



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</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
फा.सं./F.No. GST/15-37/OA/2022

DIN-20231064WT000000C1DC

आदेश की तारीख/Date of Order: - 10.10.2023
जारी करने की तारीख/Date of Issue : - 10.10.2023

द्वारा पारित/Passed by:- लोकेश डामोर //Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 39/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 रू. 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 रू. 5) 00. पांच रुपये (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:

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.

निष्पत्ति: कादम्बि विनाओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GADT/TECH/SGN/GST/114/2022-TECH&LGL- dated 21.10.2022 issued to M/s Saga Lifesciences Limited, having GSTIN 24ABCCS3380H1ZF Survey No 198/2 and 198/3, Chacharwadi, Vasna, Sanand, Ahmedabad, Gujarat, 382210.



BRIEF FACTS OF THE CASE

M/s. Saga Life sciences Limited, Goods and Service Tax Identification (GSTIN) No:- 24ABCCS3380H1ZF having their principal place of business situated at 198/2 and 198/3, Charcharwadi, Vasna, Sanand, Ahmedabad-Gujarat-382210 (herein after referred as 'the said taxpayer' for the sake of brevity) are engaged in the outward supply of PP Medicines, etc. falling under HSN 3004, etc.

2. The audit of the records of the said taxpayer was conducted for the period from July, 2017 to March, 2020. Pursuant to completion of Audit, Final Audit Report No. GST 213 dated 24.08.2022 was issued to the said taxpayer. Pursuant to completion of Audit. Total 11 numbers of GST revenue paras were raised. The said Tax Payer have got para No. 1 to Para No. 8 settled on payment of tax, interest at appropriate rate and penalty @ 15% under provisions of Section 74(5) of CGST Act,2017. GST Revenue Para No. 9 to 11 remained unsettled which are discussed in detail in subsequent paras. In this show cause notice all sections/provisions of CGST Act, 2017 (hereinafter referred to as "the said Act") have been referred as 'pari-materia' to the same parallel provisions under the Gujarat GST Act, 2017. Further, provisions of IGST Act, 2017 as made applicable vide Section 20 thereof in reference to applicability of provisions of CGST Act, 2017. The revenue paras detected are as follows:

Revenue Para9- Wrong availment of ITC under CGST/SGST Act-2017:-

3. During the course of audit, on perusal of purchase register, it appeared that said tax payer has availed ITC of the GST shown by M/s Gopal Enterprise GSTIN No. 24ARRPG2029D2Z3 in their supply invoices, for providing Manpower Supply Service HSN 998513, as per the following details.

TABLE 1

(Amount in Rs.)

Date	Inv No.	Basic taxable amount (Rs.)	CGST (Rs.)	SGST (Rs.)
17.12.19	2019/09/105	69,094	6,218	6,218
17.12.19	2019/09/106	3,20,606	28,855	28,855
03.01.20	2019/12/119	2,25,710	20,314	20,314
-	2019/12/123	3,66,907	33,022	33,022
-	2020/01/140	4,54,806	40,933	40,933
-	2020/02/153	4,80,231	43,221	43,221
TOTAL		19,17,354	1,72,563	1,72,563

3.1. From the above table, it appears that M/s Saga Lifesciences Limited availed ITC of GST shown by M/s. Gopal Enterprise GSTIN No. 24ARRPG2029D2Z3, in their invoices, issued during the month of Sept. 19, Dec.19, Jan.2020 and Feb.2020.

3.2. For ease of reference, relevant provisions regarding eligibility and conditions for taking input tax credit are reproduced as under:-

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;

(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 utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under Section 39;

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment."

3.3 Further, it appeared that Section 16 of the CGST Act, 2017 provides for eligibility and conditions for taking Input Tax Credit; that Sub Section 2(C) of Section 16 stipulates that '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 utilisation of input tax credit admissible in respect of the said supply'; Thus, as per the said provision under Section 16(2)(c), it appeared that one of the condition for availing ITC by the recipient of goods or services is that the supplier of goods or services should have deposited the tax amount charged/shown in the invoices, into the Government account. In case, the tax amount charged/shown in the invoices is not deposited into the Government account either in cash or through utilization of input tax credit due to non filing of GSTR3B Return for said period, the said condition laid down under the CGST Act, 2017 for taking Input Tax Credit gets violated and hence it appeared that in such a situation, the Input Tax Credit availed by the recipient of goods/services is required to be denied and recovered from them, under Section 74(1) of the CGST Act, 2017. It appears on verification of the status of the said taxpayer viz. M/s Gopal Enterprise GSTIN No. 24ARRPG2029D2Z3 from the GST Portal, that the said M/s Gopal Enterprise have not filed their GSTR3B Returns for the month of Sept, 19, Dec, 19, Jan, 2020 and Feb, 2020. Thus, it appeared that M/s Gopal Enterprise have not deposited GST in the Government account thereby conditions availing

ITC as envisaged under provisions of Section 16 of CGST Act,2017/ Gujarat State GST Act,2017 are violated. Thus, they have wrongly availed and utilized ITC of CGST of Rs.1,72,563/- and ITC of SGST of Rs.1,72,563/-for the said period on the basis of invoices issued by M/s Gopal Enterprise and the said ITC appeared recoverable under Section 74(1) of CGST Act,2017/ Gujarat GST Act,2017 alongwith interest under Section 50(3) of CGST Act,2017/Gujarat State GST Act, 2017/ and penalty under Section 74(1) of CGST Act,2017/Gujarat State GST Act, 2017 appeared to be imposable on the said taxpayer.

CALCULATION OF WRONG AVAILMENT AND UTILIZATION OF ITC AS PER REVENUE PARA 9

TABLE - 2

(Amount in Rs.)

Year	IGST	CGST	SGST	Interest	Penalty
2019-20	0	1,72,563	1,72,563	To be ascertained	To be ascertained
Total	0	1,72,563	1,72,563		

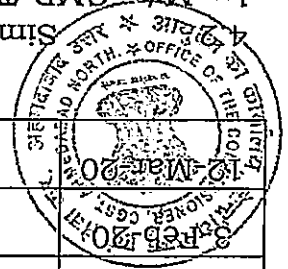
Revenue Para 10:- Wrongavailment of ITC of blocked credit as per Section 17 (5) of CGST Act,2017.

4. During the course of audit, on perusal of purchase register/invoices, it appeared that the said taxpayer has availed Works Contract Services for installation of Central Air Conditioner from M/s Shah Engineering. The details are as under:-

TABLE 3

(Amount in Rs.)

ITC availed on the strength of invoices issued by M/s Shah Engineering GSTIN No. 24AZBPS5212J1ZG for providing Central Air Conditioning System					
Date	Inv No	Product	Basic	CGST	SGST
03.12.19	168	Cooling Tower	189,551.64	17,059.68	17,059.68
05.12.19	174	M S Pipe for AHU	227,673.16	20,490.62	20,490.62
10.12.19	191	M S Pipe for AHU	364,935.52	32,844.24	32,844.24
14.12.19	194	Panel for Chilled Water Pumps	380,600.00	34,254.00	34,254.00
19.12.19	199	XLPE Insulation for AHU	26,927.96	2,423.52	2,423.52
19.12.19	200	XLPE Insulation for AHU	7,479.60	673.20	673.20
19.12.19	201	24 Gauge Sheet for AHU	98,137.24	8,832.38	8,832.38
21.12.19	202	Balancing Valves for AHU	156,974.58	14,127.71	14,127.71
22.12.19	203	M S Pipe for AHU	15,707.56	1,413.72	1,413.72
22.12.19	204	XLPE Insulation for AHU	44,879.60	4,039.20	4,039.20
22.12.19	205	XLPE Insulation for AHU	8,976.32	807.84	807.84
22.12.19	206	24 Gauge Sheet for AHU	98,137.24	8,832.38	8,832.38
25.12.19	207	Condenser Water Pump	289,872.36	17,392.32	17,392.32
27.12.19	209	Hot Water/valve	89,645.80	8,068.10	8,068.10
27.12.19	210	XLPE Insulation for AHU	59,664.48	5,369.76	5,369.76
31.12.19	211	Chilled/Water Pump			



Similarly, they have availed ITC on the strength of invoices issued by M/s GMP Technical Solutions Pvt. Ltd. who have provided them Works Contract Service of clean room panels and have also fabricated/installed clean room panels for the said taxpayer.

TABLE 5 (Amount in Rs.)

Date	Inv No.	Basic	CGST	SGST
25-Dec-19	M-0271	68100	6129	6129
	M-0333	453731	40836	40836
	M-0385	15346	1381	1381
ITC availed on the strength of invoices issued by M/s Malti GSTIN No. 24AWFPM3497P1ZU for providing PU FLOORING/EPOXY COVING 995479				

TABLE 4 (Amount in Rs.)

4.1 Similarly, the taxpayer also has availed ITC on the strength of invoices issued by M/s Malti, who have provided them Works Contract Service of PU FLOORING/EPOXY COVING 995479, the details of which are as under:

01.01.20	216	24 Gauge Sheet for AHU	98,137.24	8,832.38	8,832.38
06.01.20	219	Starter Panel for AHU	161,479.60	14,533.20	14,533.20
06.01.20	220	Gauge/ Temperature Gauge	20,768.00	1,869.12	1,869.12
06.01.20	220	Air Vent Valve	6,511.60	586.08	586.08
06.01.20	221	Flow Switch for Chiller	4,400.00	396.00	396.00
09.01.20	223	24 Gauge Sheet for AHU	98,137.24	8,832.38	8,832.38
10.01.20	225	Rubber Bellows for Chilled Water System	41,483.02	3,733.49	3,733.49
10.01.20	226	XLPE Insulation for AHU	44,879.60	4,039.20	4,039.20
23.01.20	241	24 Gauge Sheet for AHU	58,882.14	5,299.43	5,299.43
27.01.20	242	Butterfly Valve	9,944.00	894.96	894.96
27.01.20	242	Cable for AHU	44,827.18	4,034.45	4,034.45
27.01.20	243	Cable Tray	7,260.20	653.40	653.40
27.01.20	244	Cable for AHU	13,464.48	1,211.76	1,211.76
28.01.20	246	Sensor	44,879.60	4,039.20	4,039.20
29.01.20	249	M S Pipe for AHU	123,605.14	11,124.43	11,124.43
10.02.20	256	Chilled Water Manifold	179,520.40	16,156.80	16,156.80
			3,303,166.62	280,014.39	280,014.39

ITC availed on the strength of invoices issued by M/s GMP TECHNICAL SOLUTIONS PVT. LTD. GSTIN No. 24AAACQ1042P1ZH and 27AAACQ1042P2ZA for providing Works Contract Service of Clean Room panels					
Date	Inv No	Basic	CGST	SGST	IGST
27-Dec-19	GMP3LOC1920-0885	5,905.96	-	-	1,063.04
15-Feb-20	GMP3LOC-1001	8,077.96	-	-	1,454.04
29-Feb-20	GMP3LOC-1046	38,816.04	-	-	6,986.96
18-Mar-20	GJGST1920-0072	31,608.44	2,844.78	2,844.78	-
18-Mar-20	GJGST1920-0073	12,000.00	1,080.00	1,080.00	-
18-Mar-20	GJGST1920-0074	1,000.00	90.00	90.00	-
18-Mar-20	GJGST1920-0075	4,575.50	411.75	411.75	-
18-Mar-20	GMP03INS19200161	198,938.93	-	-	35,809.07
18-Mar-20	GMP03INS19200162	1,500.00	-	-	270.00
			4,426.53	4,426.53	45,583.11

4.3 Works Contract has been defined in Section 2(119) of the CGST Act, 2017. In terms of the said definition, where supply of goods and services results into an immovable property is considered as works contract.

4.4 As can be seen from the words of definition, a work contract under the GST Act is in relation to immovable property. It may be noted that immovable property has not been defined under the CGST Act, 2017 and therefore reference is made to the definition of immovable property under the General Clauses Act, 1897. As per Section 3(26) of the General Clauses Act 1897, "immovable property" shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth".

4.5 In the case of "Municipal Corporation of Greater Bombay & Ors V. Indian Oil Corporation Ltd. (199 suppl. CC 18) wherein one of the questions Hon'ble Supreme Court considered was whether a petrol tank, resting on earth on its own weight without being fixed with nuts and bolts, had been erected permanently without being shifted from place to place. It was pointed out that the test was one of permanency; if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place, if the answer to former is in the positive it must be a movable property but if the answer to the later part is in the positive then it would be treated as permanently attached to the earth".

4.6 In the instant case, it appeared that the test of permanency laid down by the Apex Court in the case of Municipal Corporation of Greater Bombay & Ors V. Indian Oil Corporation Ltd. (199 suppl. CC 18) has been answered in subject case as the Central Air Conditioning System, PU Flooring/Epoxy Covering and installation of clean room panels cannot be shifted from one place to another as such without dismantling it; that Central Air Conditioning System, PU Flooring/Epoxy Covering and installation of clean room panels is transferred to the building owner and this involves transfer of

property. In view of the above, it appeared that the said installations are immovable property.

4.7 For ease of reference relevant provisions of Section 17 (5) of CGST Act, 2017 are reproduced hereunder:-

Section 17. Apportionment of credit and blocked credits.-

(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) _____
- (aa) _____
- (ab) _____
- (b) _____
- (i) _____
- (ii) _____
- (iii) _____

(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 services;

(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.

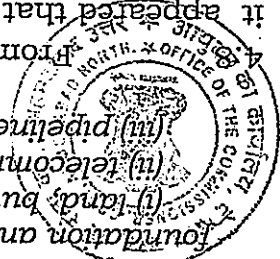
Explanation.-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

- (e) _____;
- (f) _____;
- (g) _____;
- (h) _____;
- (i) _____;

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

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 the above provisions of Section 17(5) (c) of CGST Act, 2017, it appeared that 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) is blocked under the said provision. As per the explanation to the said section, the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. The word plant & machinery is also explained in above explanation. In other words, if Works Contract Service is provided for construction of plant & machinery,

then ITC of the tax paid for such works contract service is admissible, whereas, in the present case, as the works contract service is provided for said installations (other than plant & machinery) which also appeared to be immovable, ITC is not admissible.

4.9 It further noticed that the said taxpayer has received the services of electrical installation/ testing/ commissioning from M/s Apikore Electrobuild Pvt. Ltd./Apikore Corporation, as per following details, which appeared to be blocked as per provisions of Section 17 (5) (d) of CGST Act,2017.

TABLE 6 (Amount in Rs.)

Date	Inv No.	Basic	CGST	SGST
03.02.20	AEPL/005	798,955.08	71,905.96	71,905.96
16-Mar-20	AC/19-20/061	272,161.92	24,494.54	24,494.54
16-Mar-20	AC/19-20/062	342,026.28	30,782.36	30,782.36
		1,413,143.28	127,182.86	127,182.86

4.10 It further appeared that the said taxpayer has received the goods/services from M/s Galaxy Tools & Hardware, M/s Shital Sales Corporation and M/s Mukund Industrial Stores, as per following details, who have supplied them materials which has been booked for Building Repairs / Other Repairs / Factory Expenses/ Consumable stores, etc, which appears to have been used for construction of an immovable property (other than plant or machinery) which appear to be blocked as per provisions of Section 17 (5) (d) of CGST Act,2017.

TABLE 7 (Amount in Rs.)

ITC availed on the strength of invoices issued by M/s GALAXY TOOLS & HARDWARE GSTIN No. 24CLHPM7153A1ZD for providing materials for Building Repairs / Other Repairs / Factory Expenses/ Consumable stores						
Date	Inv No	Product	Basic	CGST	SGST	Remarks
3-Dec-19	A-1055	PLET MIGAGRA/SPARE PAINT/ VALL/TEP	757.24	68.13	68.13	Building Repair
3-Dec-19	A-1055	COTTAN WASTE	390.00	9.75	9.75	Building Repair
6-Dec-19	A-1063	HEX BOLT/WOSHAR/ NUT/ PLASTIC/BELT	6,960.94	626.53	626.53	Consumabl e
13-Dec-19	A-1084	HEMAR/TESTER/U PVC VALL/BERING	1,955.10	175.95	175.95	Consumabl e
14-Dec-19	A-1087	AIE SLIENDAR/UPVC TEE/BUSHING/VAL L/SOLUSAN/BERAL PUMP	5,989.80	539.10	539.10	Consumabl e
14-Dec-19	A-1090	HSS TEPSET	1,979.60	178.20	178.20	Consumabl e
16-Dec-19	A-1094	PVC PIPE/COPLIN/ELBO W/SOLUSAN/SILIN DER/KHILA	4,960.20	446.40	446.40	Building Repair
18-Dec-19	A-1100	UPVC COPLIN/TEE/PVC. NT/JARI SS/UPVC ELBOW/UNION	504.28	45.36	45.36	Building Repair
19-Dec-19	A-1102	PAINT SPRE/SILICON TUB/BUFIG WHILL	3,600.00	324.00	324.00	Consumabl e

1-Feb-20	A-1372	ANGAL BRECKET/KHILA JASTI/SILICON GUN/TUB/KALA HIT	2,827.96	254.52	254.52	Consumabl e
3-Feb-20	A-1780	WIRE ROOP/SILICON TUB	2,039.80	183.60	183.60	Consumabl e
5-Feb-20	A-1392	FAIAR BOTAL/MARBAL BLADE	1,689.80	152.10	152.10	Consumabl e
12-Feb-20	A-1410	RABAR BELT	5,000.00	450.00	450.00	Consumabl e
14-Feb-20	A-1420	UPVC PIPE/PU CONCTER/ PU PIPE/ UPVC UNION/ ELBOW/ COPLIN/SOLUSAN/ BUSHING/BRASS/ WIRE ROOP	1,750.00	157.50	157.50	Building Repair
22-Feb-20	A-1447	UPVC BRASS/ELBOW/PIP E/REDUSAR/VALL/ SOLUSAN/TANK NIPPLE/COPLIN/FT /VALL/UNION/CON CTER/PATRA/FAIB ER SCURE/BOLT/KHIL A JASTI/MS PIPE/CHENAL/BRA SS HEAND CEP	105,272.04	9,474.48	9,474.48	Building Repair
24-Feb-20	A-1450	FAIBAR SIT/RENK	50,060.20	4,505.40	4,505.40	Consumabl e
24-Feb-20	A-1454	TAKI	67,800.00	6,102.00	6,102.00	Factory Expense
25-Feb-20	A-1456	UPVC PIPE/UPVC ELBOW / VALL/ BOLL COCK/ UPVC TEE/BRASS	3,740.80	336.60	336.60	Building Repair
25-Feb-20	A-1455	MS SADYA/MIDI/PLET MIGAGRA/NAKA/PA N/KEPISITAR STATAR	389.80	35.10	35.10	Building Repair
29-Feb-20	A-1521	GEJ	52,650.00	4,738.50	4,738.50	Consumabl e
2-Mar-20	A-1526	PU ELBOW/GI NIPPLE	266.94	24.03	24.03	Building Repair
4-Mar-20	A-1538	UPVC PIPE/VALL/COPLIN /ELBOW/TEP/SILIC ON TUB/COSTING POWDER/DRILL PANA	19,370.40	1,743.30	1,743.30	Building Repair
5-Mar-20	A-1545	UPVC PIPE/FT/ELBOW/R EDUSAR/TEE/SOL USAN/COPLIN/TEP LON TEP/KHILA JSTI/ROLL PLUG/DRILL PANA	10,404.28	936.36	936.36	Building Repair
5-Mar-20	A-1543	MARKAR PEN CD/WHILL/ UPVC VALL/TEE/ ELBOW/ SOLUSAN/VALL BRASS MT/ REDUSAR/ MOTER/LOCK/COS TING POWDER	8,088.16	727.97	727.97	Building Repair
6-Mar-20	A-1549	UPVC PIPE/ELBOW/PU CONCTER/PIPE/SS NIPPLE/REDUSAR/ VALL	4,755.10	427.95	427.95	Consumabl e
6-Mar-20	A-1551	COLAM PIPE	7,700.00	693.00	693.00	Other Repair

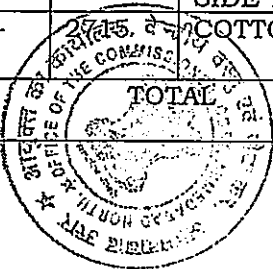
Date	Inv No	Product	Basic	CGST	SGST	Remarks
6-Mar-20	A-1552	UPVC REDUSAR/TANK NIPPLE/ ELBOW/ COPLIN /VALL/ UNION/GOLDAN CLAMP / KHILA JASTI/UPVC FT	1,360.20	122.40	122.40	Building Repair
9-Mar-20	A-1556	UPVC PIPE/VALL/REDUS AR/TEE/DRILL PANA	9,520.40	856.80	856.80	Building Repair
9-Mar-20	A-1557	UPVC PIPE/BRASS MT/ UNION/ PRE-FILTER/UPVC TEE	15,739.80	1,416.60	1,416.60	Building Repair
12-Mar-20	A-1561	SS HEX BOLT/ NUT/ GEJ/ STAR BIT/SCORE DRIVER/ PLAYR/FIX PANA	1,961.84	176.58	176.58	Consumable
13-Mar-20	A-1566	CUTTING DIS	375.50	33.75	33.75	Consumable
13-Mar-20	A-1567	FIX PANA/BOX PANA/BRASS VALL/PVC PIPE/REDUSAR/KIT	1,015.30	91.35	91.35	Consumable
13-Mar-20	A-1565	GARDAN PIPE	779.60	70.20	70.20	Factory Expense
15-Mar-20	A-1575	LAPI PATRA/SELOTEP DABAL SIDE	550.00	49.50	49.50	Building Repair
19-Mar-20	A-1587	LN CSK BOLT/ AXSOBLADE	150.00	13.50	13.50	Consumable
20-Mar-20	A-1594	UPVC VALL/ TEE/CLAMP/LAPI	494.90	44.55	44.55	Building Repair
21-Mar-20	A-1598	SILICON TUB/NUT BOLT	2,826.32	254.34	254.34	Consumable
TOTAL .						
			536,194.66	48,228.72	48,228.72	

TABLE 8 (Amount in Rs.)

ITC availed on the strength of invoices issued by M/s MUKUND INDUSTRIAL STORE GSTIN No. 24ABPPD0726L1ZP for providing materials for Building Repairs / Other Repairs / Factory Expenses / Consumable stores

Date	Inv No	Product	Basic	CGST	SGST	Remarks
5-Dec-19	2094	PLASTIC TALPATRI	1,607.56	144.72	144.72	Factory Expense
9-Dec-19	2097	TAPARIA C CLAMPS	575.50	51.75	51.75	Consumable
9-Dec-19	2097	CAPACTER	50.00	4.50	4.50	Consumable
18-Dec-19	2129	BEARINGS	825.50	74.25	74.25	Consumable
21-Dec-19	2159	TROLLEY WHEEL	1,800.20	162.00	162.00	Other Repairs
21-Dec-19	2159	PLIER COMMERCIAL JONEX	160.00	14.40	14.40	Consumable
25-Dec-19	2213	BRASS BALLVALVE ZYLOTO	2,429.72	218.70	218.70	Consumable
25-Dec-19	2213	BALL VALVE /PU CONNECTORS	1,116.00	100.44	100.44	Consumable
26-Dec-19	2217	SILICONE RUBBER	5,479.10	493.16	493.16	Consumable
26-Dec-19	2217	WD 40 SPRAY RUST	593.20	53.39	53.39	Consumable
26-Dec-19	2217	LOCK	60.00	5.40	5.40	Consumable

26-Dec-19	2217	PIPE WRENCH	650.00	58.50	58.50	
26-Dec-19	2217	V BELTS	160.00	14.40	14.40	
28-Dec-19	2242	SS HEX NIPPLES/ ROTARY DILL MACHINE/ RCC DRILL/PUPIPE/ ELBOW/COUPLE R/MTA/FTA/ADJ USTABLE WRENCH/CPVC SOLUTION/ UPVC ELBOW / UPVC TEE/PU CONNETOR/CAR BON BRUSH	5,870.40	528.30	528.30	Consumabl es
29-Dec-19	2266	CYLINDER	3,800.00	342.00	342.00	Consumabl es
30-Dec-19	2305	SS BOLTS	360.20	32.40	32.40	
31-Dec-19	2326	EQUAL CONNECTOR/PU CONNECTOR/SS HEX NIPPLES/PVC BALL CORKS	431.42	38.79	38.79	
3-Jan-20	2367	JOUL MODULAR REGULATOR/PVC ELBOW/TEE/PIP ES/FTA	445.72	40.14	40.14	Building Repair
4-Jan-20	2370	SS BOLTS/PVC ELBOW	59.38	5.31	5.31	Consumabl es
6-Jan-20	2378	PVC ELBOW/ REDUCERS/BUS HING	372.04	33.48	33.48	Building Repair
9-Jan-20	2393	CH HEAD SCREWS/ NUT/TROLLY WHEEL	2,664.48	239.76	239.76	Consumabl es
10-Jan-20	2396	BEARINGS/RCC DRILL/PVC FTA	1,251.64	112.68	112.68	Consumabl es
11-Jan-20	2402	HOOKS/SAMAR WASHER/UPVC JET SPRAY	948.26	85.37	85.37	Consumabl es
12-Jan-20	2414	GI JALI/HSS DRILL/DOOR STOPPER/UPVC BALL VALVES/ MTA/FTA	3,381.42	304.29	304.29	Other Repairs
13-Jan-20	2417	GI JALI	3,750.00	337.50	337.50	Other Repairs
17-Jan-20	2437	ROTARY BRASS WIRE	450.00	40.50	40.50	Consumabl es
24-Jan-20	2501	ALUMINIUM SECTION MOTER RAILINGS/SS BOLTS	2,075.50	186.75	186.75	Consumabl es
6-Feb-20	2638	SPRAY PAINT/DOUBLE SIDE TAPE	1,416.94	127.53	127.53	Building Repair
23-Feb-20	2645	COTTON WIPERS	400.00	10.00	10.00	Consumabl es
TOTAL			43,184.18	3,860.41	3,860.41	



ITC availed on the strength of invoices issued by M/s SHTAL SALES CORPORATION GSTIN No. 24AADHSS904G1ZA for providing materials for Building Repairs / Other Repairs / Factory Expenses / Consumable stores

TABLE 9 (Amount in Rs.)

Date	Inv No.	Product	Basic	CGST	SGST	Remarks
5-Dec-19	2160/1	MCB	2,432.24	218.88	218.88	Other Repairs
11-Dec-19	2214/1	LIGHT	934.70			Other Repairs
17-Dec-19	2277/1	SENSOR	850.00	76.50	76.50	Consumables
1-Jan-20	2437/1	FLEXIBLE WIRE	6,974.62			Other Repairs
1-Jan-20	2437/1	DOL STATER	1,350.00	121.50	121.50	Other Repairs
2-Jan-20	2448/1	COIL	779.60	70.20	70.20	Consumables
3-Jan-20	2452/1	LFD	3,440.20	206.40	206.40	Other Repairs
4-Jan-20	2472/1	SWTCH/CONTRO LTER/FLAME PROOF FITTING	11,310.16	1,017.90	1,017.90	Other Repairs
4-Jan-20	2472/1	SENSOR	720.00	64.80	64.80	Other Repairs
4-Jan-20	2472/1	TOP	408.00	36.72	36.72	Other Repairs
13-Jan-20	2554/1	FLEXIBLE COIL/WIRE	8,227.04	740.48	740.48	Other Repairs
17-Jan-20	2582/1	FLEXIBLE WIRE	10,212.68	916.16	916.16	Other Repairs
22-Jan-20	2634/1	FLEXIBLE WIRE	2,670.96	240.39	240.39	Other Repairs
22-Jan-20	2634/1	METER	7,050.26	634.50	634.50	Other Repairs
22-Jan-20	2627/1	PL	1,650.00	148.50	148.50	Other Repairs
25-Jan-20	2666/1	METER	2,300.00	207.00	207.00	Consumables
30-Jan-20	2707/1	WIRE	6,392.44	575.28	575.28	Other Repairs
3-Feb-20	2744/1	CFL/TOP	3,023.78	272.16	272.16	Other Repairs
3-Feb-20	2744/1	TAPE ROLL	255.00	22.95	22.95	Other Repairs
8-Feb-20	2795/1	LFD	14,825.28	889.50	889.50	Other Repairs
8-Feb-20	2795/1	PL/CHOCK	5,650.00	508.50	508.50	Other Repairs
8-Feb-20	2795/1	MCB/SOCKET/S WITCH	5,972.00	537.48	537.48	Other Repairs
8-Feb-20	2795/1	WIRE	7,343.02	660.87	660.87	Other Repairs
8-Feb-20	2796/1	WIRE	895.90	80.63	80.63	Other Repairs
8-Feb-20	2796/1	MODULE BOX	690.00	62.10	62.10	Other Repairs

8-Feb-20	2796/1 9-20	PLATE TYPE HEATERS	1,290.00	116.10	116.10	Other Repairs
8-Feb-20	2796/1 9-20	DRIVER	1,719.84	154.80	154.80	Other Repairs
8-Feb-20	2796/1 9-20	TUBE	3,400.00	306.00	306.00	Other Repairs
27-Feb-20	2966/1 9-20	METER	2,500.00	225.00	225.00	Consumables
2-Mar-20	2996/1 9-20	SENSOR	700.00	63.00	63.00	Consumables
7-Mar-20	3043/1 9-20	CABLE	5,500.00	495.00	495.00	Other Repairs
7-Mar-20	3043/1 9-20	TAPE ROLL	255.10	22.95	22.95	Other Repairs
11-Mar-20	3058/1 9-20	FLEXIBLE WIRE	1,638.16	147.42	147.42	Other Repairs
11-Mar-20	3055/1 9-20	LED	14,450.00	867.00	867.00	Other Repairs
11-Mar-20	3055/1 9-20	CONTACTOR/ACT UATOR	3,043.16	273.92	273.92	Other Repairs
16-Mar-20	3095/1 9-20	REALY	1,179.90	106.20	106.20	Other Repairs
16-Mar-20	3095/1 9-20	ADAPTOR	1,559.90	140.40	140.40	Other Repairs
16-Mar-20	3098/1 9-20	FLEXIBLE WIRE	6,714.29	604.28	604.28	Other Repairs
16-Mar-20	3098/1 9-20	MCB	2,261.15	203.50	203.50	Other Repairs
			152,569.38	12,746.81	12,746.81	

4.11 A summary of above blocked credit under Section 17(5)(C) and(d) is as under:-

TABLE 10 (Amount in Rs.)

Name of the inward supplier	IGST	CGST	SGST
Shah Engineering		280014	280014
Malti		48346	48346
M/s GMP Technical Solutions Pvt. Ltd.	45,583	4,4267	4,4267
M/s ApikoreElectrobuild Pvt. Ltd. /Apikore Corporation		127183	127183
Galaxy Tools and Hardware		48,229	48,229
Mukund Industrial Store		3860	3860
Shital Sales Corporation		12747	12747
TOTAL	45,583	5,64,646	5,64,646

4.12 In view of the above, it appeared that the said taxpayer is required to reverse ITC of IGST of Rs.45,583/-, CGST of Rs.5,64,646/- and ITC of SGST of Rs.5,64,646/-, as calculated above, under Section 74(1) of CGST Act, 2017/Gujarat State GST Act, 2017 and Section 20 of the IGST Act, 2017, alongwith interest at appropriate rate under Section 50(3) of CGST Act, 2017/Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 and penalty under Section 74(1) of CGST Act, 2017/Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017.

CALCULATION OF WRONG AVAILMENT AND UTILIZATION OF ITC AS PER REVENUE PARA 10

TABLE - 11

(Amount in Rs.)					
Year	IGST	CGST	SGST	Interest	Penalty
2019-20	45,583	5,64,646	5,64,646	To	To
Total	45,583	5,64,646	5,64,646	ascertained	ascertained

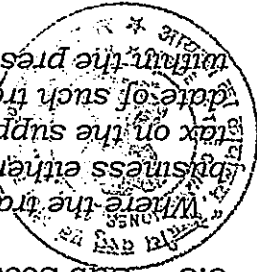
Rev. Para 11: - Non-payment/Short payment of GST by M/s. Saga Lifesciences Ltd. on clearances made by M/s Saga Laboratories after change in status.

5. During the course of audit of M/s. Saga Lifesciences Ltd. (GSTN 24ABCCS3380H1ZF) it was noticed that the taxpayer was incorporated on 10.07.2019 and prior to that they were functioning in the name of M/s Saga Laboratories, from the same premises, having GST Registration No. 24AAGFS4833D1ZF. Further, it was noticed that the taxpayer has obtained GST Registration No. 24ABCCS3380H1ZF, which shows date of liability w.e.f. 10.07.2019 and date of validity from 11.10.2019.

5.1 It was noticed that the taxpayer viz. M/s. Saga Lifesciences Ltd. in the F.Y. 2019-20 has shown total taxable value of Income of Rs. 15,68,27,637/- in their financial account including in the Balance Sheet/Profit & Loss Account.

5.2 Section 29 of CGST Act, 2017 read with Rule 20 of CGST Rules, 2017 deals with cancellation of Registration including a case where there is any change in the constitution of the business. It appears that as per the said provisions, the said M/s Saga Laboratories was required to get their Registration Cancelled within 30 days of the occurrence of the event warranting the cancellation i.e. 10.07.2019 when the constitution of M/s Saga Laboratories ceased to exist and M/s Saga Lifesciences Ltd was incorporated as a limited company by the Registrar of Companies. But, it appears that M/s Saga Laboratories Limited continued its operations in their name though the provisions of law as enumerated in Section 85(2) of the CGST Act, 2017 warranted that it was for the transferee to discharge tax liability with effect from the date on which registration was obtained. The GST registration obtained by the said taxpayer also shows the date of liability of the said taxpayer from 10.07.2019.

5.3 Sub Section (2) of Section 85 of the CGST Act, 2017, reads as under :



5.4. The said Section 85 (2) of the CGST Act, 2017, stipulate that the transferee is liable to discharge tax liability with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration. The date of incorporation of M/s Saga Lifesciences Limited as per certificate issued by ROC is 10.07.2019. As per the Memorandum of Association, the name of the co-

Partner is Saga laboratories and after registration as the company under chapter XXI of the Companies Act, 2013, shall be M/s Saga Lifesciences Limited. It is also mentioned in the Memorandum of Association that "all the properties of the said firm whether movable or immovable, including actionable claims belonging to the said firm and all the liabilities of the said firm, as on the closing of the business hours of the day preceding the date of issuance of incorporation certificate by the Registrar of the Companies shall be vested in the company pursuant to its Registration in accordance with the provisions of Part I Chapter XXI of the Companies Act, 2013." Thus, in the instant case, the date of such transfer in the eyes of law is 10.07.2019 viz. the date on which of M/s Saga Laboratories has been converted into M/s. Saga Lifesciences Ltd. as per certificate of incorporation issued by Registrar of Companies. This date viz. 10.07.2019 is also reflected as date of liability in the GST Registration certificate of M/s. Saga Life Sciences Ltd. Therefore, the tax payer was required to discharge the tax liability w.e.f. 10.07.2019 being the date of conversion, resolution and transfer and shown as the date of liability in the registration however M/s. Saga Lifesciences Ltd. started discharging their own GST liability (on outward supplies made by them) w.e.f. 01.12.2019. M/s Saga Laboratories have discharged GST liability instead of M/s. Saga Life Sciences Ltd. on the outward supplies made by M/s Saga Laboratories even after 10.07.2019.

5.5. In view of the above facts discussed in the foregoing paras, it appeared that the said taxpayer has contravened the provisions of Section 85 (2) of the CGST Act, 2017, in so far as the taxpayer failed to discharge the GST liability with effect from the date of transfer of business (i.e. 10.07.2019) and failed to apply for amendment of their certificate of registration within the prescribed time. Thus, the circumstances and facts available on record suggest that the taxpayer had not fulfilled the legal requirement with regards to discharge of tax liability on the clearance shown in their financial records without any legal justification and thereby contravened the provisions related to discharge of tax liability on the clearance/supply shown in their financial records to the tune of Rs.2,52,32,953/- (IGST Rs. 2,51,33,607/- + CGST Rs. 49,673/- + SGST Rs. 49,673/-) for the period 2019-20.

5.6. In view of the facts discussed hereinabove and the evidences available on record, it appeared that the said taxpayer has not paid GST to the tune of IGST Rs.2,51,33,607/- + CGST Rs. 49,673/- + SGST Rs. 49,673/- on the taxable value of Rs.21,24,24,947/- during the year 2019-20. The said amount of GST is to be recovered from the taxpayer under Section 74(1) of the CGST Act, 2017 along with applicable interest in terms of Section 50(1) read with Section 74(1) of the CGST Act, 2017. They also appear liable to pay penalty under Section 74(1) of the CGST Act, 2017. For IGST matters, all the above provisions of CGST Act, 2017 are to be read with Section 20 of IGST Act, 2017.

CALCULATION OF NON PAYMENT/ SHORT PAYMENT OF GST AS PER REVENUE PARA 11

TABLE - 12 (Amount in Rs.)

Year	IGST	CGST	SGST	Interest	Penalty
2019-20	2,51,33,607	49,673	49,673	To be ascertained	To be ascertained
Total	2,51,33,607	49,673	49,673		

6. Section 16 of CGST Act, 2017:- 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;

(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;

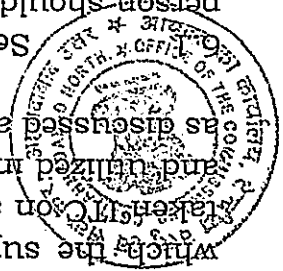
(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(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 utilisation of input tax credit admissible in respect of the said supply; and

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

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

From the above provisions, it appeared that the taxpayer is eligible to take credit of input tax charged on any supply of goods or services or both on which tax charged by the supplier is deposited into Govt. account. In the instant case, it appeared that tax charged by the supplier is not deposited into Govt. account as the supplier has not filed GSTR-3B returns for the months in which the supplier had issued invoices showing GST and the taxpayer had taken ITC on such invoices and thereby it appeared that taxpayer have availed and utilized ITC as mentioned in the above provisions, in contravention of the said provisions, which the supplier had issued invoices showing GST and the taxpayer had as discussed above.



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

6.2. 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.

From conjoint reading of Section 39 of CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, it appeared that M/s Saga Lifesciences Limited 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 availed.

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

From the aforesaid provisions of Section 17 of CGST Act, 2017, it appears that M/s Saga Life sciences Limited have availed ITC of GST paid on Works Contract Service which were supplied to them for creation of immovable property and the ITC on such inputs and input services were blocked under the said section. It appears that the said taxpayer should have reversed the ITC wrongly availed and utilized by them and 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 availed, as discussed above, which they have failed to do so.

6.4 Section 22 of CGST Act,2017:- Persons liable for Registration

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

6.5 Section 25 of CGST Act,2017:- Procedure for Registration

(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

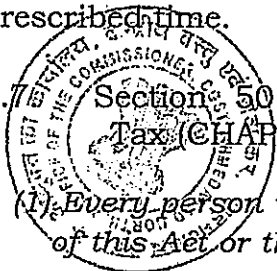
6.6 Section 85(2) of the CGST Act,2017:-

" Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.)

The said taxpayer has contravened the provisions of Section 85 (2) of the CGST Act, 2017, in as much as the taxpayer failed to discharge the GST liability with effect from the date of transfer of business (i.e. 10.07.2019) and failed to apply for amendment of their certificate of registration within the prescribed time.

6.7 Section 50 of CGST Act 2017: Interest on Delayed Payment of Tax (CHAPTER X – PAYMENT OF TAX)

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any



part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council. Interest on delayed payment of tax.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

6.7.1 Further, Hon'ble Jharkhand High Court in the case of M/s Mahadeo Construction have stated that-

"Liability of interest is automatic, but the same is required to be adjudicated in the event an assessee disputes the computation or very levability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act. In our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules."

As M/s Saga Lifesciences Limited have failed to discharge their GST liability in due time / wrongly availed ITC and thus they have made themselves liable to pay interest on the same under Section 50(1) and Section 50(3) of the CGST Act, 2017 and Section 20 of IGST Act, 2017, as applicable.

7. In light of the facts discussed hereinabove and the material evidences available on record, it appears that M/s Saga Lifesciences Limited have contravened the following provisions of the CGST Act, 2017/CGST Rules, 2017:

- (i) Section 16 of CGST Act, 2017/Gujarat State GST Act, 2017 in as much as they have wrongly availed and utilized ITC of the tax amount which was not deposited by the supplier of goods into Govt. Account, as discussed above;
- 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 they wrongly availed and utilized ITC with an intent to evade payment of tax;
- Section 17(5) (c) and Section 17 (5) (d) of CGST Act, 2017 in as much as they have availed and utilized ITC attributable to blocked credit;
- (iv) Section 85(2) of CGST Act, 2017 in as much as they failed to discharge the GST liability with effect from the date of transfer of business (i.e. 10.07.2019) and failed to apply for amendment of their certificate of registration within the prescribed time;
- (v) Section 22 read with Section 25 of CGST Act, 2017 in as much as they failed to obtain Registration with effect from the date of such transfer;



- (vi) Section 50 of the CGST Act, 2017, in as much as they failed to discharge their GST liability in due time / failed to reverse 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;

8. Quantification of Non Payment/Short Payment of GST and ITC wrongly availed by M/s SagaLifesciences Limited:

As discussed herein above in para 3, 4 and 5, the total amount of ITC wrongly availed and utilized and GST not paid/short paid is summarized as under:-

Table - 13

(Amount in Rs.)

Sr. No.	Revenue Para No.	IGST		CGST		SGST	
		Demand	Paid	Demand	Paid	Demand	Paid
1.	R.P.9	0	0	1,72,563	0	1,72,563	0
2.	R.P.10	45,583	0	5,64,646	0	5,64,646	0
3.	R.P.11	2,51,33,607	0	49,673	0	49,673	0
GRAND TOTAL		2,51,79,190		7,86,882		7,86,882	

9. Section 74 of the CGST Act, 2017 :

"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 utilized 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 utilized 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 percent 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 percent 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."

9.1 In this regard, it may not be out of place to highlight the observations of the Hon'ble Apex Court discussed in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 regarding applicability of the extended period in different situations.

9.2. 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.

9.3.1 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." It appears that the said taxpayer suppressed the short payment of GST and wrong availment and utilization of ineligible ITC and thereby it appears has knowingly failed to correctly self assess tax 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 of the statutory returns filed by the taxpayers under the statute. Therefore, it places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns.

9.3.2. 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"

10. From the Information/data of the taxpayer verified during the course of audit, it appears that the taxpayer have short paid GST and wrongly availed and utilized ineligible ITC and it appears that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax/Inter-liabilities is utter disregard to the requirements of law and breach of trust, deposited on them is outright act in defiance of law by way suppression, concealment, non-furnishing value of taxable supply and wrong availment of ITC with intent to evade payment of tax. The above said short payment of GST and wrong availment of ITC is unearthed after audit was conducted by officers of Central Tax Audit, Ahmedabad and therefore had the said short payment of GST and wrong availment and utilization of ineligible ITC had not been detected during audit, it would have remained unnoticed. 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.

11. 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.

11.1. It appeared that the taxpayer had not paid the tax within the prescribed due dates on the outward supplies made by them. Further, it appears they had wrongly availed and utilized ITC of CGST/SGST/IGST. These supplies and wrongly availed & utilized ITC were not shown in their GSTR 3B returns. It, therefore, appears that there is a case of suppression of facts to evade the payment of tax and wrong availment& utilization of ITC. It appears that short paid CGST/SGST and wrongly availed& utilized ITC of CGST/SGST is to be demanded/ recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act' 2017. Similarly, short paid IGST and wrongly availed & utilized ITC of IGST appears liable to be demanded/ recovered from them under the provisions of Section 74(1) along with interest under Section 50 of the CGST Act' 2017 read with the provisions of Section 20 of the IGST Act,2017.

11.2. 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& utilization 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 GST; thereby it appears penalty under Section 74(1) of the CGST Act' 2017 is invocable.

12. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC-01 A was issued to the said taxpayer on 23.09.2022 intimating their liability under Section 74(5) of the CGST Act, 2017 and advising them to pay the tax as ascertained therein or to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 07.10.2022.

12.1 The said taxpayer has neither paid tax as ascertained and intimated by this vide DRC-01 A mentioned in above paragraph nor any written submissions have been received from them till date.

13. Therefore, Show Cause Notice bearing No.GADT/TECH/SCN/GST/114/2022-TECH and LEGAL dated 21.10.2022 was issued to M/s. Saga Lifesciences Limited, 198/2 and 198/3, Charcharwadi, Vasna, Sanand, Ahmedabad-Gujarat-382210 GSTN No:- 24BCCS3380H1ZF are called upon to show cause to the Additional/Joint Commissioner, Central GST & Central Excise, Ahmedabad North Commissionerate, 1st floor, Customs House, Near All India Radio, Navrangpura, Ahmedabad- 380 009,as to why:

13.1

the wrongly availed ITC totally amounting to Rs.3,45,126/- (Rupees Three Lakh Forty five Thousand One Hundred Twenty six only) (CGSTRs.1,72,563/-+ SGSTRs.1,72,563/-)as per Revenue Para 9, should not be demanded and recovered from them, under the provisions of Section 74 (1) of the CGST Act, 2017/Gujarat GST Act, 2017 as discussed in para 3 above;



(ii) Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at 13.1 (i) above, under the provisions of Section 50(3) of the CGST Act, 2017/Gujarat GST Act, 2017;

(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 13.1 (i) above.

13.2

(i) the wrongly availed blocked ITC amounting to Rs.11,74,875/- (Rupees Eleven Lakh Seventy four Thousand Eight Hundred and Seventy five Only) (IGST Rs.45,583/- + CGSTRs.5,64,646/- + SGSTRs.5,64,646/-) as per Revenue Para 10, should not be demanded and recovered from them, under the provisions of Section 74 (1) of the CGST Act, 2017, as discussed in para 4 above;

(ii) Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at 13.2 (i) above, under the provisions of Section 50(3) of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;

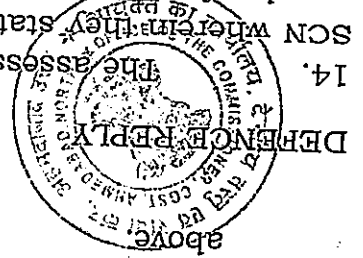
(iii) Penalty should not be imposed upon them, under the provisions of Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on tax amount mentioned at 13.2 (i) above.

13.3

(i) the GST totally amounting to Rs.2,52,32,953/- (Rupees Two Crore Fiftytwo Lakh Thirtytwo Thousand Nine Hundred and Fiftythree Only) (IGST Rs.2,51,33,607/- + CGSTRs.49,673/- + SGSTRs.49,673/-) as per Revenue Para 11, should not be demanded and recovered from them, under the provisions of Section 74 (1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 as discussed in para 5 above;

(ii) Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at 13.3 (i) above, under the provisions of Section 50(3) of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;

(iii) Penalty should not be imposed upon them, under the provisions of Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on tax amount mentioned at 13.3 (i) above



14. SCN wherein they stated that they are public limited company engaged in the supply of medicaments and holding valid GSTIN under GST law. They have compiled the 3 paras as under:

Revenue Para No.9 : Wrong availment of ITC-GSTR 2-A reconciliation

15. In this connection, the tax payer stated that the department has made the demand against ITC availed of the invoice where GST is not paid by the supplier as supplier has not filed its GST returns. In this connection, they

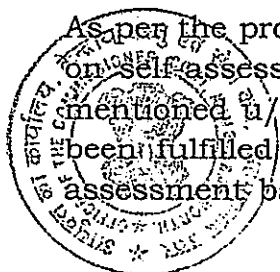
further stated that one of the conditions of Section 16(2)(aa) is that the details of invoice must be furnished by the supplier and communicated to the recipient for availment of ITC by recipient however it must be noted that the said conditions is made effective vide Noti.No.39/2021 dated 21.12.2021 w.e.f 01.01.2022. In the instant case, the said conditions was not applicable as the Notification became effective from 01.01.2022. Section 16(2)(ba) is made effective vide Notification No.18/2022 dated 28.09.2022 with effect from 01.10.2022 hence not applicable in the instant case. Further they a stated that as approved by the 27 th Council meeting held on 04.05.2018 amount of credit will not be limited to the invoices uploaded by their suppliers which appears in GSTR 2A of the assessee. In the press release, it has been mentioned that there shall not be any automatic reversal of input tax credit from the buyer on non payment of tax by the seller. In case of default of payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc. They have also provide copy of press not for perusal.

16. They further stated that looking to the press release issued by CBIC, it can be seen that recovery from the buyer can be made only in case of situations where such recovery cannot be made from the seller. Hence, in case where seller is untraceable then only buyer can be made liable for such recovery. In the instant case, the department should make recovery from M/s.Gopal enterprise who has collected GST from noticee and has not paid the same to Government. On the default made by supplier, buyer should not be held responsible for the payment of GST. GST is a mechanism to collect indirect taxes under a value chain process and if seller collects tax then responsibility to pay such taxes lies with such seller and buyer is not liable to pay GST as equal to default made by the supplier. They further submitted that they have actually received goods and/or services which is used by it in the course or furtherance of business. It is also in possession of tax invoice for the said supplies and the relevant returns has also been filed by the noticee. With respect to condition of payment of tax to the Government [Section 16(2)(C)], the said condition is subject to provisions of Section 41 of the CGST Act, 2017. The extract of same is as under:

"41. Claim of input tax credit and provisional acceptance thereof-

1. *Every registered person shall, subject to such conditions and restrictions as may be prescribed, **be entitled to take the credit of eligible input tax, as self-assessed**, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.*
2. *The credit referred to in sub-section (1) shall be utilized only for payment of self- assessed output tax as per the return referred to in the said sub-section"*

As per the provision of Section 41 (supra), the tax payer is entitled to take ITC on self assessment basis in the returns filed by it. Hence, all the conditions mentioned u/s 16(2) of CGST Act, 2017 for availment of Input Tax Credit has been fulfilled by the noticee and hence it is allowed to claim ITC on self-assessment basis. Further, Section 41 has been amended vide Finance Act,



2022 effecting substitution of new sub-section for section 41. The said amended section is reproduced as under:

"41.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed"

In the said section, it is stated that if the tax has not been paid by the supplier, the recipient would be liable to reverse his input tax credit along with interest. When the tax is paid by the supplier on a later date, the recipient would be able to re-avail the credit in the return. In this connection, the tax payer stated that the above Section has been amended vide Notification No. 18/2022-Central Tax where it is made effective from 01.10.2022. Hence, it can be seen that as said Section is effective from 01.10.2022 therefore there is no provision which makes the noticee liable for reversal of ITC which is not reflecting in GSTR-2A. Please note that if any intention of Government was to match the ITC of GSTR-3B with GSTR-2A for earlier period then it would have made the Section effective retrospectively from 01.07.2017. However, CBIC has made the said Section effective prospectively w.e.f. 01.10.2022 hence as said Section was not effective in the period covered under the instant case hence reversal is not required to be made and demand needs to be set aside.

17. On conjoint reading of Section 16(2) and Section 41 it can be said that ITC can be availed on self-assessment basis if the above four conditions are satisfied. Hence, if these conditions are satisfied, no more restrictions can be imposed on the taxpayer to restrict the ITC. As per condition (C) given in the Section 16(1), eligibility and conditions for taking input credit, as stated above, it is required to ensure that tax has been paid by the supplier however that purpose can't be served by reconciling ITC with GSTR-2A. Further, it is to be noted that in GSTR-2A, we can see the filing status of taxpayer however it doesn't provide an information regarding the tax payment of a particular transaction hence even by comparing GSTR-2A with GSTR-3B it can not be established that GST of a particular transaction has been paid to Government hence when mechanism to determine such fact is not available then ITC can not be restricted and such practices are ultra vires.

18. They further stated that in the earlier periods, there was no mechanism for matching of ITC between GSTR-3B and GSTR-2A. Requirement of matching of such ITC was made effective through Rule 36(4) of CGST Rules, 2017 which is introduced vide Notification No. 49/2019 - Central Tax dated

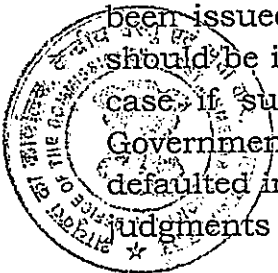
09.10.2019 and it was made effective from 09.10.2019. Relevant extract of the same is as under:

"(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"

It is to be noted that the above rule has been made effective from 09.10.2019 and though above rule was implemented w.e.f. 09.10.2019 however concession of 20% was granted to the taxpayer where it can avail ITC in GSTR-3B upto 20% of eligible ITC matching with GSTR-2B. Further, said limit of 20% was reduced to 10% and then to 5% and then to exact matching with GSTR-2B. Hence, it can be seen that the mechanism of matching of ITC between GSTR-3B and GSTR-2A was made effective in phased manner and hence such relaxation was provided to the taxpayers to implement the system of matching gradually. The tax payer has reproduced the details of notifications through which it was prescribed that taxpayer can avail ITC in its GSTR-3B after matching with GSTR-2A however such matching was not restricted to the invoices which are reflecting in GSTR-2A but Government given relaxations by way of prescribing limit upto which ITC in GSTR-3B can be availed by taxpayer even if it is not reflecting in GSTR-2A. Details of the notifications are as under:

Notification No.	% of eligible ITC as per GSTR-2A	Effective date
Notification No. 49/2019 – Central Tax dated 09.10.2019	20%	09-10-2019
Notification No. 75/2019–Central Tax dated 26.12.2019	10%	01-01-2020
Notification No. 94/2020–Central Tax dated 22.12.2020	5%	01-01-2021
Notification No. 40/2021- Central Tax dated 29.12.2021	0%	01-01-2022

19. The department must consider the fact that a taxpayer was eligible to avail additional ITC in its GSTR-3B to the extent limits prescribed and as mentioned in above table. Hence, in case of invoices booked in books and ITC of those invoices is not reflecting in GSTR-2A then ITC to extent of limit can be availed hence straight away raising of demand on the basis of filing status of supplier is bad in law and such type of demand needs to be set aside. The noticee should not be hassled on the fault of supplier. It has paid all its tax dues to the supplier on time and also done all the compliance required under the law. Thus, the noticee is the person who has suffered the tax i.e., incidence of tax is on noticee and hence it is eligible to take Input Tax Credit. Here, supplier is the person who has not filed the returns within due time or has not reported supplies in the returns filed by him and as a consequence, notice has been issued by the department to the noticee for demand of ITC. The notice should be issued to supplier for non-filing of returns and not to the noticee. In case if supplier has not filed the returns and not paid the tax to the Government then department should raise demand to the supplier who has defaulted in compliance of law. The tax payer has relied upon below mentioned judgments of earlier laws:



"54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act"

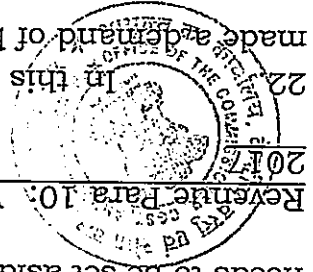
As per the above judgement, it can be seen that demand can not be made from buyer and in case of default made by seller, recovery proceedings must be initiated against seller. Condition which is impossible to comply by the notice cannot be imposed. It is also submitted that the notice is unable to identify whether payment has been done by the supplier or not or whether he has filed the return or not. For condition of matching of ITC as per GSTR-2A and payment of tax by the supplier, notice will never be in position to identify the same. Thus, condition which is not identifiable by the assessee cannot be imposed by law. This will lead to blockage of ITC and will affect the working capital of the noticee in substantial terms. Thus, it should be allowed to avail ITC as per books of accounts.

20. The tax payer relied upon the judgements of Indian Seamless Steel and Alloys vs Union of India (UOI) And Ors. And M/s. D.Y. Bethel Enterprises v. The State Tax Officer in support of their claim. They also relied upon the following decision of *Bharti Airtel Ltd - Hon'ble Supreme Court* wherein it was held that it is a statutory obligation fastened upon the registered person to maintain books of accounts and record within the meaning of Chapter VII of the 2017 Rules, which are primary documents and source material on the basis of which self-assessment is done by the registered person including about his eligibility and entitlement to get ITC and of output tax liability. Form GSTR-2A is only a facilitator for taking an informed decision and ITC cannot be denied to the taxpayer merely on the basis of difference between GSTR 3B & GSTR 2A.

21. Based on aforesaid explanation and submission, it can be deduced that department has clearly overlooked facts of the case that needs to be assessed before issuing notice. Thus, the impugned notice is liable to be quashed. Further, it is submitted that w.e.f. 01.01.2022, CBIC prescribed that ITC by taxpayer can be availed in GSTR-3B only if it is reflecting in GSTR-2B hence before that time, specific relaxations were given to avail ITC hence if return is not filed by the seller, then demand cannot be made straight away. Ld. Departmental officer has not checked the effective date of provision and has not gone through the press release before issuance of notice hence demand needs to be set aside.

Revenue Para 10: Wrong availment of ITC - Block ITC u/s 17(5) of CGST Act.

In this connection, the tax payer stated that the department has made a demand of blocked ITC u/s 17(5)(C) of CGST Act, 2017 stating that the



noticee has availed ITC against work contract service. Summary of party wise demand made is as under:

Name of Supplier	IGST	CGST	SGST
Shah engineering	-	2,80,014	2,80,014
Malta	-	48,346	48,346
M/s GMP Technical Solution Pvt Ltd	45,583	44,267	44,267
M/s Apikore Electrobuild Pvt Ltd & Apikore Corporation	-	1,27,183	1,27,183
Galaxy Tools & Hardware	-	48,229	48,229
Mukund Industrial store	-	3,860	3,860
Shital Sales corporation	-	12,747	12,747
Total	45,583	5,64,646	5,64,646

The noticee would like to reproduce the relevant extract of Section 17(5)(c) & 17(5)(d) of CGST Act, 2017 as under:

"(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:

(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 reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

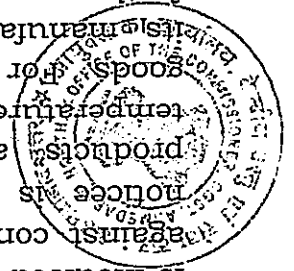
Explanation- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural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

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

As per Section 17(5)(c), ITC shall not be allowed of construction of immovable property which does not include plant & machinery hence by that means we can say that ITC shall be allowed if the input is towards plant & machinery. Further, they stated that towards the explanation as prescribed and reproduced above where it is specified that construction shall be limited to the extent of capitalization hence if inputs are capitalized in books of accounts of a taxpayer then ITC shall not be allowed however if it is in nature of expense and booked under profit & loss account then Section 17(5)(c) is not applicable therefore taxpayer shall be eligible to avail such ITC in GSTR-3B. By considering such factual situation and background law, the noticee would like to produce the bifurcation of inputs which are capitalized or booked in profit & loss account as under:



23. The tax payer further submitted that the above expenditure is incurred towards plant & machinery however department has considered it against construction and therefore ITC is disallowed. It is submitted that notice is engaged in the business of manufacturing "Pharmaceuticals and for its business activities, it requires to maintain certain temperature to preserve raw materials, work in progress goods and finished goods for that purpose, they have installed Central Air Conditioning plant in manufacturing facility. This plant and machines are required for furtherance of business, and it does not fall under the category of construction of immovable property hence it is not blocked credit under Section 17(5) therefore credit of the same should be allowed to the tax payer. It has not



Name of Supplier	IGST	CGST	SGST	Total	Type of investment
Shah engineering	-	2,80,014	2,80,014	5,60,028	Central Air conditioning system
Malti	-	48,346	48,346	96,692	PU flooring/Epoxy coving
M/s GMP Technical Solution Pvt Ltd	45,583	44,267	44,267	1,34,117	Clean room panel
M/s Apikore Electrobulld Pvt Ltd & Apikore Corporation	-	1,27,183	1,27,183	2,54,366	Electrical installation/testing/commissioning

Looking to the above bifurcation, it can be seen that total ITC of Rs. 1,29,672/- is eligible ITC due to the reason that value of inputs against such ITC has been charged to profit & loss account hence Section 17(5)(c) does not restrict such ITC. Further, ITC of Rs. 10,45,203/- is against the plant & machinery. Hence, such ITC shall be allowed. The notice would like to produce the type of investment that is being incurred against plant & machinery as under:

Name of Supplier	IGST	CGST	SGST	Total	Treatment in books of account
Shah engineering	-	2,80,014	2,80,014	5,60,028	Capitalized
Malti	-	48,346	48,346	96,692	Capitalized
M/s GMP Technical Solution Pvt Ltd	45,583	44,267	44,267	1,34,117	Capitalized
M/s Apikore Electrobulld Pvt Ltd & Apikore Corporation	-	1,27,183	1,27,183	2,54,366	Capitalized
Total Capitalization	45,583	4,99,810	4,99,810	10,45,203	
Galaxy Tools & Hardware	-	48,229	48,229	96,458	Charged to P&L
Mukund Industrial store	-	3,860	3,860	7,720	Charged to P&L
Shital Sales corporation	-	12,747	12,747	25,494	Charged to P&L
Total booked in P&L	-	64,836	64,836	1,29,672	
Grand Total	45,583	5,64,646	5,64,646	11,74,875	

received any works contract service for construction of immovable property, but it has purchased plant and machinery for manufacturing purpose and further supply of goods.

24. They further stated that they are required to maintain manufacturing facility as per norms of Regulatory body of pharma sector and hence it has availed GST credit of flooring and epoxy for plant. Further, it is submitted that a "Clean- Room" is an environment in which several parameters (like Contamination, Pressurization, Temperature & Humidity and Personnel Access) are controlled, monitored and maintained. Basically Clean- Room is an area in which the quantity & size of air- borne particles are controlled in order to limit contamination. It is installed & operated in a manner to control the Introduction, Generation & Retention of contaminates inside the space. Filtered air flows into the rooms through High Efficiency Particulate Air (HEPA) filters. Clean- Rooms are classified on the basis of; the amount of air- borne particles load in the room in any given time. It needs to be installed as per specific requirement of the regulatory authority of pharma and requirement of products hence credit of the same should be allowed to the noticee. Furthermore, CESTAT (Delhi) has held in the matter of "M/s Syncom Formulations (I) Ltd." that pharma company is eligible to take CENVAT credit on Input used for fabrication of clean room. Further, it is submitted that the noticee has availed service from M/s Apikore Electrobuild Pvt Ltd and Apikore Corporation for installation of Central Air Condition plant and the same service are related to installation of plant and machinery hence the same should not be disallowed to the noticee. As the noticee has incurred expense towards plant & machinery hence ITC should be allowed.

Revenue Para 11: Demand u/s 85(2) of CGST Act, 2017

25. The noticee would like to submit that department has demanded GST from noticee on the supplies which are made by the transferor entity i.e. M/s Saga Laboratories. Details of the incorporation and effective date of registration of noticee are as under:

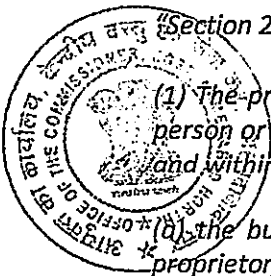
Particulars of noticee	Date
Date of Incorporation	10-07-2019
Effective date of GST registration	11-10-2019

In the instant case, department has mentioned in SCN that transferee company was required to apply for cancellation within 30 days of occurrence of event warranting such cancellation however it has not complied with Section 29 of CGST Act, 2017 read with Rule 20 of CGST Rules, 2017 and continued to supply the goods in its own name. Relevant extract of said Section and Rule is as under:

Section 29. Cancellation 1[or suspension] of registration-

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where;

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or



(b) there is any change in the constitution of the business; or

(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25

Rule 20. Application for cancellation of registration:

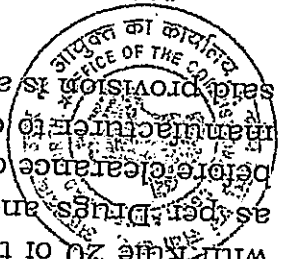
"A registered person, other than a person to whom a registration has been granted under rule 12 or a person to whom a Unique Identity Number has been granted under rule 17, seeking cancellation of his registration under sub-section (1) of section 29 shall electronically submit an application in FORM GST REG-16, including therein the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date from which the cancellation of registration is sought, liability thereon, the details of the payment, if any, made against such liability and may furnish, along with the application, relevant documents in support thereof, at the common portal within a period of thirty days of the occurrence of the event warranting the cancellation, either directly or through a Facilitation Centre notified by the Commissioner"

26. The taxpayer further submitted that though the above provision requires a taxpayer to apply for cancellation of GST registration within 30 days of such event however vide Circular No. 69/43/2018-GST dated 26.10.2018, it is clarified by CBIC that in some of the case such condition of 30 days may be liberally interpreted. Relevant extract of said Circular is as under:

"Rule 20 of the CGST Rules provides that the taxpayer applying for cancellation of registration shall submit the application in FORM GST REG-16 on the common portal within a period of 30 days of the "occurrence of the event warranting the cancellation". It might be difficult in some cases to exactly identify or pinpoint the day on which such an event occurs. For instance, a business may be transferred/disposed over a period of time in a piece meal fashion. In such cases, the 30-day deadline may be liberally interpreted and the taxpayers' application for cancellation of registration may not be rejected because of the possible violation of the deadline"

27. It is submitted that in the instant case, industry is pharma which requires regulatory and Government approvals for certain practices and work processes hence due to the said reason M/s Saga Laboratories could not apply for cancellation of GST Registration and has discharged liability on the transactions made by it. As in the case of Pharma Industry, it has to get regulatory approval from the Government body for starting manufacturing operations and it requires some time for getting approval from the regulatory body where may so happen that such approval process could not be completed within 30 days from the change in constitution of business therefore notice should be given relaxation in complying Section 29 of CGST Act, 2017 read with Rule 20 of the CGST Rules, 2017. The notice would like to submit that as per Drugs and Cosmetics Act, 1940 a license is required to be obtained before clearance or supply of drugs. As per Section 18(c) of said Act, requires a manufacturer to obtain the license before such supply. Relevant extract of the said provision is as under:

"18. Prohibition of manufacture and sale of certain drugs and cosmetics- From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—



*(c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, **except under, and in accordance with the conditions of, a license issued for such purpose under this Chapter***"

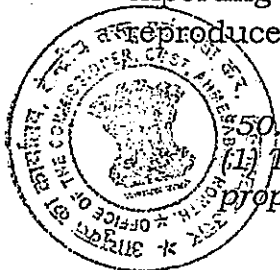
28. It is submitted that the noticee applied for license to manufacture for sale (or for distribution) of drugs under the above Act and the said license was granted by Commissioner, Food & Drugs Control Administration, Gandhinagar on 04.10.2019. Hence, it is established fact that as per the regulatory requirements and restriction, noticee was unable to supply drugs before 04.10.2019 in his own name hence such supply was made by Saga laboratory. They have also attached copies of licences for perusal. Further, it has previously been informed that they are primarily engaged in exports pharmaceutical products. To export any pharmaceutical product, regulatory procedures of both exporting and importing countries are required to be followed. The companies manufacturing pharmaceutical products for exports and their products are required to be registered by the regulatory bodies of the importing countries. If any party wants to change the name of manufacturer he has to undergo procedure as prescribed by regulatory bodies of the importing countries. To apply for change in manufactures name manufacturer has to provide copy of drug manufacturing license issued in the new name by Food and Drug Control Administration and a copy certificate of Good Manufacturing Practices. Also above obtaining license is not a sufficient compliance for supplying the drugs on own name but a further application is required to be made to "Food & Drugs Control Administration" for getting a certificate relating to Site verification.

29. After filing the said application, site visit is to be done by the Government officials and on the basis of verification, certificate is to be issued to the effect that said site where activities relating to drug manufacturing are undertaken is a complying site with good manufacturing practices. The noticee has received such certificate on 27.11.2019 hence it can be seen that before 27.11.2019, it was not possible for the noticee to undertake the manufacturing activity on the said site in his own name hence such supply was made by Saga laboratory in his own name. Copy of certificate is also attached by the tax payer. Further, it is to be noted that Pharma industry is an industry which requires more and more regulatory approvals, and it is very sensitive industry where no activity can be undertaken without valid license as it has higher penal actions hence for complying to the said requirements, noticee started supplying drugs from 01.12.2019 and also all compliance relating to GST are followed with.

30. The tax payer further submitted that the demand which is made by the department pertains to the demand on exports which are made by Saga Laboratories. It is submitted that at the time of export of goods, copy of shipping bill is to be filed and such shipping bill can be filed by exporter who is exporting the goods. Relevant extract of Section 50 of Customs Act, 1962 is reproduced as under:

50. *Entry of goods for exportation-*

(1) *The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a*



shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.
 (2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents"

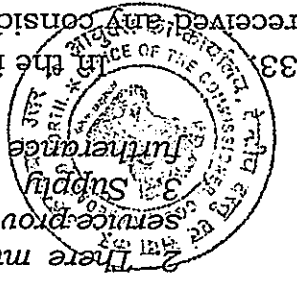
31. It is to be noted that copy of shipping bill is the document which justifies the ownership of goods and name of exporter who is exporting the goods. The person in whose name, copy of shipping bill is filed is called as owner of the goods and hence document of title of such goods lies with exporter. In the instant case, goods are exported outside India and copy of shipping bill is filed in the name of Saga laboratory hence it is proved that ownership of goods lies with Saga laboratories and hence said goods can not be exported by notice. Therefore, when ownership of goods does not lie with noticee then obviously supply cannot be called as made by noticee and therefore no demand can be made from noticee. They have also produced sample shipping bill is for reference.

32. They further stated that for levying GST on any transaction, the first and foremost conditions is that such transaction falls under the definitions of "Supply" as per Section 7 of CGST Act, 2017. For understanding the said Section, relevant extract is reproduced as under:
 "7. Scope of supply.

(1) For the purposes of this Act, the expression "supply" includes— 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;
 the activities specified in Schedule I, made or agreed to be made without a consideration; and the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
 (2) Notwithstanding anything contained in sub-section (1)— activities or transactions specified in Schedule III; or such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
 (3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as a supply of goods and not as a supply of services; or a supply of services and not as a supply of goods"

As per the above definition, for levying GST on any transaction, following conditions must be satisfied simultaneously:

1. There must be supply of goods or rendition of services
2. There must be a consideration in reciprocity of supply of goods or service provisions
3. Supply of goods or service provision must be in the course or furtherance of business



33. In the instant case, the noticee would like to submit that it has not received any consideration from recipient of goods for supply of goods on which demand is made by department. The said supply is made by Saga laboratories and consideration against the same is also received by Saga laboratories. As consideration for the supply of goods made by Saga laboratories is not received by the noticee hence one of the basic conditions of Section 7 is not fulfilled therefore transaction does not fall under Section 7 hence GST is not applicable. Copy of sample FIRC is attached for ready reference.

Export of goods and refund benefits as per Section 16 of IGST Act, 2017 read with Section 54 of CGST Act, 2017

34. The tax payer further submitted that as per Section 2(5) of IGST Act, 2017, export of goods means taking goods out of India to a place outside India. Relevant extract of said Section is as under:

"(5) export of goods with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India"

Further, as per Section 16 of IGST Act, 2017, in case of export of goods, taxpayer has two options either export the goods under cover of with payment of IGST or export it under LUT. Relevant extract of said Section is as under:

"16. Zero rated supply.

*(1) "zero rated supply" means any of the following supplies of goods or services or both, namely-
export of goods or services or both; or supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely-

he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder"

As per the above Section, in both of the options refund of GST paid is available to the taxpayer in view of Section 54 of the CGST Act, 2017. Therefore, it can be seen that there is no intention of Government to collect GST from the taxpayers who is generating foreign exchange for India. Further, to give the benefits to taxpayers and to promote them Government is giving refund of GST paid on export transactions. Therefore, it is humble request by the noticee to submit that firstly it is exports made by Saga laboratories and secondly it is no supply for the noticee. Further, to support the above claim, the noticee has submitted that no demand can be made on export transactions as exports can be made without payment of IGST. Copy of sample invoices as raised by Saga Laboratories are attached and Copy of ledger of export invoice is also attached by the tax payer.

In the present case, revenue is arguing that event which warrants cancellation of registration, is date of issuance of Certificate of Incorporation by

the Ministry of Corporate Affairs however notice would like to submit that CBIC has given clarification that in some instances, it is not possible to pin point exact date which warrants cancellation of GST Registration as business is transferred in piece meal fashion. Hence, in such situation relaxation should be given to the taxpayer. The notice would like to reproduce relevant extract of Section 85 of CGST Act, 2017 as under:

"Section 85. Liability in case of transfer of business:

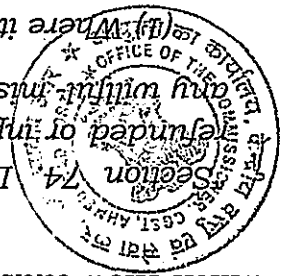
- (1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

- (2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration"

36. It is submitted that by referring Section 85(2) of CGST Act, 2017, department has demanded GST from them however the stated that it has applied for registration and date of liability as per GST registration is 11.10.2019. Hence, before that period transferee has discharged the liability of GST. Further, said Section only applies when business is transferred however in the present case after receiving Certificate of Incorporation, business could not be started immediately in the new registered company due to non-availability of regulatory approval. Further, as regulatory approval is not received to the newly incorporated company, all the business obligations have been discharged from the transferor GSTIN and all the tax liability has been discharged by the transferor. Furthermore, tax has already been paid to the Government on the supplies made hence there is no revenue loss situation arising.

37. The tax payer referred Section 74(1) of CGST Act, 2017 under which show cause notice was issued. Relevant extract of the same is as under:

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.-



Where it appears to the proper officer that any tax has not been 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 charged with tax which has not been so paid or which has been 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"

As per the above Section, show cause notice can be given only in following situation:

- *Tax must not have paid or short paid and*
- *Having an intention of evasion of tax*

In the instant case, neither tax is not paid or short paid nor there is any intention of tax evasion. Tax liability has already been discharged by the transferor company and same tax which is already deposited to Government can not be demanded again from noticee as it is bad in Law and against the powers of Government. On a single transaction, tax cannot be paid twice. Hence, such demand needs to be set aside. It is submitted that when there is demand needs to be set aside then question of interest levability does not arise. It is submitted that demand needs to be set aside hence penalty is not leviable. In view of the above facts, they requested to drop the proceedings on merits.

PESONAL HEAREING

38. In the instant case personal hearing was granted on 12.07.2023 and 22.09.2023. Shri Viral Sanghvi, CA, duly authorised representative attended the P.H on behalf of the assessee. He reiterated the submissions dated 09.12.2022 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

39. I have carefully gone through the Show Cause Notice, reply to SCN dated 09.12.2022 along with Annexures, copy of licence in Form 28, Certificate issued by Food and Drugs control Administration, copies of invoices, shipping Bill account edger other submissions made by the assessee during the course of P.H.

40. On perusal of the above referred documents, I find that audit was conducted for the period July 2017 to March 2020. During the scrutiny of documents relating to expenses made by the said taxpayer and their other accounts & returns, it was noticed that they have wrongly availed ITC of CGST of Rs.1,72,563/- and SGST of Rs.1,72,563/- (total ITC of Rs. Rs.3,45,126/-). It was further noticed that they have wrongly availed ITC of blocked credit amounting to Rs. Rs.11,74,875/- . It was also noticed that they have not paid GST of Rs. Rs.2,52,32,953/- for the period under reference and accordingly SCN was issued. On perusal of SCN, I find that the issues which requires determination are:

- i) Whether the tax payer is liable to reverse the wrongly availed ITC of Rs. Rs.3,45,126/- (CGST of Rs.1,72,563/- and ITC of SGST of Rs.1,72,563/- or not.
- ii) Whether the tax payer is liable to reverse wrongly availed ITC of Rs.11,74,875/- (IGST of Rs.45,583/-, CGST Rs.5,64,646/- and SGST of Rs.5,64,646/- of blocked credit as per section 17(5) of CGST Act, 2017 or not and
- iii) Whether the tax payer is liable to pay non-paid / short paid GST of Rs.2,52,32,953/-(IGST Rs.2,51,33,607/- + CGST Rs.49,673/- + SGST



Rs.49,673/-) under Section 74(a) of GST Act, 2017 on clearance made by M/s. Saga Laboratories after change in status or not.

For the sake of clarity, I would like to discuss the points one by one.

i) Revenue Para 9: Wrong availment of ITC under CGST/SGST Act, 2017:

41. On perusal of the SCN, reply to SCN and other documents, I find

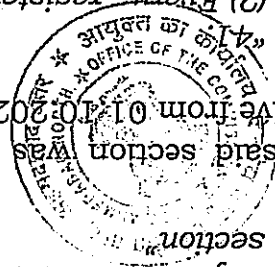
that during the course of audit, on perusal of purchase register, it was noticed that the tax payer has availed ITC of Rs.3,45,126/- shown by M/s.Gopal Enterprises in their supply invoices for providing man power supply service during the period Sept.2019, December 2019, January 2020 and Feb.2020. The SCN alleges that sub section 16 (C) of Section 16 of the GST Act, 2017 stipulates that subject to provisions of Section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of ITC admissible in respect of said supply. Thus one of the condition for availing ITC by the recipient of the goods or services is that the supplier of goods or services should have deposited the tax amount charged/shown in the invoices into the Govt. account. However in the instant case due to non filing of GSTR3B the said amount of Rs.3,45,126/- has not been deposited for the said period and therefore the said amount is recoverable from the recipient of the goods i.e. the tax payer. In this connection, the tax payer submitted that they have received the goods, they are also in possession of tax invoice for the said supplies and relevant returns have been filed. Further the condition under section 16 (2) (C) is subject to provisions of Section 41 of the CGST Act, 2017 and according to which they are entitled to take credit as self assessed in the returns filed by them. They further stated that Section 41 has been amended vide Notification No.18/2022-Central Tax where it is made effective from 01.10.2022 and therefore there is no provision which makes the tax payer liable for reversal of ITC which are not reflecting in their GSTR 2A. In this connection, I would like to go through the concerned section 41 for clarification of the issue.

"41. Claim of input tax credit and provisional acceptance thereof-

1. Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

2. The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section

The said section was amended vide Notification No.18/2022 where it made effective from 01.10.2022 which reads as under:



(2) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with

applicable interest, by the said person in such manner as may be prescribed

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed"

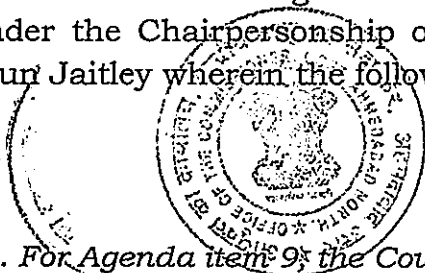
42. In this connection, I have gone through the amended Notification and find that the credit of input tax availed by a registered person in respect of supplied of goods or services, the tax payable has not been paid by the supplier, shall be reversed along with the applicable interest, by the said person in such manner as may be prescribed. On the plain reading of this amended section, it is clear that if the supplier has not paid the tax, the buyer is binding to reverse the input credit along with the interest. This amendment has become effective from 01.10.2022 only. In the instant case, I find that the SCN alleges that they have violated the condition of Section 16 (2)(c) by taking Cenvat credit even though the supplier has not deposited the tax to the government account. On perusal of section 16(2)(c) of the Act, I find that the said clause (c) of Section 16 (2) is subject to provisions of Section 41 of the Act. Section 41 of the Act was amended with effect from 01.10.2022 inserting the condition of reversal of credit by the buyer if the supplier has not paid the tax. However on perusal of the documents, I find that the issue is pertaining to the period of September 2019, December 2019, January 2020 and Feb 2020 which is well before the amendment of the Notification. Therefore the provisions of reversal of input credit is not applicable in the instant case as during the period under reference the amendment was not in force. In view of the above, I accept the contention of the assessee that the Section 16 (2) (c) is not applicable in their case as the same was not in force at the time of taking credit. In view of the above, I find that the demand of wrongly availed ITC o Rs.3,45,126/- is not tenable and therefore the same is required to be dropped.

43. Further the assessee has also claimed that as per the minutes of 27 th Council meeting held on 04.05.2018, GST council has approved that the assessee can avail credit on self declaration basis and credit will not be limited to the invoice uploaded by their suppliers which appear in GSTR 2 A of the assessee. I has also been mentioned that there shall not be any automatic reversal of input tax credit from the buyer on non payment of tax by the seller. In case of default of payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.

44. In this connection, I have gone through the copy of Minutes of 27th GST Council Meeting held on 04th May, 2018 through video conferencing under the Chairpersonship of the Hon'ble Union Finance Minister, late Shri Arun Jaitley wherein the following points were approved:

1.

21. For Agenda item 9, the Council approved the following



21.1. The broad principles for the design of new return filing system shall be as follows:

i.
ii.
iii.

iv. There would not be any automatic reversal of input tax credit from buyer on non payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller, however, reversal of credit from the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc. In the instant case the supplier M/s. Gopal Enterprise has collected GST from the tax payer but has not paid the same to the Govt account. In view of the decision of the council, the input credit is to be recovered from the supplier M/s. Gopal Enterprises. The said credit cannot be recovered from the tax payer as no exceptional circumstances as explained in the decision is there in the instant case. In view of the above, by accepting the contention of the tax payer I find that the demand of wrongly availed ITC of Rs. 3,45,126/- is not tenable and therefore the same is required to be dropped.

45.

On perusal of the point approved by the GST council, I find that the Council has made it clear that there shall not be any automatic reversal of input tax credit from the buyer on non payment of tax by the seller. In case of default of payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc. In the instant case the supplier M/s. Gopal Enterprise has collected GST from the tax payer but has not paid the same to the Govt account. In view of the decision of the council, the input credit is to be recovered from the supplier M/s. Gopal Enterprises. The said credit cannot be recovered from the tax payer as no exceptional circumstances as explained in the decision is there in the instant case. In view of the above, by accepting the contention of the tax payer I find that the demand of wrongly availed ITC of Rs. 3,45,126/- is not tenable and therefore the same is required to be dropped.

46.

In this regard the tax payer further stated that in the earlier period there was no mechanism for matching ITC between GSTR 3 B and GSTR 2A. Requirement of matching was made effective from 09.10.2019. Initially it was upto 20% of eligible matching and subsequently it was reduced to 0% with effect from 01.01.2022. It can be seen that mechanism of matching of ITC between GSTR 3 B and GSTR 2A was made effective in a phased manner and hence such relaxation was granted to the tax payer. The department must consider the fact that the taxpayer was eligible to avail additional ITC in its GSTR 3 B to the extent limits prescribed. The notice should be issued to supplier for non filing of returns and not to the tax payer. The tax payer further stated that the supplier is the person who was not filed the returns within due time or has not reported supplies in the returns filed by them and as a consequence demand has issued to the tax payer, however it should have been issued to the supplier.

In this connection, I have gone through the points raised by the tax payer. In the instant case the show cause notice has not mentioned anything regarding mismatch of GSTR 3 B or GSTR 2 filed by the tax payer even though the basis of the SCN is the mismatch. The SCN has also not provided the relaxation by way of prescribing limit upto which ITC in GSTR 3B can be availed by them even if it is not reflecting in GSTR 2 A. I have also gone through the this point also and find that before issuance of SCN, the issuing authority has not considered the said fact whether they are covered under the criteria of % age of eligible ITC as per their GSTR2A but directly issued SCN to the tax payer. The said issuance of SCN is also prevented the tax payer to avail the opportunity to avail the relaxation granted by the Govt. Further, it was

also noticed that the SCN alleged that the supplier has not paid the said amount in the Govt. Account on the ground that the supplier has not filed the GST3 B returns for the period Sept.2019, Dec.2019, Jan 2020 and Feb 2020. The allegation has not been supported by any material to establish they the supplier has not deposited the GST in the Govt. Account. It is assumed that as they have not filed the required returns in time, they should not have been deposited the tax also.

48. Further the tax payer has also relied upon a number of case laws in their favour as referred above. I have gone through the case law of D.Y.Beathel Enterprises Vs. State Tax Officer (Data Cell) Thirunelveli 2022 (58) GSTL 269 (Mad), issued by the Hon'ble High Court of Madras wherein similar issue has been decided by the Hon'ble Court. In the referred case, the appellant has bought rubber sheets from sellers Mr. Charles & his wife and made payment to them also and taken credit. It was later came to know that the sellers did not pay any tax to the Govt. account. Department has issued notice to the recipient and ordered for recovery from the buyer, i.e. the appellant. However the Hon'ble court quashed the OIO and the matter was remitted to the Department to initiate recovery action against the sellers by holding supplier was responsible for non payment of tax to the Govt. On perusal of the said order, I find that the matter is similar in the instant case also.

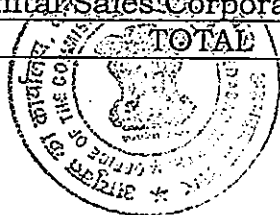
49. By considering all the above facts and findings, I find that the tax payer is eligible for ITC of Rs.3,45,126/- (CGST of Rs.1,72,563/- + ITC of SGST of Rs.1,72,563/-) and accordingly the demand of said ITC of Rs.3,45,126/- (CGST of Rs.1,72,563/- + ITC of SGST of Rs.1,72,563/-) is not sustainable and accordingly dropped.

(ii) Revenue Para 10: Wrong availment of ITC of blocked credit as per Section17(5) of CGST, Act,2017.

50. Now, I would like to proceed to the second point that whether the tax payer is liable to reverse wrongly availed ITC of Rs.11,74,875/- ITC of IGST of Rs.45,583/- + CGST Rs.5,64,646/- + SGST of Rs.5,64,646/-) of blocked credit as per section 17(5) of CGST Act, 2017 or not. In this connection, I have gone through the SCN and find that the total demand of Rs.11,74,875/- has been made under the head wrong availment and utilization of ITC as detailed below:

(Amount in Rs.)

Name of the inward supplier	IGST	CGST	SGST
Shah Engineering		280014	280014
Malti		48346	48346
M/s GMP Technical Solutions Pvt. Ltd.	45,583	4,4267	4,4267
M/s ApikoreElectrobuild Pvt. Ltd. /Apikore Corporation		127183	127183
Galaxy Tools and Hardware		48,229	48,229
Mukund Industrial Store		3860	3860
Shital Sales Corporation		12747	12747
TOTAL	45,583	5,64,646	5,64,646



51. In this connection, I have gone through the details of invoices of the above referred suppliers and find that input credit of Rs. 11,74,875/- pertains to the above referred inwards suppliers. The SCN proposed to reverse the ITC availed amounting to Rs.10,45,203/- availed/ utilized on works contract services of M/s.Shah Engineering for works contract services for installation of air conditioner, M/s.Maiti for providing PU flooring/EPoxy covering, M/s.GMP technical solutions for works contract for cleaning panel services, M/s.Apikore Electrical P.Ltd/ Apikore Corporation for works contract for electrical installation/testing/commissioning etc. The SCN also proposed to reverse ITC of Rs.1,29,672/- availed/ utilized on supplying materials which has been booked for building repairs/other repairs/factory expenses/consumable stores etc appears to have been used for construction of an immovable property other than plant and machinery. The said credit was availed by the assessee on the basis of invoices raised by M/s.Galaxy Tool and Hardware, M/s.Mukund Industrial Store, M/s.Shtal Sales Corporation.

52. In this connection, I have gone through the reply filed by the taxpayer and find that the taxpayer claimed that the ITC of Rs.10,45,203/- is availed is against plant and machinery and therefore they are eligible for the said ITC. They claimed that expenditure is incurred towards plant and machinery however department has considered it against construction and therefore ITC is disallowed. They further claimed that they are engaged in the business of manufacturing of pharmaceutical products and it requires to maintain certain temperature to preserve raw materials, work in progress goods and finished goods. For this purpose they have installed Central Air-conditioning plant in its manufacturing facility.

53. They further claimed that they are required to maintain manufacturing facility as per norms of regulatory body of pharma sector and hence it has availed credit on flooring and epoxy for plant. It was also submitted by the tax payer that Clean Room is an environment in which several parameters (like contamination, pressurization, temperature and humidity and ersonnel access) are controlled, monitored and maintained. Basically Clean-Room is an area in which the quantity & size of air-borne particles are controlled in order to limit contamination. It is installed & operated in a manner to control the Introduction, Generation & Retention of contaminants inside the space. Filtered air flows into the rooms through High Efficiency Particulate Air (HEPA) filters. Clean-Rooms are classified on the basis of; the amount of air-borne particles load in the room in any given time. It needs to be installed as per specific requirement of the regulatory authority of pharma and requirement of products hence credit of the same should be allowed to the noticee. It was also stated that CESTAT (Delhi) has held in the matter of "M/s Syncom Formulations (I) Ltd." that pharma company is eligible to take CENVAT credit on Input used for fabrication of clean room. Further it is submitted that the noticee has availed service from M/s Apikore Electrobuid Pvt Ltd and Apikore Corporation for installation of plant and machinery hence the same should not be disallowed to the noticee. As the noticee has incurred expense towards plant & machinery hence ITC should be allowed.

54. In this connection, I have gone through the contentions filed by the tax payer and find that the SCN is proposed to recover the wrongly availed ITC of Rs. Rs.10,45,203/- on the ground that they are availed ITC of

works contract service and which is blocked under Section 17(5) of CGST Act, 2017. In this regard, I would like to go through the relevant portion of the Section 17 (5) for further clarity.

The noticee would like to reproduce the relevant extract of Section 17(5)(c) & 17(5)(d) of CGST Act, 2017 as under:

"(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:

(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;

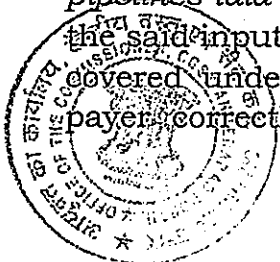
(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

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 capitalization, to the said immovable property;

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"*

55. On perusal of Section 17(5)(c), I find that ITC shall not be allowed of construction of immovable property which does not include plant & machinery hence by that means ITC shall be allowed if the input is towards plant & machinery. In this connection, I find that the tax payer is a manufacturer of pharmaceutical products and they are required to obtain licence as per Drugs and Cosmetics Act, 1940. It is undisputed that pharmaceutical produces, mostly medicines are of sensitive nature they have to manufacture, store and dispatch in such a manner as prescribed by the licensing authority. The drug manufacturing plant is to be constructed/operated by incorporating all the conditions and precaution prescribed by the licensing authority also. In the circumstances, I find that the activities related to Central Air-conditioning system, PU flooring/Epoxy covering, clean room panel, Electrical installation/testing commissioning are covered under the term plant and machinery as envisaged as per the explanation i.e. 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. It is also pertinent to mention that the said activities are also not covered under the excluded items under Section 17 (5) mentioned above i.e. (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises". In view of the above, I find that as the said input/input services are meant for plant and machinery and definitely covered under the definition of plant and machinery and therefore the tax payer correctly availed ITC on these input/input services and accordingly



allowable. In view of the above facts, I find that the demand and recovery of the ITC amounting to Rs.10,45,203/- is not sustainable and accordingly dropped.

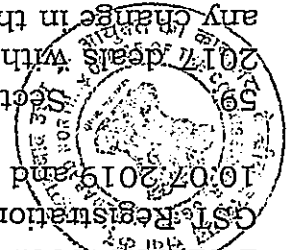
56. The SCN also proposed to reverse ITC of Rs.1,29,672/- availed/utilized on supplying materials which has been booked for building repairs/other repairs/factory expenses/consumable stores etc appears to have been used for construction of an immovable property other than plant and machinery. The said credit was availed by the assessee on the basis of invoices raised by M/s.Galaxy Tool and Hardware, M/s.Mukund Industrial Store, M/s.Shital Sales Corporation. In this connection, I have gone through the explanation given under Section 17(5) wherein it is specified that construction shall be limited to the extent of capitalization hence if inputs are capitalized in books of accounts of a taxpayer then ITC shall not be allowed however if it is in nature of expense and booked under profit & loss account then Section 17(5)(c) is not applicable therefore taxpayer shall be eligible to avail such ITC. Accordingly, I find that they have not capitalised the said amount of Rs.1,29,672/- for the reason that value of inputs against such ITC has been charged to profit & loss account hence Section 17(5)(c) does not restrict availment of such ITC. Accordingly they are eligible for ITC of the said amount and therefore the reversal of the said ITC does not arise. Therefore, I find that the demand of ITC of Rs.1,29,672/- is also not sustainable and accordingly the same required to be dropped. In view of the above the entire demand of Rs.11,74,872/- on account of blocked ITC is dropped as the same is not sustainable as discussed above.

(iii) Revenue Para 11: Non-payment/Short payment of GST by M/s. Saga Lifesciences Ltd. on clearances made by M/s Saga Laboratories after change in status.

57. Now, I would like to proceed to the third point that whether the taxpayer is liable to pay non-paid / short paid GST of Rs.2,52,32,953/- on clearance made by M/s. Saga Laboratories after change in status or not.

58. In this connection, I have gone through the SCN and other documents and find that charges made in the SCN according to which during the course of audit it was noticed that the taxpayer was incorporated on 10.07.2019 and prior to that they were functioning in the name of M/s Saga Laboratories, from the same premises, having GST Registration No. 24AAGPS4833D1ZF. Further, it was noticed that the taxpayer has obtained GST Registration No.24ABCCS3380H1ZF, which shows date of liability w.e.f. 10.07.2019 and date of validity from 11.10.2019.

Section 29 of CGST Act,2017 read with Rule 20 of CGST Rules, 2017 deals with cancellation of Registration including a case where there is any change in the constitution of the business. It appeared that as per the said provisions, the said M/s Saga Laboratories was required to get their Registration Cancelled within 30 days of the occurrence of the event warranting the cancellation i.e. 10.07.2019 when the constitution of M/s Saga Laboratories ceased to exist and M/s Saga Life sciences Ltd was incorporated as Limited company by the Registrar of Companies. But, it was found that M/s Saga Laboratories continued its operations in their name though the



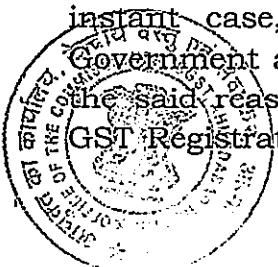
provisions of law as enumerated in Section 85(2) of the CGST Act, 2017 warranted that it was for the transferee to discharge tax liability with effect from the date on which registration was obtained. The GST registration obtained by the said taxpayer also shows the date of liability of the said taxpayer from 10.07.2019.

60. The said Section 85 (2) of the CGST Act, 2017, stipulate that the transferee is liable to discharge tax liability with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration. The date of incorporation of M/s Saga Lifesciences Limited as per certificate issued by ROC is 10.07.2019. Thus, in the instant case, the date of such transfer in the eyes of law is 10.07.2019 viz. the date on which of M/s Saga Laboratories has been converted into M/s. Saga Lifesciences Ltd. as per certificate of incorporation issued by Registrar of Companies. This date viz..10.07.2019 is also reflected as date of liability in the GST Registration certificate of M/s. Saga Life Sciences Ltd. Therefore, the tax payer was required to discharge the tax liability w.e.f. 10.07.2019 being the date of conversion, resolution and transfer and shown as the date of liability in the registration however M/s. Saga Lifesciences Ltd. started discharging their own GST liability (on outward supplies made by them) w.e.f. 01.12.2019. M/s Saga Laboratories have discharged GST liability instead of M/s. Saga Life Sciences Ltd. on the outward supplies made by M/s Saga Laboratories even after 10.07.2019. Thus, the circumstances and facts available on record suggest that the taxpayer had not fulfilled the legal requirement with regards to discharge of tax liability on the clearance shown in their financial records without any legal justification and thereby contravened the provisions related to discharge of tax liability on the clearance/supply shown in their financial records to the tune of Rs.2,52,32,953/-(IGST Rs. 2,51,33,607/-+ CGST Rs. 49,673/- + SGST Rs. 49,673/-) for the period 2019-20.

61. In this connection, I have gone through the contention of the tax payer wherein it is stated that though the above provision requires a taxpayer to apply for cancellation of GST registration within 30 days of such event however vide Circular No. 69/43/2018-GST dated 26.10.2018, it is clarified by CBIC that in some of the case such condition of 30 days may be liberally interpreted. Relevant extract of said Circular is as under:

"Rule 20 of the CGST Rules provides that the taxpayer applying for cancellation of registration shall submit the application in FORM GST REG-16 on the common portal within a period of 30 days of the „occurrence of the event warranting the cancellation“. It might be difficult in some cases to exactly identify or pinpoint the day on which such an event occurs. For instance, a business may be transferred/disposed over a period of time in a piece meal fashion, In such cases, the 30-day deadline may be liberally interpreted and the taxpayers" application for cancellation of registration may not be rejected because of the possible violation of the deadline"

62. In this connection, the tax payer further submitted that in the instant case, industry is pharma sector which requires regulatory and Government approvals for certain practices and work processes hence due to the said reason M/s Saga Laboratories could not applied for cancellation of GST Registration and has discharged liability on the transactions made by it.

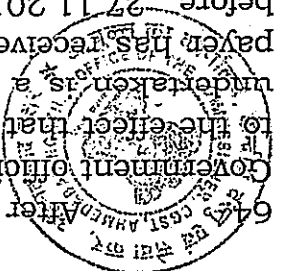


As in the case of Pharma Industry, it has to get regulatory approval from the Government body for starting manufacturing operations and it requires some time for getting approval from the regulatory body where may so happen that such approval process could not be completed within 30 days from the change in constitution of business therefore notice should be given relaxation in complying Section 29 of CGST Act, 2017 read with Rule 20 of the CGST Rules, 2017. They have also submitted that as per Drugs and Cosmetics Act, 1940 a license is required to be obtained before clearance or supply of drugs. As per Section 18(c) of said Act, requires a manufacturer to obtain the license before such supply. Relevant extract of the said provision is as under:

"18. Prohibition of manufacture and sale of certain drugs and cosmetics-
 From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—
 (c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, **except under, and in accordance with the conditions of, a license issued for such purpose under this Chapter"**

63. It is submitted that the tax payer applied for license to manufacture for sale (or for distribution) of drugs under the above Act and the said license was granted by Commissioner, Food & Drugs Control Administration, Gandhinagar on 04.10.2019. Hence, it is established fact that as per the regulatory requirements and restriction, notice was unable to supply drugs before 04.10.2019 in his own name hence such supply was made by Saga laboratory. They have also attached copies of licences for perusal. Further, it has previously been informed that they are primarily engaged in exports pharmaceutical products. To export any pharmaceutical product, regulatory procedures of both exporting and importing countries are required to be followed. The companies manufacturing pharmaceutical products for exports and their products are required to be registered by the regulatory bodies of the importing countries. If any party wants to change the name of manufacturer he has to undergo procedure as prescribed by regulatory bodies of the importing countries. To apply for change in manufacturer name manufacturer has to provide copy of drug manufacturing license issued in the new name by Food and Drug Control Administration and a copy certificate of Good Manufacturing Practices. Also above obtaining license is not a sufficient compliance for supplying the drugs on own name but a further application is required to be made to "Food & Drugs Control Administration" for getting a certificate relating to Site verification.

After filing the said application, site visit is to be done by the Government officials and on the basis of verification, certificate is to be issued to the effect that said site where activities relating to drug manufacturing are undertaken is a complying site with good manufacturing practices. The tax payer has received such certificate on 27.11.2019 hence it can be seen that before 27.11.2019, it was not possible for them to undertake the manufacturing activity on the said site in his own name hence such supply was made by Saga laboratory in their own name. Copy of certificate is also attached by the tax payer. Further, it is to be noted that Pharma industry is an industry which requires more and more regulatory approvals, and it is very sensitive industry where no activity can be undertaken without valid license as

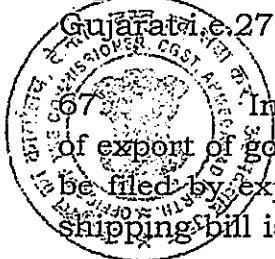


it has higher penal actions hence for complying to the said requirements, hence they started supplying drugs from 01.12.2019 and also all compliance relating to GST are followed with.

65. In this connection, I have gone through the above contention of the assessee and find that the tax payer has registered in the ROC on 10.07.2019 as per certificate of incorporation issued by ROC. It is also a fact that as per Section 85(2) of GST Act, 2017, the assessee is required to discharge the tax from the date on which the registration is obtained. However, in the instant case the registration of the M/s.Saga Laboratories has not been cancelled within 30 days as stipulated due to the reason that industry is pharma which required regulatory and government approvals for certain practices and work processes and therefore they have not applied for cancellation and continued to discharge the liability. They also referred Circular No.69/43/2018 GST dated 26.10.2018 wherein it was clarified that in certain cases the condition of 30 days may be liberally interpreted. It is also a fact that being pharma industry, it has to get licence and approvals from various government agencies before starting any operation. On perusal of the documents submitted by the assessee, I find that without a licence and certificate from the competent authority, no drug manufacturing company can clear any product in the market. It was also noticed that the said tax payer has got the licence to manufacture the products only on 04.10.2019 issued by the Commissioner, Food & Drugs Commissioner, Gandhinagar. It was also seen that they have got certificate for manufacturing only on 27.11.2019 from Commissioner, Food & Drugs Commissioner, Gandhinagar. In the circumstances the tax payer cannot engage in clearance of their products in their name accordingly they have started their clearance from 01.12.2019 immediately on receipt of the certificate dated 27.11.2019. In this connection, I have gone through the contention of the tax payer, the certificate and licence issued by the Commissioner, Food & Drugs Commissioner, Gandhinagar and find that they have started discharging of their liability on receipt of the required certificate and without the certificate they cannot engage in any clearance of goods manufactured. In the circumstances, I find that the allegation that the tax payer has cleared the goods without discharging tax is not sustainable and therefore required to be dropped.

66. On perusal of documents, I also find that the taxpayer is primarily engaged in export of pharmaceuticals products. To export any pharmaceutical product, regular procedures of exporting and importing countries are required to be followed. If any party want to change the name of the manufacturer he has to undergo procedure as prescribed by regulatory bodies of importing countries also. Therefore the licence and certificate has to be obtained from the regulatory authorities. Accordingly, on completion of verification and procedures they have got the certificate only on 27.11.2019 and accordingly they started clearance for export. In the circumstances, the contention of the tax payer that they can not clear the goods before the date of licence and registration certificate issued by Food & & Drugs Control Administration, Gujarat, i.e. 27.11.2019 is acceptable

In this connection, the tax payer further contended that at the time of export of goods, copy of shipping bill is to be filed and such shipping bill can be filed by exporter who is exporting the goods. It is to be noted that copy of shipping bill is the document which justifies the ownership of goods and name



of exporter who is exporting the goods. The person in whose name, copy of shipping bill is filed is called as owner of the goods and hence document of title of such goods lies with exporter. In the instant case, goods are exported outside India and copy of shipping bill is filed in the name of Saga laboratory hence it is proved that ownership of goods lies with Saga laboratories and hence said goods can not be exported by tax payer. Therefore, when ownership of goods does not lie with notice then obviously supply cannot be called as made by notice and therefore no demand can be made from notice. They have also produced sample shipping bill is for reference. On perusal of sample shipping bills, I find that they are filed in the name of M/s.Saga Laboratories and not in the name of M/s.Saga Life science Ltd and therefore I do not accept the allegation that the tax payer did not discharge their tax liability and therefore demanding any GST on M/s.Saga Life science Ltd is not justifiable and legal.

68. They further stated that for levying GST on any transaction, the first and foremost conditions is that such transaction falls under the definitions of "Supply" as per Section 7 of CGST Act, 2017. For understanding the said Section, relevant extract is reproduced as under:

"7. Scope of supply.

(1) For the purposes of this Act, the expression "supply" includes— 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;

the activities specified in Schedule I, made or agreed to be made without a consideration; and

the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1)- activities or transactions specified in Schedule III; or such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as a supply of goods and not as a supply of services; or a supply of services; or a supply of goods

As per the above definition, for levying GST on any transaction, following conditions must be satisfied simultaneously:



1. There must be supply of goods or rendition of services
 2. There must be a consideration in reciprocity of supply of goods or service provisions
 3. Supply of goods or service provision must be in the course or furtherance of business

69. In the instant case, I find that the tax payer has not received any consideration from recipient of goods for supply of goods on which demand is made by department. The said supply is made by Saga laboratories and consideration against the same is also received by Saga laboratories. As consideration for the supply of goods made by Saga laboratories is not received

by the tax payer hence one of the basic conditions of Section 7 is not fulfilled therefore transaction does not fall under Section 7 hence GST is not applicable. I have also gone through the copy of sample FIRC (Foreign Inward Remittance Certificate) and find that the same is issued in the name of M/s. Saga Laboratories only and not in the name of the tax payer. In view of the above, I find that the GST demand is not sustainable as the element of supply is not emerged in the case of M/s. Saga Life science Ltd and therefore I find that the contention of the tax payer is correct and acceptable.

70. The tax payer further submitted that as per Section 2(5) of IGST Act, 2017, export of goods means taking goods out of India to a place outside India. Relevant extract of said Section is as under:

"(5) export of goods with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India"

Further, as per Section 16 of IGST Act, 2017, in case of export of goods, taxpayer has two options either export the goods under cover of with payment of IGST or export it under LUT. Relevant extract of said Section is as under:

"16. Zero rated supply.

*(1) "zero rated supply" means any of the following supplies of goods or services or both, namely-
export of goods or services or both; or supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely-

he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder"

71. As per the above Section, in both of the options refund of GST paid is available to the taxpayer in view of Section 54 of the CGST Act, 2017. Therefore, it can be seen that there is no intention of Government to collect GST from the taxpayers who is generating foreign exchange for India. Further, to give the benefits to taxpayers and to promote them Government is giving refund of GST paid on export transactions. It is also a fact that firstly it is exports made by Saga laboratories and secondly it is no supply for the tax payer. Further, to support the above claim, they have also submitted that no demand can be made on export transactions as exports can be made without payment of IGST. Copy of sample invoices and Copy of ledger of export invoice

is attached by the tax payer also. In this connection, I have gone through the sample invoices and find the contention of the tax payer in this aspect also is acceptable as it is clear that the export is made in the name of M/s.Saga Laboratories and not supplied by the tax payer, hence the demand of GST from the tax payer is also not justifiable and sustainable.

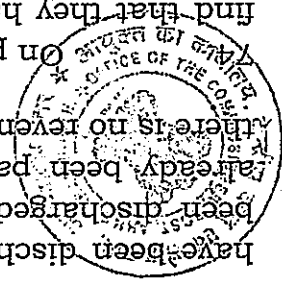
72. In the present case, it was pointed out that event which warrants cancellation of registration, is date of issuance of Certificate of Incorporation by the Ministry of Corporate Affairs however the tax payer submitted that CBIC has given clarification that in some instances, it is not possible to pin point exact date which warrants cancellation of GST Registration as business is transferred in piece meal fashion. Hence, in such situation relaxation should be given to the taxpayer. The relevant extract of Section 85 of CGST Act, 2017 is reproduced as under as under:

“Section 85. Liability in case of transfer of business:

(1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration”

73. It is submitted that by referring Section 85(2) of CGST Act, 2017, department has demanded GST from them however they stated that they have applied for registration and date of liability as per GST registration is 11.10.2019. Hence, before that period transferee has discharged the liability of GST. Further, the said Section only applies when business is transferred, however in the present case after receiving Certificate of Incorporation, business could not be started immediately in the new registered company due to non-availability of regulatory approval. Further, as regulatory approval is not received to the newly incorporated company, all the business obligations have been discharged from the transferor GSTIN and all the tax liability has been discharged by the transferor. Furthermore, I find that as the tax has already been paid to the Government account on the supplies made hence there is no revenue loss situation is arising.



On perusal of the relevant documents submitted by the assessee, I find that they have applied for registration which was granted on 11.10.2019 however they could not start the business immediately due to non availability of regulatory approval i.e. licence and certificate from Food & Drugs Control Administration. They have received the said Certificate dated 27.11.2019 issued by the Commissioner, Food & Drugs Control Administration, Gandhinagar after that they have started to clear the goods on payment of GST. As they have not received the regulatory approval, the obligations have

been discharged from the old GSTIN and all the liability have been discharged by them also. Therefore it is not tenable to demand GST on the goods already cleared on payment of tax.

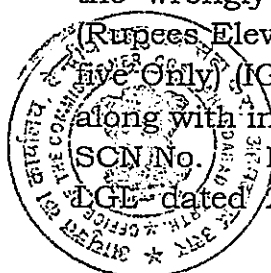
75. By considering all the above facts, I find that the allegation of suppression of facts of non payment of GST is not coming from the Show Cause Notice. The point raised in the audit is that they have discharged the liabilities in the name of M/s.Saga Laboratories instead of in the name of the tax payer. On perusal of the facts, I find that the tax payer has changed their status from partnership firm to Ltd Co and they have also explained in details the circumstances under which they have to discharge the GST in the name of M/s.Saga Laboratories instead of M/s. Saga Lifescience Ltd. As the tax liability has already discharged by M/s.Saga Laboratories, demand on the same consignment again will be double taxation in the hands of the tax payer. It is also a fact that , the SCN has not made allegation that the goods have cleared without tax but tax has been paid by the M/s.Saga Laboratories. Hence the question of non payment of tax does not arise. In the circumstances, I find that as the demand of GST amounting to Rs.2,52,32,953/- is not sustainable and therefore required to be dropped.

76. In view of the above facts and findings, I find that the Show Cause Notice dated 21.10.2022 issued to the tax payer i.e. M/s. Saga Life sciences Limited for demand and recovery of wrongly availed ITC of Rs.3,45,126/-, wrongly availed blocked ITC of Rs.11,74,875/- and unpaid GST amounting to Rs.2,52,32,953/- is not sustainable and accordingly liable to be set aside. As the demand itself is not sustainable, the tax payer is also not liable to pay any interest u/s.50(3) of CGST Act, 2017/Gujarat GST, 2017 read with Section 20 of IGST 2017 or penalty under section 74(1) or 125 of the CGST, Act, 2017/Gujarat GST Act, 2017 read with section 20 of IGST Act, 2017 as proposed in the SCN.

77. In view of the above facts, I pass the following order.

O R D E R

- (i) I hereby order to drop proceedings initiated for demand and recovery of wrongly availed ITC of Rs.3,45,126/- (Rupees Three Lakh Forty five Thousand One Hundred Twenty six only) (CGST Rs.1,72,563/-+ SGST Rs.1,72,563/-) along with interest against M/s. Saga Life sciences Limited, vide SCN No. No.GADT/TECH/SCN/GST/114/2022-2022-TECH&LGL- dated 21.10.2022.
- (ii) I hereby order to drop proceedings initiated for demand and recovery of the wrongly availed blocked ITC totally amounting to Rs.11,74,875/- (Rupees Eleven Lakh Seventy four Thousand Eight Hundred and Seventy five Only) (IGST Rs.45,583/- + CGSTRs.5,64,646/-+ SGSTRs.5,64,646/-) along with interest against M/s. Saga Life sciences Limited, vide SCN No. No.GADT/TECH/SCN/GST/114/2022-2022-TECH&LGL- dated 21.10.2022.



(iii) I hereby order to drop proceedings initiated for demand and recovery of the GST amounting to Rs.2,52,32,953/- (Rupees Two Crore Fifty two Lakh Thirty two Thousand Nine Hundred and Fifty three Only) (IGST Rs.2,51,33,607/- + CGSTRs.49,673/- + SGSTRs.49,673/-) along with interest against M/s. Saga Life sciences Limited, vide SCN No. No.GADT/TECH/SCN/GST/114/2022-2022-TECH&LGL- dated 21.10.2022.

78. Accordingly the Show Cause Notice No. SCN No. No.GADT/TECH/SCN/GST/114/2022-2022-TECH&LGL- dated 21.10.2022 is disposed off.



(Lokesh Damor)
Joint Commissioner
Central GST & CE,
Ahmedabad North

F.NO.GST/15-37/OA/2022

DT.

By speed post/hand delivery

To,
M/s. Saga Life sciences Limited,
198/2 and 198/3, Charcharwadi, Vasna,
Samand, Ahmedabad-Gujarat-382210

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- IV Ahmedabad North.
3. The Superintendent, Range-II, Division-IV, Central GST & Central Excise, Ahmedabad North with a request to upload the OIO electronically in terms of DSR advisory No.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
4. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
5. Guard File.