenses, placement and recruitment expenses, internet expenses, telephone and mobile expenses, legal expenses, consulting charges etc. The Gujarat Unit is being Head Office has incurred all expenses collectively for carrying out such activities and accounted for in its books of accounts.

22.1 The head office and branches are distinct persons. So far as distinct person is concerned, the definition of distinct person is as follows;

22.2. The concept of “Distinct Person” has been newly introduced under the GST law, provisions of Section 25(4) and Section 25(5) of the CGST Act, 2017 covers the Concept of ‘Distinct Persons’:

Section 25(4): A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as **distinct persons** for the purposes of this Act.

Section 25(5): Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an

establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

As per the concept of 'Distinct Person' if the person has obtained or is required to obtain more than one registration (whether in one state/Union Territory or more than one State/ Union Territory in respect of an establishment and the same person has an establishment in another State/Union Territory then such establishment shall be treated as establishment of distinct persons.

To further elaborate, the registered unit of registered unit of Gujarat i.e HO (inclusive of all the manufacturing facilities ect.) is registered in Gujarat State and other branches registered with GST outside Gujarat as required under the GST law.

22.3. Now, before going into further discussion, it would be appropriate to take a proper look into terms "cross charge" (Supply of goods or service between the distinct persons) and applicability of tax on such supply of goods or services (Cross Charge Services) as per relevant provisions of CGST Act, 2017.

22.4. I find that the expression "Cross-charge" is not defined under the GST laws. It is a phrase colloquially referred in the industry to identify the supplies made between different GST registrations under a same PAN. It is the term used when a taxable person provides goods or services to its own constituents having separate registration numbers. In the course of furtherance of business, if taxable person, supplies any goods or services to any other person who is distinct person having registration under same PAN, without consideration.

22.5. For the sake of clarity, the relevant portions of the CGST Act which have a bearing on the issue at hand is reproduced as under.

1. In terms of Section 22 of the Act, every supplier shall be liable to be registered in the State from where he makes a taxable supply.
2. Section 25 states that every person who is liable to be registered under Section 22 shall apply for registration in every State in which he is so liable within 30 days from the date on which he becomes liable to registration.
3. Sub-section 4 of Section 25 states that every person who has obtained a registration in more than one State, shall, in respect of each such registration, be treated as 'distinct person' for the purpose of this Act.
4. Section 9 of the CGST & SGST Act levies a tax on all intra-state supplies of goods and services or both.

5. Section 5 of the 1GST Act levies a tax on all inter-state supplies of goods and services.
6. Section 7 (1) of the CGST Act states that **“supply” includes**
 - (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 - (b) —
 - (c) **the activities specified in Schedule I, made or agreed to be made without a consideration, and**
 - (d) —
7. **Schedule I of the CGST Act describes the activities to be treated as supply even if made without consideration. As per entry 2 of the said Schedule, supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is to be treated as a ‘supply’.**

22.6. In the light of the above legal provisions, let us understand the activities of the taxpayer and determine the applicability of the above provisions of law. I find that it was alleged in the notice that the said taxpayer is engaged in manufacturing of goods falling under chapter 28 & 29 and having registered unit at Gujarat i.e. HO (inclusive of all the manufacturing facilities etc.) and other branches registered with GST outside Gujarat as required under the GST law. It has other 5 branch offices located outside Gujarat with different registration numbers based on the same PAN. It appeared that, for all collective expenses incurred at the Head Office level, the expenses incurred by HO are required to be distributed among the individual branch offices registered at different locations other than Gujarat in proportion of their sale.

22.7. I find that the Head Office has incurred expenditure for activities such as *Salary of persons working in various section of the taxpayers unit viz. accounts, taxation, HR, Management, purchase/ sale, Director’s service etc, sales team expenses, Director sitting fees, Advertisement expenses, Placement and recruitment expenses, internet expenses, Tel & mobile expenses, legal expenses, Consultancy charges, etc.* and all such activities are used in collectively and common for its all branch offices and ultimately benefited to outward supply of goods or service of the company through its branches across the country. The execution of these activities by the Head Office which is for the benefit of the all their other branch offices is in very nature of supply of service to by the Head Office to its branch offices. I find that the said taxpayer being the Head Office, is incurring expenditure on behalf of their branch located elsewhere in the country, outside Gujarat, for activities to be treated as supply even if made without consideration to distinct persons (hereinafter referred as “deemed supply”).

22.8. I find that it was alleged in the notice that the tax payer has not booked expenses incurred for their Gujarat unit and the other units (i.e distinct persons) separately in their books of accounts and the following expenses, obtained from their books of account (provided by the taxpayer through their email dated 20.04.2022), can be considered as services attributable to their five branches (distinct persons). Accordingly, it is construed that the taxpayer has supplied services to their branches which are distinct entity as per Section 25 of the CGST Act, 2017.

Salary
Sales Team Expenses
Sitting Fees
Advertisement Expenses
Placement & Recruitment expenses
Internet Expenses
Telephone & Mobile Expenses
Legal Expenses
Consulting Charges (Factory)

22.9. Further, I find that the relationship between the Head Office and their branch fall within the ambit of 'distinct persons', as laid down under the provisions of Sections 25(4) and 25(5) of the CGST Act, 2017. Accordingly, as per the provisions of Sections 7(1)(c) of the Act read with the provisions of clause (2) of Schedule I to the CGST Act, 2017, as elaborated hereinabove, the nature of expenditure incurred by the Head Office for deemed supply to their branch would fall within the ambit of 'supply'.

22.10. I find it was alleged that the business model of the taxpayer is such that all the activities related to the branches are being controlled by the head office and only as per the directions of the head office, the goods are despatched from the branches. Only the invoice is generated by the branches. Accordingly, all the other activities of the branches are being done by the head office.

22.11. Further, I find that as per the data provided by the taxpayer in respect of the turnover of the Gujarat unit and the other five units the percentage of turnover of the other five branches was ascertained year wise as under.

Year	Gujarat	Hyderabad	Ghaziabad	Bhiwandi	Vijayawada
2017-18	56.48 %	21.40 %	9.19 %	7.75 %	5.17 %
2018-19	59.32 %	17.47 %	9.35 %	6.10 %	7.76 %
2019-20	54.80 %	15.54 %	10.27 %	6.44 %	9.38

22.12. Further, I find that the taxpayer has not made any provision of service in their books of account hence the valuation cannot be ascertained under Rule 30 of the CGST Rules, 2017. Therefore, the residual method for determination of value of supply of services, rendered by the head office to their distinct person, has to be employed, in terms of the provisions of Rules 31 of the CGST Rules, 2017 as the cost of provision of service is not available.

22.13. Thus, I find that on the basis of turnover of the other five units in comparison with total turnover, the expenses in regard to services provided by their head office along with IGST payable by the taxpayer was calculated and the taxable value for the purpose of levy of IGST was ascertained as Rs 24,59,84,353/- and IGST payable comes to Rs 4,42,77,184/-.

22.14. I find that on the contrary, the taxpayer has submitted that they have manufacturing factory in the state of Gujarat and operates under 5 branches across India and all the branches are operated through Carrier & Forwarding Agents (C&F Agents). The entire operations and logistics of a branch are controlled by respective C & F Agent and the company have no role in any operations. I do not find either any explanation or any documents from the said taxpayer regards expenses incurred by the Head Office (Finar Ltd-Gujarat) and taken in books of accounts collectively. The expenses incurred by Finar Ltd. Gujarat such as salary, sales team expenses, sitting fees, advertisement expenses, placement & recruitment expenses, internet, telephone & Mobile expenses, legal expenses, consulting charges could not be treated exclusively for their Gujarat Unit only. I find that all as the activities such as sales team, advertisement; placement & requirement, legal, consultation etc. could affect the entire operations of the company and benefited to all branches collectively. Therefore, I am of the view that the Gujarat unit of the said taxpayer, which has incurred various expenses for the company in the whole and accounted in the books of account of HO, is not exclusive expenses for Gujarat unit, but it is a collective / combined expenses being incurred for and on behalf of the other branches (including of Gujarat entities and branches outside Gujarat State).

22.15. I find that thus by making expenses on behalf of the other units, the Gujarat Unit (Head Office) has provided service to the distinct persons and thereby these activities are considered as a supply of service by the Head office to their branch office which fall under the category of distinct persons under Section 25(4) and 25(5) of the CGST Act, 2017 and as per Entry 2 of Schedule I to the CGST Act, any supply between distinct persons is to be treated as a 'Supply' in terms of Section 7(1)(c) of said Act. In view of this deeming fiction of law. The service supplied by the head office to its other branch offices by way of performing activities which benefits the other distinct persons is liable to be

charged to GST. Accordingly tax is leviable on the same under Section 5(1) of the IGST Act, 2017 read with Section 9(1) of the CGST Act, 2017.

22.16. In light of the facts discussed hereinabove and the material evidences available on records, an amount of **Rs. 4,42,77,184/- IGST** short/not paid by taxpayer, is required to be charged and recovered the same under provisions of Section 74(1) of the CGST Act, 2017 read with relevant provisions of SGST Act, 2017 and IGST Act, 2017 along with interest under Section 50(1) of the said Act, 2017.

23. As regards **Revenue para :-9**, I find that the issue involved in SCN regards non-reversal of ITC of Rs. 4,77,514/- taken on raw materials which were used for Exempted supply under Section 17(2) read with Rule 42 of CGST Rules 2017.

23.1. The relevant provisions deals the issue are as under:-

“17. (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.”

23.2. Further, I find that it was alleged in the SCN that some of items such as Aqualiv, Boost C 1 Kg, Droph, Jalpro 1 Kg, Neutral 1 Lt, Nitrocase 1 LT, etc. were cleared at Nil rate of duty and the same can be considered as exempted supply of goods. In view of above provisions, the credit of input or input service is restricted to so much of exempted supply of goods or services or both under the Act. Therefore, the input tax credit availed on raw materials used exclusively in supply of such exempted goods is required to be charged and required from the taxpayer under the provisions of Section 74(1) of the CGST Act, 2017.

23.3. I find that it was alleged in the SCN that the taxpayer has not provided the details of reversal of credit in respect of raw material in terms of provisions of Section 17(2) of the Act.

23.4. Now, the taxpayer has submitted the year wise reduction calculation details of turn over and exempted sales and discharged their liability/reverse the ITC on proportionate basis which is as under: -

F.Y.	IGST	CGST	SGST	Total Tax	DRC 03	Date
2017-18	208998	79006	79006	367010	AD240220013	14.02.

					338Q	2020
2018-19	114840	57228	57228	229297	AD240522002 2422W	180.05.2 020
2019-20	265890	132758	132758	531406	GSTR-3B Monthly Return	

23.5. From the calculation submitted by the taxpayer, it appears that the credit has been reversed by the said tax payer on proportionate basis with extent to exempted supply/sales. However, the input tax credit was not restricted in respect of raw materials used exclusively for exempted supplies in terms of provisions of Section 17(2) of the CGST Act, 2017. Hence, the calculation of the taxpayer does appear to be correct and not acceptable. Accordingly, the tax amount of Rs. 4,77,514/- is required to be restricted and since the same was availed by the taxpayer, the same was required to be recovered from them under Section 74 (1) of the CGST alongwith applicable interest under Section 50(1)/50(3) of the CGST Act, 2017. Further, I find that the payment of Rs. 2,29,297/- (Rs. 1,14,840/- + CGST of Rs. 57,228/- + SGST of Rs. 57,228/-) and Interest of Rs. 1,25,630/- has already been reversed by the said taxpayer which needs to be appropriated against their tax demand.

24. As regards **Revenue para 10**, I find that the excess availment of IGST credit of Rs. 38,04,601/- on reconciliation of credit available as per GSTR-2A and GSTR-3B as per provisions of Section 16(2)(c)&(d) of the CGST Act, 2017 read with Rule 36 (4) of the CGST Rules, 2017.

24.1. The relevant provisions deals the matter are reproduced as under:-

Section 39. (1):- Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof;

Rule 61 of the CGST, Rules, 2017,

61. Form and manner of submission of monthly return.-(1) Every registered person other than a person referred to in Section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Sub Rule 4 to Rule 36 of Central GST Rules, 2017 was inserted vide para 3 of Notification No. 49/2019-Central Tax dated 9th Oct, 2019 reads as under which have gone under several amendments:-

3. In the said rules, in rule 36, after sub-rule (3), the following sub-rule shall be inserted, namely: - "(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility."

From conjoint reading of Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, I find that the said taxpayer is required to file correct GSTR-3B returns. I find that the said taxpayer have knowingly failed to file correct GSTR-3B returns. They have declared wrongly availed credit in the appropriate column of GSTR3B viz. Ineligible ITC.

24.2. Further, I find from on combined reading of above provisions, if the ITC taken by the taxpayer as per GSTR-3B is more than the amount of credit auto populated in his GSTR-2A returns and the tax has not been paid to the government, the return has not been filed, then the taxpayer shall be denied the differential ITC availed by him in his GSTR 3B Returns vis-à-vis corresponding GSTR-2A returns as per the above provisions of Section 16(2)(c) & 16(2)(d) of CGST Act, 2017 read with sub Rule 4 of Rule 36 of CGST Rules, 2017.

24.3. The reason for not reflecting of details of inward supply in GSTR-2A appears to be that the suppliers of the raw materials have not filed their GSTR-1 returns or have not mentioned these invoices in his GSTR-1 Returns filed or have mentioned wrong GSTIN No. (instead of GSTIN No. of the said taxpayer may have mentioned GSTIN No. of someone else) in their GSTR-1 Returns or the taxpayer has taken excess credit on their own. In absence of the outward liability of the supplier not being auto-populated in the GSTR 2A, it is not ascertainable as to whether the tax has been paid to the government or not.

24.4. Further, from the reply tendered by the said taxpayer, I do not find any clarification or documentary proof for justifying the difference of ITC between GSTR-2A and GSTR-3B as much as proof of invoice not uploaded by seller, seller uploaded erroneous data, difference of IGST in GSTR-9. Thus, I am of the view with allegations of the SCN that the taxpayer has declared wrongly availed credit in the appropriate column of GSTR-3B return and have knowingly failed to file correct GSTR-3B return and on reconciliation of credit available as per GSTR-2A with credit available as per GSTR-3B read with Sr. No. 8 of GSTR-9 for relevant period, the excess credit of IGST of Rs. 38,04,601/- is required to be recovered from the said taxpayer in terms of provisions of Section 74(1) of the CGST Act, 2017 alongwith interest under

Section 50(1) of the CGST Act, 2017 read with Rule 88B of the CGST Rules, 2017.

25. Now, I discuss the applicability of penal action under Section 74 of the CGST Act, 2017 read with similar of SGST Act, 2017 and IGST Act, 2017 under clause of suppression of facts and other contraventions of provisions of Act. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act' 2017 /Gujarat GST Act'2017 which reads as "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for the tax period as specified under section 39." From the findings in above para, I find that that the said taxpayer has suppressed the non/short payment of GST; wrong availment of ITC; non-payment of interest and thereby it appeared that they have knowingly failed to correctly self assessed tax payable / interest payable with an intent to evade payment of proper tax. In the scheme of self-assessment, the Department comes to know about the supplies made and ITC availed only during the scrutiny/Audit of the statutory returns filed by the taxpayers under the statute. Therefore, the government places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns.

25.1. The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the payer.

25.2. From the Information/data of the taxpayer verified during the course of audit, it appeared that the taxpayer have short paid GST; wrongly availed ITC; not paid the wrongly availed ITC and not discharged the interest liability and it appears that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax/ Interest liabilities is utter disregard to the requirements of law and breach of trust deposed on them and outright act in defiance of law by way suppression, concealment & non-furnishing value of taxable supply/ wrong availment of ITC with intent to evade payment of tax. The above said non/short payment of GST; wrong availment of ITC; non payment of interest is unearthed after audit was conducted by officers of Central Tax Audit, Ahmedabad and had the same not been detected during audit, it would have remained unnoticed leading to loss of government revenue. All the above facts of contravention on the part of the Taxpayer have been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be charged and recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act,2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017 by invoking extended period of five years.

25.3. Since the said taxpayer was liable to self-assess the liability to pay tax, they had an obligation to furnish the correct and complete information. It appeared that the taxpayer had not paid the tax within the prescribed due dates on the outward supplies made by them/wrongly availed ITC. Further, it appeared they had wrongly availed ITC of CGST/SGST/IGST. These supplies/wrongly availed ITC were not shown in their GSTR 3B returns filed for the respective period. It, therefore, appears that there is a case of suppression of facts with intent to evade the payment of tax, wrong availment of ITC etc. It appeared that non/short paid IGST/CGST/SGST and wrongly availed IGST/CGST/SGST is to be charged and recovered from the said taxpayer under the provisions of Section 74(1) of the Act and interest also liable to be recovered under the provisions of Section 50 of the CGST Act, 2017 /Gujarat GST Act, 2017, provisions of Section 20 of the IGST Act, 2017 readwith Rule 88-B of the CGST Rules, 2017.

25.4. The taxpayer has relied upon the decision of the Hon'ble Supreme Court of India in case of PUSHPAM PHARMACEUTICALS COMPANY vs. Collector of C. Ex., Bombay reported at 1995 (78) E.L.T. 401 (S.C.) and relied upon various decisions wherein it was held that *where facts are known to both the parties the omission by one not to render it suppression of fact*. I find that as per provisions of section 155 of the CGST Act, 2017, burden of proof for claim of eligible input tax credit under the Act shall lie on the taxpayer and the facts of case regard availment of ITC, which was not admissible as per law, have not known to the department before the audit hence I do not agree with contention of the taxpayer regards the disclosures the fact of eligible ITC and thereby non-invocation of section 74 of the Act.

25.5. By their various acts discussed above, the said taxpayer appeared to have rendered themselves liable for penal action under Section 74 (1) of the CGST Act, 2017 readwith similar provisions of Gujarat State GST Act, 2017 and Section 20 of the IGST Act, 2017 for failure to file proper statutory GST returns, duly discharging the proper tax liability, failure to pay tax, failure to self assess the tax liability, wrong availment of ITC and suppression of facts and contravention of various provisions of the CGST/SGST/IGST Acts and Rules made there under with intent to evade payment of Goods and Services Tax.

26. I find, from charging paras [(x) to (xii)] of the SCN, regards a **demand of IGST of Rs. 7,76,804/-** has been replaced with demand of ITC of Rs. 4,77,514/- vide corrigendum dated 11.09.2023 as discussed above in paras hence the same is not taken into consideration.

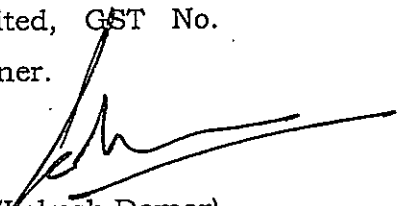
27. In view of the above discussion and findings, I pass the order as under:-

ORDER

- (i) I Confirm the demand of GST amounting to **Rs.1,09,16,528/- (CGST- Rs. 30,60,392/-, SGST- Rs. 30,60,392/- & IGST – Rs. 47,95,743/-) (Rupees One Crore Nine Lakhs Sixteen Thousand and Five Hundred Twenty Eight Only)** under the provisions of Section 74(9) of the CGST Act, 2017 read with provisions of Section 20 of IGST Act,2017. Since the taxpayer has paid an amount of Rs 67,131/- (CGST Rs 33,565.50/- + SGST Rs 33,565.50/-), the said amount is appropriated against the confirm demand.
- (ii) I hold the Interest as applicable under Section 50(1)/50(3) of the CGST Act, 2017 readwith Rule 88B of the CGST Rules, 2017, as made applicable to IGST Act, 2017 on the amount mentioned at (i) hereinabove. Since the taxpayer has paid an amount of Rs 39,054/- towards interest, the said amount is appropriated against their total interest liability;
- (iii) I Impose penalty of **Rs. 1,09,16,528/- (Rs. One Crore, Nine Lakhs Sixteen Thousand Five Hundred and Twenty Eight Only)** under the provisions of Section 74(9) of the CGST Act,2017/ Gujarat GST Act,2017 on tax amount mentioned at (i) above.
- (iv) I Confirm the demand of Integrated Goods and Service Tax (IGST) amounting to **Rs. 4,42,77,184/-(Rupees Four Crores, Forty Two Lakhs Seventy Seven Thousand One Hundred Eighty Four Only)**, on supplies made by the Head Office to Branch Office, as discussed above, and order to recovery the same from the said taxpayer under the provisions of Section 74(9) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 and order to recover the same;
- (v) I hold the Interest at appropriate rate on the confirmed demand mentioned at (iv) above, under the provisions of Section 50(1) of the CGST Act,2017/ Gujarat GST Act,2017 readwith Rule 88B of the CGST Rules, 2017, as made applicable to IGST Act 2017;
- (vi) I Impose Penalty of **Rs. 4,42,77,184/-(Rupees Four Crores, Forty Two Lakhs Seventy Seven Thousand One Hundred Eighty Four Only)** under the provisions of Section 74(9) read with Section 122(2)(b) of the CGST Act,2017/ Gujarat GST Act,2017 on tax amount mentioned at (iv) above.
- (vii) I Confirm the demand of ITC of Integrated Goods and Service Tax (IGST) amounting to **Rs. 38,04,601/-(Rupees Thirty-Eight Lakhs Four Thousand Six Hundred and One Only)** availed by the taxpayer in their GSTR-3B which is in excess of the amount reflected in GSTR - 2A and order to recovery the same under the provisions of Section 74(9) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017;

- (viii) I hold the Interest at appropriate rate on the tax mentioned at (vii) above, under the provisions of Section 50 of the CGST Act,2017/ Gujarat GST Act,2017 readwith Rule 88B of the CGST Rules, 2017, as made applicable to IGST Act, 2017;
- (ix) I Impose Penalty of **Rs. 38,04,601/- (Rupees Thirty-Eight Lakhs Four Thousand Six Hundred and One Only)** under the provisions of Section 74(9) read with Section 122(2)(b) of the CGST Act,2017/ Gujarat GST Act,2017 on tax amount mentioned at (vii) above.
- (x) I disallow the Input Tax Credit of **Rs. 4,77,514/- (Rupees Four Lakhs Seventy-Seven Thousand Five Hundred and Fourteen only)** and order to recovery the same from the said taxpayer under the provisions of Section 74(9) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017. Since the taxpayer has paid an amount of Rs 2,29,297/- (IGST of Rs 1,14,840/- + CGST of Rs 57,228/- + SGST of Rs. 57,228/-), the said amount is adjusted and appropriated against the confirm demand.
- (xi) I hold the Interest at appropriate rate on the tax mentioned at (x) above, under the provisions of Section 50 of the CGST Act,2017/ Gujarat GST Act,2017 readwith Rule 88B of the CGST Rules, 2017, as made applicable to IGST Act, 2017;
- (xii) I Impose Penalty of **Rs. 4,77,514/- (Rupees Four Lakhs Seventy-Seven Thousand Five Hundred and Fourteen only)** under the provisions of Section 74(9) read with Section 122(2)(b) of the CGST Act,2017/ Gujarat GST Act,2017 on tax amount mentioned at (x) above.

28. The Show Cause Notice No. GADT/TECH/SCN/GST/173/2022-Tech & Legal dated 30.12.2022 issued by the Additional Commissioner (Audit), Central Tax Audit, Ahmedabad to M/s. Finar Limited, GST No. 24AAACF3217D1ZC, stands disposed of in the above manner.


(Lokesh Damor)
Joint Commissioner,
Central Excise & CGST,
Ahmedabad North.
Date 04/10/2023

Place: Ahmedabad
F. No. GST/15-01/OA/2023
To,

M/s. Finar Limited, (GSTN) No:-24AAACF3217D1ZC)
having their principal place of business
situated at 184,185, Chacharwadi Vasana,
Sarkhej Bavla Highway,
Ahmedabad Gujarat

Copy to:-

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-IV Ahmedabad North.
3. The Superintendent, Range-V, Division-IV, CGST & Central Excise, Ahmedabad North with a request to create Form GST DRC-07 electronically in terms of DSR Advisory no.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
- ✓ 4. The Superintendent (System), CGST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.

