


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p><b>GST</b> ONE NATION. ONE TAX. ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>

निबन्धित पावती डाक द्वारा/By R.P.A.D  
फ़ा.सं./F.No. GST/15-55/OA/2022

DIN-20231164WT000000E20B  
आदेश की तारीख/Date of Order: - 10.11.2023  
जारी करने की तारीख/Date of Issue :- 10.11.2023

द्वारा पारित/Passed by:- लोकेश डामोर /Lokesh Damor  
सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 43/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।  
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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, अंबावाड़ी, 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। उस 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।

(9) उक्त अपील की प्रति।

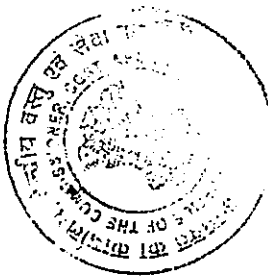
(10) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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:

(1) Copy of accompanied Appeal.

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

विषय:- कारण वताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GADT/TECH/SCN/GST/174/2022 dated 30.12.2022 issued to M/s Cooper Standard India Private Ltd.(Presently known as M/s. SFC Solution India (Sealing) Private Limited), having GSTIN 24AAACW0019N1ZG, AV3, BOL, Industrial Estate, Sanand-2, Sanand, Distt. Ahmedabad, Gujarat-380058.



**Brief Fact of the Case:-**

**M/s Cooper Standard India Private Ltd.**, Goods and Service Tax Identification No:- **24AAACW0019N1ZG** (Presently known as M/s SFC Solutions India (Sealing) Private Limited) having their principal place of business located at AV 3, BOL Industrial Estate, Sanand -2, Sanand, Distt. Ahmedabad Gujarat -380 058 (herein after referred as 'the said taxpayer' for the sake of brevity) is engaged in the outward supply of Body Mounted Door Seals, Door Mounted Door Seals, Hood to Cowl Seals, Hood to Radiator seals, Margin Seals, Sun-roof Seals, Trunk Seals, etc. falling under HSN 8708; 8480350691.

**INTRODUCTION OF THE CASE:-**

2. GST Audit of the said unit for the period July,2017 to March,2020 was conducted during August,2022 & September, 2022 and pursuant to completion of Audit, Final Audit Report No:- GST 788 dated 18.11.2022 was issued to the said taxpayer. In the said Audit Report, the following GST Revenue Paras remained unsettled which are discussed in detail in subsequent paras. 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 discussed in subsequent paras.

2.1. Pursuant to completion of Audit, total 15 number of GST revenue paras were raised. The said Tax Payer have got para No. 01, para No. 02 settled on payment of interest under provisions of Section 74(5) of CGST Act,2017. GST Revenue Para No. 3 to 15 remained unsettled which are discussed in detail in subsequent paras.

**Revenue Para 03:-Wrong availment and utilization of ITC on Food and Beverage Services received which is blocked under Section 17(5) of the CGST Act,2017:-**

3. Whereas, during the course of audit, on verification of purchase Register, it was noticed that M/s Jay Shree Krishna have supplied Breakfast/Snacks, Lunch, Dinner, Tea and Milk to the taxpayer. The taxpayer have availed ITC of GST paid on these food and beverages services provided by M/s Jay Shree Krishna to the tune of **Rs.2,11,788/-** (CGST+SGST) during period July,17 to March,20, as under. Further, the said taxpayer have also failed to produce any evidence to prove that the number of employees on the pay roll of the said taxpayer (for said GSTIN No.) is more than 250:-

3.1. Similarly, they have also availed and utilized ITC of Rs. 22,858/- towards purchase of sweets.

3.2. In view of the above, ITC amounting to **Rs. 2,34,646/-** (CGST+SGST) wrongly availed and utilized by Tax Payer during the period July,17 to March,20 appeared recoverable from the said taxpayer as per provisions of Section 74(1) of CGST Act,2017/Gujarat GST Act, 2017 along with interest at applicable rate and penalty in terms of CGST Act, 2017/Gujarat GST Act, 2017.

3.3. For ease of reference, provisions of Section 17 (5) of the CGST Act, 2017 are reproduced as under:-

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

(5) Notwithstanding anything contained in sub-section (1) of section 17 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-



(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-  
(A) further supply of such motor vehicles; or  
(B) transportation of passengers; or  
(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used-  
(i) for making the following taxable supplies, namely:-  
(A) further supply of such vessels or aircraft; or  
(B) transportation of passengers; or  
(C) imparting training on navigating such vessels; or  
(D) imparting training on flying such aircraft;  
(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

**Provided** that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;  
(ii) where received by a taxable person engaged-  
(I) in the manufacture of such motor vehicles, vessels or aircraft; or  
(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both-

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

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

(ii) membership of a club, health and fitness center; and  
(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

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

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

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

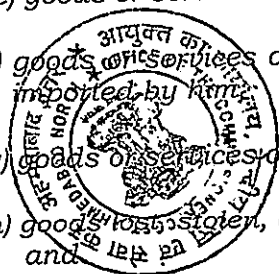
**Explanation.**-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

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

(h) goods or services or both, destroyed, written off or disposed of by way of gift or free samples; and



(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(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, it appears that as per the provisions of Section 17 (5) (b) (i) of the CGST Act, 2017, the ITC of GST paid on food and beverages is blocked.

3.4. On being pointed out the said taxpayer have partly accepted their tax liability with respect to M/s Ambica and M/s Aazad Mithai but have not replied with respect to services provided by M/s Jay Shree Krishna and have agreed to pay the same at the earliest. However, they have not paid the same till date.

**Revenue Para 4:- Transfer of Excess Credit under Tran-1:-**

4. Whereas, on perusal of the ITC Credit Ledger, it is seen that taxpayer have declared availment of transitional Credit of CGST Rs.44,08,211/- and SGST Rs.38,269/-. Out of the said credit, an amount of CGST Rs.7,94,134/- + SGST Rs.38,269/- was auto populated in their electronic credit ledger on 28.08.2017 and the remaining amount of CGST Rs.36,14,077/- was auto populated in their electronic credit ledger on 12.10.2018. The breakup of the above figure is as under:-

**TABLE - 1**

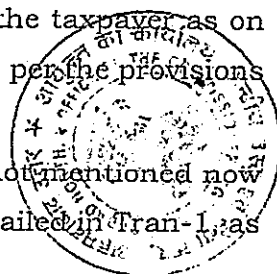
(Amount in Rupees)

	Description	CGST	SGST
A	Balance of Cenvat as per ER-1 of June,17	17,68,934	0
B	Balance of Cash Balance as per ER-1 of June,17	62,835	
C	Balance of any other credit taken,( wrongly credit not mentioned now amended) as per ST-3 return for the period April,17 to June,17	12,14,578	0
D	Table 6 (a), Details of capital goods for which un-availed credit has not been carried forward	5,67,730	0
E	Table 7b- Eligible taxes/VAT/(ET)	7,94,134.	38,269
	<b>TOTAL</b>	<b>44,08,211</b>	<b>38,269</b>

4.1. As regards balance of Cenvat and Service Tax availed in Tran-1 as per ER-1 of June,17, the said amount of Rs.17,68,934/- pertains to balance of CENVAT available with the taxpayer as on 30.06.2017 and the same is eligible to be transferred in Tran-1 as per the provisions of Section 140 of CGST Act, 2017.

4.2. As regards balance of cash Rs.62,835/- as availed in Tran-1 as per ER-1 of June,17, as Rs.62,835/- pertains to cash balance available with the taxpayer as on 30.06.2017 and the same is not eligible to be transferred in Tran-1 as per the provisions of Section 140 of CGST Act, 2017.

4.3. As regards balance of any other credit taken (wrongly credit not mentioned now amended) as per ST-3 return for the period April,17 to June,17 as availed in Tran-1, as



Rs.12,14,578/- pertains to cash balance available with the Tax Payer as on 30.06.2017 out of the payments of Rs.7,12,548/- deposited by them vide Challan CIN No. 02926680507201725647 dated 05.07.2017 and Rs. 5,08,013 deposited by them vide Challan CIN No. 0292668308201720333 dated 03.08.2017. Cash Balance/ excess tax paid in cash in ST3 Return is not eligible to be transferred in Tran-1 as per the provisions of Section 140 of CGST Act,2017.

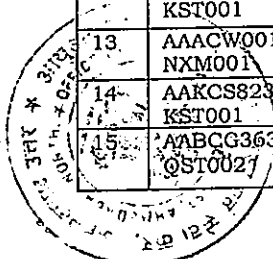
4.4. On examination of the above invoices/BEs, certain discrepancies were found in invoice No. BE/9963398 dated 06.05.2017. On perusal of said BE, amount of Cenvat Credit available under cover of the said BE is Rs.1,47,457/- (CVD Rs.1,08,275/- + SAD Rs.39,182/-). As the said goods have been considered as Capital Goods by the taxpayer, as per then existing Cenvat Credit Rules, 2004, they were supposed to avail Cenvat Credit of Rs. 73,728.50/- during 2017-18 ( which they may have availed) and the remaining amount of credit viz. Rs.73,728.50 in subsequent year ( which includes SAD also). Since GST Regime was introduced w.e.f. 01.07.2017, Cenvat Credit unavailed during existing law would be Rs.73,728.50 only, which they were eligible to avail under Tran-1. But instead, the said taxpayer have claimed Cenvat Credit of Rs.1,47,457/- in Tran-1. Thus, it appears that they have claimed **excess Cenvat Credit of Rs. 73,729/-** in Tran-1

4.5. The details of the inputs held in stock- summary processed invoices Table 7b of the said taxpayer is as under:-

TABLE - 2

(Amount in Rupees)

7b Details of the inputs held in stock- summary processed invoices										
Sr. No.	Registration No. of supplier/ Input Service Distributor	Invoice number	Invoice date	Description	UQC	Quantity	Value	Eligible duties and taxes (Central Tax)	VAT/[ET]	Date on which entered in receipts books of account
1	AAACW0019 NXM001	17015399	30/06/2017	INPUTS	M	9395	377,972	47,246	-	7/8/2017
2	BFMPS5543 ESD001	145	20/06/2017	SERVICE	U	1	13,000	1,820	-	7/25/2017
3	393	393	27/05/2017	SERVICE	U	1	10,300	1,442	-	7/27/2017
4	AAFCB4421 NEM003	4165	29/06/2017	INPUTS	PCS	960	56,770	7,096	9,580	7/8/2017
5	AAECC9737 FSD001	2067	27/02/2017	SERVICE	U	1	4,434	621	-	7/25/2017
6	AAFCR4569 RSD001	146	30/06/2017	SERVICE	U	1	30,030	4,204	-	7/22/2017
7	AAECC9737 FSD001	729	19/04/2017	SERVICE	U	1	1,427	200	-	7/25/2017
8	AAVFM7675 CSD001	12	26/04/2017	SERVICE	U	1	30,000	4,200	-	7/23/2017
9	AABCS1353 CSD002	461	21/04/2017	SERVICE	U	1	9,728	1,362	-	7/27/2017
10	AAFCR4569 RSD001	144	30/06/2017	SERVICE	U	1	50,400	7,056	-	7/27/2017
11	AAFCB4421 NEM003	4207	29/06/2017	INPUTS	PCS	630	31,406	3,926	5,300	7/27/2017
12	AAKCS8236 KST001	2212	22/02/2017	SERVICE	U	1	1,600	224	-	7/27/2017
13	AAACW0019 NXM001	17015457	30/06/2017	INPUTS	M	15305	507,941	63,493	-	7/8/2017
14	AAKCS8236 KST001	102	25/04/2017	SERVICE	U	1	3,550	497	-	7/27/2017
15	AABCG3636 QST002	4980	29/05/2017	SERVICE	U	1	143,935	20,151	-	7/27/2017



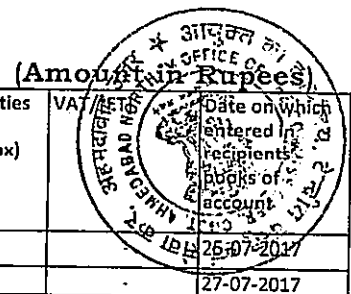
16	AAACI4550Q XM010	5038465	25/03/ 2017	INPUTS	PC	7000 0	46,500	5,816	-	7/27/2017	
17	AABCG3636 QST002	1467	31/03/ 2017	SERVICE	U	1	22,000	3,080	-	7/27/2017	
18	AACCR9089 DST001	219	28/06/ 2017	2707201 7	U	1	821,70 1	115,038	-	7/27/2017	
19	AAKCS8236 KST001	148	29/04/ 2017	SERVICE	U	1	10,300	1,442	-	7/27/2017	
20	AATCS1353 CSD002	380	18/05/ 2017	SERVICE	U	1	12,595	1,763	-	7/25/2017	
21	AAACI4550Q XM010	5034230	27/02/ 2017	INPUTS	PCS	7000 0	46,500	5,816	-	7/27/2017	
22	AAFCE4421 NEM003	4166	29/06/ 2017	inputs	PCS	1080	53,838	6,730	9,08 5	7/27/2017	
23	AABCG3636 QST002	9744	30/06/ 2017	SERVICE	U	1	101,39 0	14,195	-	7/27/2017	
24	AAFCE4421 NEM003	4206	29/06/ 2017	INPUTS	PCS	560	34,130	4,266	5,75 9	7/27/2017	
25	AAACT2438A ST007	8661	15/06/ 2017	SERVICE	U	1	15,000	2,100	-	7/15/2017	
26	AAFCE4569 RSD001	145	30/06/ 2017	SERVICE	U	1	279,00 0	39,060	-	7/27/2017	
27	AABCE3790 LST002	16031	18/04/ 2017	SERVICE	U	1	63,054	8,828	-	7/27/2017	
28	AAACI4550Q XM010	6010827	30/06/ 2017	INPUTS	PCS	1000 0	6,500	813	-	7/27/2017	
29	AACCR9089 DST001	98	30/05/ 2017	SERVICE	U	1	766,33 7	107,287	-	7/26/2017	
30	AAVFM7675 CSD001	13	26/04/ 2017	SERVICE	U	1	30,000	4,200	-	7/23/2017	
31	AATCS1353 CSD002	509	24/05/ 2017	SERVICE	U	1	3,840	538	-	7/27/2017	
32	AAECC9737 FSD001	511	14/02/ 2017	SERVICE	U	1	2,217	310	-	7/25/2017	
33	AAACG1625 QST002	532	25/06/ 2017	SERVICE	U	1	197,76 6	27,687	-	7/25/2017	
34	AAFCS4166 HST001	313	26/06/ 2017	SERVICE	U	1	227,34 4	31,828	-	7/27/2017	
35	AAACI4550Q XM010	6006620	18/05/ 2017	INPUTS	PC	1400 00	93,000	11,625	-	7/27/2017	
36	AAACZ7560P SD002	351398/B	17/04/ 2017	SERVICE	U	1	46,710	4,921	-	7/25/2017	
37	CCEPK8496 FSD001	153	26/06/ 2017	SERVICE	U	1	24,550	3,437	-	7/25/2017	
38	AAFCE4421 NEM003	4275	30/06/ 2017	INPUTS	PCS	810	40,379	5,047	6,81 4	7/27/2017	
39	AAKCS8236 KST001	2307	06/03/ 2017	service	u	1	2,216	310	-	7/22/2017	
40	AABCG3636 QST002	9743	30/06/ 2017	SERVICE	U	1	150,79 1	21,111	-	7/27/2017	
41	AAFCE4421 NEM003	4276	30/06/ 2017	INPUTS	PCS	160	10,258	1,282	1,73 1	7/8/2017	
42	AABCG3636 QST002	4981	29/05/ 2017	SERVICE	U	1	128,67 7	18,015	-	7/27/2017	
43	AAACI4550Q XM010	6009078	09/06/ 2017	INPUTS	PCS	3000 0	19,500	2,438	-	7/27/2017	
44	IMPORTED	BE/2107 012	15/06/ 2017	INPUTS	KG	690	959,71 4	181,613	-	7/15/2017	
							5,488, 300	794,134	38, 269		

832,403

Out of the above table, list of invoices which pertains to services.

TABLE - 3

Sr. No.	Registration No. of supplier/Input Service Distributor	Invoice number	Invoice date	Description	UQC	Quantity	Value	Eligible duties and taxes (Central Tax)	VAT	Date on which entered in Recipient's books of account
2	BFMP5543ESD001	145	20-06-2017	SERVICE	U	1	13,000	1,820		25-07-2017
3	393	393	27-05-2017	SERVICE	U	1	10,300	1,442		27-07-2017



5	AAECC9737FSD001	2067	27-02-2017	SERVICE	U	1	4,434	621	-	25-07-2017
6	AAFCR4569RSD001	146	30-06-2017	SERVICE	U	1	30,030	4,204	-	22-07-2017
7	AAECC9737FSD001	729	19-04-2017	SERVICE	U	1	1,427	200	-	25-07-2017
8	AAVFM7675CSD001	12	26-04-2017	SERVICE	U	1	30,000	4,200	-	23-07-2017
9	AABCS1353CSD002	461	21-04-2017	SERVICE	U	1	9,728	1,362	-	27-07-2017
10	AAFCR4569RSD001	144	30-06-2017	SERVICE	U	1	50,400	7,056	-	27-07-2017
12	AAKCS8236KST001	2212	22-02-2017	SERVICE	U	1	1,600	224	-	27-07-2017
14	AAKCS8236KST001	102	25-04-2017	SERVICE	U	1	3,550	497	-	27-07-2017
15	AABCG3636QST002	4980	29-05-2017	SERVICE	U	1	1,43,935	20,151	-	27-07-2017
17	AABCG3636QST002	1467	31-03-2017	SERVICE	U	1	22,000	3,080	-	27-07-2017
18	AACCR9089DST001	219	28-06-2017	SERVICE	U	1	8,21,701	1,15,038	-	27-07-2017
19	AAKCS8236KST001	148	29-04-2017	SERVICE	U	1	10,300	1,442	-	27-07-2017
20	AATCS1353CSD002	380	18-05-2017	SERVICE	U	1	12,595	1,763	-	25-07-2017
23	AABCG3636QST002	9744	30-06-2017	SERVICE	U	1	1,01,390	14,195	-	27-07-2017
25	AAACT2438AST007	8651	15-06-2017	SERVICE	U	1	15,000	2,100	-	15-07-2017
26	AAFCR4569RSD001	145	30-06-2017	SERVICE	U	1	2,79,000	39,060	-	27-07-2017
27	AABCB3790LST002	16031	18-04-2017	SERVICE	U	1	63,054	8,828	-	27-07-2017
29	AACCR9089DST001	98	30-05-2017	SERVICE	U	1	7,66,337	1,07,287	-	26-07-2017
30	AAVFM7675CSD001	13	26-04-2017	SERVICE	U	1	30,000	4,200	-	23-07-2017
31	AATCS1353CSD002	509	24-05-2017	SERVICE	U	1	3,840	538	-	27-07-2017
32	AAECC9737FSD001	511	14-02-2017	SERVICE	U	1	2,217	310	-	25-07-2017
33	AAACG1625QST002	532	25-06-2017	SERVICE	U	1	1,97,766	27,687	-	25-07-2017
34	AAFC4166HST001	313	26-06-2017	SERVICE	U	1	2,27,344	31,828	-	27-07-2017
36	AAAC27560PSD002	351398/B	17-04-2017	SERVICE	U	1	46,710	4,921	-	25-07-2017
37	CCEPK8496FSD001	153	26-06-2017	SERVICE	U	1	24,550	3,437	-	25-07-2017
39	AAKCS8236KST001	2307	06-03-2017	service	u	1	2,216	310	-	22-07-2017
40	AABCG3636QST002	9743	30-06-2017	SERVICE	U	1	1,50,791	21,111	-	27-07-2017
42	AABCG3636QST002	4981	29-05-2017	SERVICE	U	1	1,28,677	18,015	-	27-07-2017
							32,03,892	4,46,927	-	

4.6. In this regard, para 2.1, 2.2 and 2.3 of Circular No. 207/5/2017- Service Tax dated 28<sup>th</sup> Sept,2017 of CBIC is reproduced as under:-

*2.0 Reflection of transitional credit arising out of payment of service tax on reverse charge basis after 30<sup>th</sup> June 2017 and by 5<sup>th</sup>/6<sup>th</sup> July 2017.*

*2.1 I am directed to refer to certain instances of assessee, who had chosen to wait till 5<sup>th</sup>/6<sup>th</sup> July 2017 to make payment of service tax on reverse charge basis, instead of paying the same by 30.06.2017. These cases would be ones where the service was received before 01.07.2017 and payment for the value of the service was also made before 01.07.2017. Since the input tax credit in cases of payment under reverse charge would be available only after payment of service tax, these assessee had doubts as to whether the details of credit should be included in the return in Form GST TRAN-1.*

*2.2 The matter has been examined in such cases, details of credit arising as a consequence of payment of service tax on reverse charge basis after 30<sup>th</sup> June 2017 by 5<sup>th</sup>/6<sup>th</sup> July 2017, the details should be indicated in Part I of Form ST-3 in entries, I3.1.2.6, I3 2.2.6, I3 3.2.6 Linked entries should be made part H of Form ST-3. In case the return has already been filed by or after the due date, these details should be indicated in the revised return, the timing for filing of which is 45 days from the date of filing of return.*

4.7. Thus, from the clarifications issued by CBIC in above circular, it appeared that the taxpayer would be entitled for Transitional Credit of Service Tax paid under RCM only if its details are reflected in the ST-3 Returns filed by them. It was brought to taxpayer's notice that the assessee should have correctly availed it under ST-3 Return for the period of April, 2017 to June, 2017. Further, it appears that the services were received during the period Feb,17, March,17, April,17, May,17 and June,17 and hence the conditions laid down under provisions of Sub Section (5) of Section 140 of CGST Act, 2017, viz. *inputs or input services received on or after the appointed day but the duty of tax in respect of which has been paid by the supplier under the*



*existing law* were not fulfilled. Hence, it appears that the Tax Payer was required to correctly claim credit of Tax paid under the said invoices in its ST-3 Returns instead of claiming the credit under Tran-1, as per provisions of Sub Section (1) of Section 140 of CGST Act, 2017 read with provisions of Sub Section (5) of Section 140 of CGST Act, 2017. As per the provisions of Section 140 of the CGST Act, 2017, the credit claimed in Tran-1 without showing in ST-3 returns is inadmissible. Therefore, Cenvat of Rs. 4,46,927/- claimed by them in Tran-1 on the basis of the said invoices is required to be denied and recovered from them along with interest and penalty under Section 74(5) of the CGST/SGST Act, 2017.

Section 140 of the CGST Act, 2017 read with Rule 117 of CGST Rules, 2017 provides for transfer of transitional credit through Tran-1.

Explanation 1 to the provision of CGST Act, 2017 provides for the eligible credit which can be transferred thro' Tran-1 from legacy era to GST era, which reads as under:-

*Explanation 1.—For the purposes of sub-sections (3), (4) and (6), the expression —eligible duties means—*

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- (iv) [\*\*\*\*]115; (omitted w.e.f. 01.07.2017)
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

From the above provisions, it appeared that cash balance available with the tax payer in his Personal Ledger Account/ ER-1 Return /ST-3 Return as on 30.06.2017 is not eligible duties for the purpose of its transfer thro Trans-1.

4.8. In view of the above, it appeared that the said taxpayer is not entitled for the Transitional Credit of Rs.17,98,069/- of CGST (Rs.62,835/- + Rs.12,14,578/- + Rs.73,729/- + Rs. 4,46,927/-) availed by taxpayer through TRAN-1 which is required to be reversed/ paid as per provisions of Section 140 of CGST Act, 2017 read with Section 74 of the CGST Act, 2017 along with interest at appropriate rate and Penalty under Section 74(5) of CGST Act, 2017.

**Revenue Para 5:- Wrong availment and utilization of ITC of CGST/ SGST Under IGST HEAD and ITC of IGST Under CGST/ SGST Head AND also availment of excess ITC of IGST:**

5. Provisions regarding levy and collection and eligibility and conditions for taking input tax credit, under CGST Act, 2017 are reproduced hereunder for ease of reference.

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

**Section 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.

5.1. From the combined reading of both the provisions, it transpires that under CGST Act,2017, a registered person is entitled to take credit of input tax charged under this act and input tax charged under the Act is central goods and services tax. Thus a registered person can avail credit of central goods and services tax charged as input tax in CGST head only. Identical provisions are also legislated under Gujarat GST Act of the state.

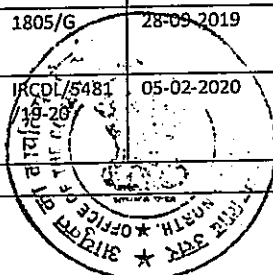
5.2. As regards IGST, the levy and collection of IGST under IGST Act,2017 is as per Section 5 of the IGST Act,2017. Eligibility and conditions for taking input tax credit under CGST Act,2017 has been made applicable for IGST matters as per Section 20 of IGST Act,2017. Thus, a registered person can avail credit of integrated goods and services tax charged as input tax in IGST head only.

5.3. I find that during the course of audit, on verification of Purchase Register, it was noticed that the Tax Payer have availed credit of ITC of CGST+ SGST for ITC pertaining to IGST as per following details :-

**TABLE - 4**

**(Amount in Rupees)**

Invoice No	Invoice Date	Supplier Name	GST No.	IGST	CGST	SGST	GST Return Month
152-157	31-10-2017	BABA GOODS CARRIERS	06AVMPP0225B1Z0	-	10,200	10,200	Dec'17
CSIL/12B/17	25-12-2017	RAO TOURIST SERVICES PVT LTD	06AACCR7261H1ZC	-	2,110	2,110	Jan'18
12A	25-12-2017	RAO TOURIST SERVICES PVT LTD	06AACCR7261H1ZC	-	25,550	25,550	Jan'18
59	02-02-2018	ALWAYS EXPRESS LOGISTICS SER	27ABBFA2072Q1Z8	-	1,350	1,350	Mar'18
2665/G	20-02-2018	SOUTHOCEAN TRANSPORT PVT LTD	27AAKCS8236K1ZR		235	235	Mar'18
2775	07-03-2018	SOUTHOCEAN TRANSPORT PVT LTD	27AAKCS8236K1ZR		1,896	1,896	Mar'18
74	05.03.2018	ALWAYS EXPRESS LOGISTICS SER	27ABBFA2072Q1Z8		1,350	1,350	Apr'18
40/G	06-04-2018	SOUTHOCEAN TRANSPORT PVT LTD	27AAKCS8236K1ZR	11641	517	517	Apr'18
236/G	30-04-2018	SOUTHOCEAN TRANSPORT PVT LTD	27AAKCS8236K1ZR		136	136	May'18
294/G	07-05-2018	SOUTHOCEAN TRANSPORT PVT LTD	27AAKCS8236K1ZR	16355	517	517	May'18
8840	24-05-2018	SOUTHOCEAN TRANSPORT PVT LTD	27AAKCS8236K1ZR		1,177	1,177	Jun'18
900/G	29-06-2019	SOUTHOCEAN TRANSPORT PVT LTD	27AAKCS8236K1ZR		4,498	4498	Jul'19
1805/G	28-09-2019	SOUTHOCEAN TRANSPORT PVT LTD	27AAKCS8236K1ZR	2431	2,408	2408	Oct'19
IRCGL/5481	05-02-2020	IRC SUPPLY CHAIN SOLUTIONS	07AACCI8224R1Z1	-	679	679	Feb'20
TOTAL				30,427	24,963	24,963	



(NB:- 2 Invoices of M/s Rao Tourist Services Pvt. Ltd. are also covered in para 8 below and hence ITC involved therein is not taken into consideration in Total to avoid duplication in denial of ITC on the same invoices two times)

5.4. From the above table, from GSTIN Nos. of suppliers, it appeared that these suppliers were situated outside state of Gujarat. Hence the supplies made by the said vendors to the Tax Payer situated in Gujarat was inter state supply and hence they should have charged & paid IGST in their invoices. On being asked the copied ff aforesaid invoices, the said taxpayer failed to submit the said copies except copy of invoice No. 152-157 of Baba Goods Carriers and invoice No. 8840 of SOUTHOCEAN TRANSPORT PVT LTD.

5.5. From the above table, it also appeared that the said Tax Payer have availed excess ITC of IGST Rs.30,427/- when it is compared to the IGST paid in the respective invoices.

5.6. In view of the above, it transpires that the said taxpayer is required to reverse ITC of IGST of Rs.30,427/- , which was availed in Rs.24,963/- and ITC of SGST of Rs.24,963/-, as calculated above, under Section 74(1) of CGST Act,2017/ Gujarat State GST Act,2017 read with provisions of Section 09 and Section 16 of CGST Act,2017/ Gujarat State GST Act,2017 along with interest at appropriate rate under Section 50 of CGST Act,2017/Gujarat State GST Act, 2017 and penalty under Section 74 of CGST Act,2017/Gujarat State GST Act, 2017.

5.7. Similarly, the said taxpayer had availed credit of ITC amounting to Rs.81,720/- (IGST) for ITC pertaining actually to CGST and SGST as per following details.

TABLE - 5

Invoice No.	Invoice Date	Supplier Name	GST No.	(Amount in Rupees)	
				IGST	GST Return Month
3830497345	18-09-2017	Tata Teleservices Ltd	24AAACT2438A1ZZ	2,700	Sept'17
3T/G/18-19/0008	01-05-2018	3T INDUSTRIAL SOLUTIONS PVT LTD	24AAACZ9306M1ZZ	3,546	May'18
3T/G/18-19/0009	01-05-2018	3T INDUSTRIAL SOLUTIONS PVT LTD	24AAACZ9306M1ZZ	3,546	May'18
SG-223/18-19	19-11-2018	SUPREME PLASTOSTEEL	24ACXFS1725P1ZC	9,720	Nov'18
SG-224/18-19	19-11-2018	SUPREME PLASTOSTEEL	24ACXFS1725P1ZC	9,720	Nov'18
SG-358/18-19	18-02-2019	SUPREME PLASTOSTEEL	24ACXFS1725P1ZC	52,488	Feb'19
TOTAL				81,720	

5.8. From the above table, from GSTIN No. of the suppliers, it appeared that the aforesaid supplier is situated within state of Gujarat. Hence the supplies made by the said vendors to the taxpayer situated in Gujarat was intrastate supply and hence they should have charged & paid CGST + SGST in their invoices, instead of which IGST is shown to have been paid by supplier and availed by the Tax Payer. On being asked the copied ff aforesaid invoices, the said taxpayer failed to submit the said copies.

5.9. In view of the above, it also appears that the said Tax payer is required to reverse ITC of IGST Rs.81,720/-, as calculated above, under Section 74(1) of CGST Act,2017 read with provisions of Section 05 of IGST Act,2017 along with interest under Section

50 of CGST Act,2017 and penalty under Section 74(1) of CGST Act,2017 and all these provisions read with Section 20 of the IGST Act,2017.

**Revenue Para 6- Wrong availment and utilization of ITC on the strength of invoices of suppliers who haven't filed their GST Returns:-**

6. Whereas, during the course of audit, on perusal of purchase register, it appears that said Tax Payer have availed ITC of the GST shown by following suppliers, in their supply invoices, as per the following details.

**TABLE - 6**

**(Amount in Rupees)**

Details of suppliers who have not filed their GSTR3B Returns as per GSTR2A of Tax payer								
Supplier Name	GSTIN No. of Supplier	Invoice No.	Invoice Date	CGST	SGST	IGST (	GST Return Month	Name of supplier appearing in GSTR2A of Tax Payer
AAR PACK INDUSTRIES	24ASEPS6031R2Z7	G/0057	23-05-2018	918	918	-	Jun'18	Ashok Kumar Ramjibhai Samariya
AAR PACK INDUSTRIES	24ASEPS6031R2Z7	G/0058	25-05-2018	1,310	1,310	-	Jun'18	Ashok Kumar Ramjibhai Samariya
MAGIC INDUSTRIES	09AEXPR5922H2ZP	245	24-07-2018	-	-	9,360	Aug'18	Suncel Kumar Razdan
LOCUS CORPORATION	24ADGPP9430L1Z7	34	04-04-2019	1,350	1,350	-	Apr'19	Divayang Patel
LOCUS CORPORATION	24ADGPP9430L1Z7	39	13-05-2019	1,350	1,350	-	Jun'19	Divayang Patel
LOCUS CORPORATION	24ADGPP9430L1Z7	41	13-06-2019	1,350	1,350	-	Jun'19	Divayang Patel
KANDARP MARKETING	09INAPS1944A1Z1	10	14-01-2020	-	-	1,908	Jan, 20	Kandarp Sharma
<b>TOTAL</b>				<b>6,278</b>	<b>6,278</b>	<b>11,268</b>		

6.1. However, on verification of the status of the aforesaid Tax payers from the GSTR 2A of the tax payer viz. M/s Cooper Standard India Pvt. Ltd., it appeared that aforesaid suppliers of goods/providers of service have not filed their GSTR3B Returns for the period shown against their names. Thus, it appears that the said suppliers have not deposited GST into the Govt. account.

6.2. Further, it appeared that Section 16 of the CGST Act,2017 provides for the 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 utilization of input tax credit admissible in respect of the said supply'. Thus, as per the said provision, it appears 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 by non filing of GSTR3B Return for said period, the said condition laid down under the CGST Act,2017 for taking Input Tax Credit is violated and hence it appears 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 the aforesaid provisions of CGST Act,2017.

6.3. It appeared on verification of the status of the aforesaid Tax payers from the GST Portal, that the said Tax Payers have not filed their GSTR3B Returns for the said corresponding periods. Thus, it appears that aforesaid Tax Payers have not deposited GST into the Govt. 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 ITC of IGST Rs.11,268/- CGST of Rs.6,278/- and ITC of SGST of Rs.6,278/-, during the said period as shown in above table.

6.4. In view of the above, it appeared that the said Tax payer is required to reverse ITC of IGST Rs.11,268/- CGST of Rs.6,278/- and ITC of SGST of Rs.6,278/-, as calculated above, under Section 74(1) of CGST Act,2017/ Gujarat State GST Act,2017 read with provisions of Section 16 of CGST Act,2017/ Gujarat State GST Act,2017 along with interest under Section 50 of CGST Act,2017/Gujarat State GST Act, 2017/ and penalty under Section 74 of CGST Act,2017/Gujarat State GST Act, 2017 read with Section 122(2)(b) of CGST Act,2017/Gujarat State GST Act, 2017.

**Revenue Para 7:- Wrong availment and utilization of ITC of blocked credit as per Section 17 (5) of CGST Act,2017.**

7. Whereas, during the course of audit, on perusal of purchase register/invoices, it appears that the said Tax payer have availed works contract services for installation of CC TV Cameras from M/s Continental Electricals GSTIN No. 09AFXPD1962J2ZW. The details are as under.

**TABLE - 7**

(Amount in Rupees)

ITC availed on the strength of invoices issued by M/s Continental Electricals GSTIN No. 09AFXPD1962J2ZW for providing works contract services for installation of CC TV Cameras				
Date	Inv No	Product	Basic	IGST
21.08.2017	029	Supply, installation, Testing and Commissioning of CCTV Cameras	1,00,549	18,099
21.08.2017	030	Supply, installation, Testing and Commissioning of CCTV Cameras	3,72,501	67,050
<b>TOTAL</b>			<b>4,73,050</b>	<b>85,149</b>

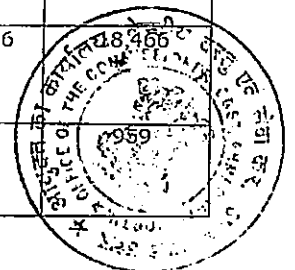
7.1. It also appeared that they have capitalized the goods/services received as per above invoices in their books of account.

7.2. Similarly, M/s Siddhi Construction have provided following services to the Tax Payer.

**TABLE - 8**

(Amount in Rupees)

Bill No. & Date	Project	Description	Taxable Value	CGST	SGST
GST/11 dated 15.09.2017	Tensile Structure Base	Concrete Braking and excavation, RC Work, Bolt 25mm dia 500mm long, Steel reinforcement, Bolt template, Grouting of base plate	2,05,178	18,466	18,466
GST/55 dated 12.02.2018	STP- Sludge collection tank at Sanand Plant	Tank for sludge collection near STP-4.4 mtr*0.68 mtr with excavation, PCC, Brick masonry, plaster, aggregate and sane filling, etc. complete	10,650	959	959



GST/062/19-20 dated 20.12.2019	Construction of Shed 9mtr x 20 mtr	Excavation, RCC in foundation and floor, column, shuttering for all RCC work, plaster, paint inside and outside, VDF concrete floor, Roof and side cladding with MS Structure, etc.	16,29,132	1,46,622	1,46,622
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7.3. Further, M/s Quality Furniture and Projects Pvt. Ltd. have provided following services to the Tax Payer.

TABLE -9

(Amount in Rupees)

Bill No. & Date	Description	Taxable Value	CGST	SGST
28/F dated 07.07.2018	Full Ht. Partition/ Grid Ceiling (Training Area), Frame Glass Panelled Door (including Hardware), Electric Work (Training Area), Demolition of full Ht. Partition, Removal of existing door frame & installation	233007.50	20,971	20,971

7.4. From the above invoices it appeared that M/s Siddhi Construction and M/s Quality Furniture and Projects Pvt. Ltd. have provided works contract services 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) ITC of which is blocked under provisions of Section 17(5) (c) of CGST Act, 2017

7.5. Similarly, M/s Sky Air Cooler have carried out ducting works and have supplied Air Cooler Stand/Canvas as per following details.

TABLE - 10

(Amount in Rupees)

Supplier Name	GST No	Invoice No.	Invoice Date	Sum of CGST	Sum of SGST	Month
SKY AIR COOLER	24ACCF57 523A1ZK	93	05-05-2018	29,880	29,880	May'18
SKY AIR COOLER	24ACCF57 523A1ZK	301	25-09-2018	36,612	36,612	Sept'18

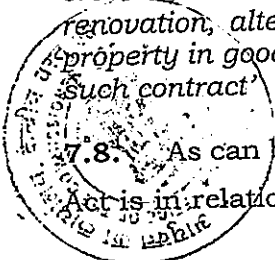
7.5.1. It also appeared that they have capitalized the goods/services received as per above invoices in their books of account.

7.6. The said Tax Payer have submitted that the said Supplier have provided ducting services for installing air-conditioned facility for cooling the air at work place of workers in the plant; that without this facility it is not possible for workers to operate on so heated machines at plants. From the nature of service provided, it appears that M/s Sky Air Cooler have provided works contract services 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) ITC of which is blocked under provisions of Section 17(5) (c) of CGST Act, 2017

7.7. 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, For ease of reference, the same is reproduced as under:-

*'Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract'*

7.8. As can be seen from the words underlined above, a work contract under the GST Act is in relation to immovable property. It may be noted that immovable property has

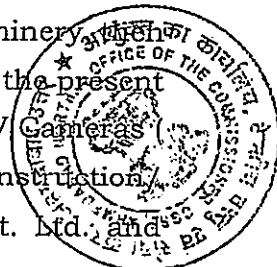


not been defined under the CGST Act and therefore reference is made to the definition of immovable property under the General Clauses Act, 1897. As per Section 3(26) of the General Clauses Act 1897, "immovable property" "shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth".

7.9. In the case of Municipal Corporation of Greater Bombay & Ors Vs. 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.*

7.10. In the instant case, it appeared that installation of CCTV cameras by M/s Continental Electricals; construction work as mentioned above done M/s Siddhi construction; furniture & fixtures supplied by M/s Quality Furniture and Projects Pvt. Ltd. and Services provided by M/s Sky Air Cooler under works contract service has to be dismantled and individual parts are to be removed & transported; that it appears that the test of permanency laid down by the Apex Court in the case of Municipal Corporation of Greater Bombay & Ors Vs. Indian Oil Corporation Ltd. (199 suppl. CC 18) has been answered in subject case as the installed cameras along with its cables and other attachments supplied by M/s Continental Electricals; construction work by M/s Siddhi construction; furniture & fixtures supplied by M/s Quality Furniture and Projects Pvt. Ltd. and Services provided by M/s Sky Air Cooler can't be shifted from one place to another as such; that installed cameras along with its cables and other attachments supplied by M/s Continental Electricals / construction work by M/s Siddhi construction and furniture & fixtures supplied by M/s Quality Furniture and Projects Pvt. Ltd. and Services provided by M/s Sky Air Cooler is transferred to the building owner and this involves transfer of property. In view of the above, it appears that the said installations are immovable.

7.11. In terms of provisions of Section 17(5) (c) of CGST Act, 2017, it is evident 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, 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 of CCTV Cameras viz. other than Plant & Machinery)/construction work by M/s Siddhi construction, furniture & fixtures supplied by M/s Quality Furniture and Projects Pvt. Ltd. and



Services provided by M/s Sky Air Cooler which also appears to be immovable, ITC is not admissible.

7.12. In view of the above, it appeared that the said tax payer is required to reverse ITC of IGST Rs.85,149/-, + CGST Rs. 2,53,510/- and SGST Rs.2,53,510/- as calculated above, under Section 74(1) of CGST Act, 2017/ Gujarat State GST Act,2017 read with provisions of Section 17(5) (c) of CGST Act, 2017/ Gujarat State GST Act,2017 along with interest under Section 50 of CGST Act, 2017/Gujarat State GST Act, 2017/ and penalty under Section 74 of CGST Act, 2017/Gujarat State GST Act, 2017 read with Section 20 of IGST Act,2017. The ITC reversal of Rs.39,437/- CGST and Rs.39,437/- SGST made by them subsequently appears to be adjusted against the proposed demand

**Revenue Para 8- Wrong availment and utilization of ITC on the strength of invoices of suppliers who have provided bus service for transportation of the employees of Tax Payer: -**

8. It appeared that as per provisions of Section 17 (5) (a) read with Section 17 (5) (b) (i) of the CGST Act,2017, the ITC of GST paid on hiring of motor vehicles is blocked.

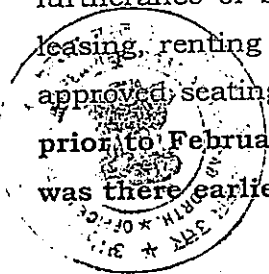
8.1. Whereas, during the course of audit, on perusal of purchase register, it appears that Tax Payer have inter-alia availed ITC of the GST paid by M/s Rao Tourist Service Pvt. Ltd. GSTIN No. 06AACCR7261H1ZC as per the following details.

**TABLE - 11 (Amount in Rupees)**

List of invoices issued by M/s Rao Tourist Service Pvt. Ltd. GSTIN No. 06AACCR7261H1ZC				
Invoice No.	Invoice Date	IGST	CGST	SGST
CSIL/12B/17	25-12-2017	-	2,110	2,110
12A	25-12-2017	-	25,550	25,550
09/A	01-10-2017	26,850	-	-
01A/18	27-01-2018	27,052	-	-
CSIL/03A/18	27-03-2018	14,495	-	-
CSIL/04A/18	26-04-2018	17,990	-	-
CSIL/04B/18	26-04-2018	2,254	-	-
CSIL/05A/18	29-05-2018	18,311	-	-
CSIL/06B/18	01.07.18	2,253	-	-
CSIL/06A/18	01.07.18	17,319	-	-
CSIL/07A/18	01.08.18	17,542	-	-
CSIL/08A/18	01.09.18	17,172	-	-
CSIL/09A/18	20.09.18	14,557	-	-
RTS181900372	24.01.19	18,478	-	-
		1,94,272	27,660	27,660

(NB:- Invoice No. CSIL/12B/17 and 12A both dated 25.12.2017 of M/s Rao Tourist Services Pvt. Ltd. are also covered in para 5 above)

8.2. On perusal of the invoices of M/s Rao Tourist Service Pvt. Ltd. GSTIN No. 06AACCR7261H1ZC, it appears that they have provided Bus Services to the tax payer viz. M/s Cooper Standard India Pvt. Ltd. For transportation of their employees to the work place. It appears that such services are being received by the Tax Payer for furtherance of business. Moreover, Section 17(5) excludes the Input Tax Credit on leasing, renting or hiring of motor vehicles for transportation of persons, having an approved seating capacity of more than 13 persons (including driver). However, ITC prior to February,01,2019 is not eligible in view of the specific restriction as it was there earlier under Section 17(5) of the CGST Act,2017.





8.3. In view of the above, it appears that the said taxpayer is required to reverse ITC of IGST of Rs. 1,94,272/- and ITC of CGST Rs. 27,660/- + SGST of Rs. 27,660/-, as calculated above, under Section 74(1) of CGST Act, 2017/ Gujarat State GST Act,2017 read with provisions of Section 17(5) of CGST Act,2017/ Gujarat State GST Act,2017 along with interest at appropriate rate under Section 50 of CGST Act,2017/Gujarat State GST Act, 2017/ and penalty under Section 74 of CGST Act,2017/Gujarat State GST Act, 2017 read with Section 20 of IGST Act,2017.

**Revenue Para 9:- Wrong availment and utilization of ITC on Rent-a cab Services provided by M/s Rajeev Tourist Services Pvt. Ltd. which is blocked under Section 17(5) of the CGST Act, 2017:-**

9. It appeared that as per provisions of Section 17 (5) (b) (i) of the CGST Act,2017, the ITC of GST paid on renting or hiring of motor vehicles is blocked.

9.1. During the course of audit, on verification of purchase Register, it is noticed that Tax Payer have availed credit of GST paid on Rent-a- Cab Services provided by M/s Rajeev Tourist Services Pvt. Ltd. GSTIN No. 24AACCR9730M1Z1 on which ITC to the tune of Rs.14,040/- (CGST+SGST) was availed and utilized, during period May,18 and June,18, as per following details. However, availment and utilization of ITC on said Rent-a Cab services has been blocked under provisions of Section 17(5) of CGST Act, 2017. In view of the above, ITC wrongly availed and utilized by Tax Payer is required to be paid by the Tax Payer under provisions of Section 74(1) of CGST Act,2017 along with the interest at applicable rate and penalty of CGST Act, 2017. The taxpayer has reversed the ITC of CGST and SGST along with interest of Rs.10,966/- which is required to be adjusted against the proposed demand of ITC and interest thereon. Also the taxpayer appears liable for penalty under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017.

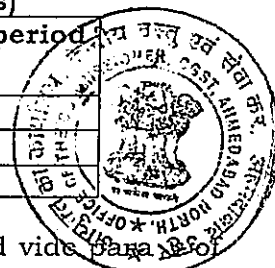
**Revenue Para 10. Excess availment and utilization of ITC due to difference between GSTR2A vis-à-vis GSTR3B**

10. Whereas, during the course of audit, it is observed from GSTR9 that the said taxpayer have availed excess ITC due to difference between GSTR2A vis-à-vis GSTR-3B as per provisions of Section 16(2)(aa) of CGST Act,2017 read with Rule 36 (4) of CGST Rules, 2017 inserted vide Notification No. 49/2019-Central Tax dated 9th Oct, 2019 as amended by Notification No. 75/2019 -Central Tax dated 26th Dec, 2019.

10.1. On verification of GSTR2A vis-à-vis GSTR3B Returns vis-à-vis GSTR 9, it was observed that the said taxpayer have availed excess irregular ITC in GSTR3B as compared to GSTR2A, during the period July,17 to March,18, as under: -

**TABLE - 12**

(Amount in Rupees)	
Difference between GSTR2A vis-à-vis GSTR3B of period July,17 to March,18	
IGST	(-) 27,69,610/-
CGST	+ 4,57,069
SGST	+ 4,57,069



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

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

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

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

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

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

10.5. The said Sub Rule (4) of Rule 36 of Central GST Rules, 2017 was further amended vide Para 2 of Notification No. 94/2020-Central Tax dated 22<sup>nd</sup> Dec, 2020 inter alia substituted the figure and words “5 per cent” for the figures and words “10 per cent.”

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

“16. Eligibility and conditions for taking input tax credit.

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
- (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—
- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- (aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37,
- (b) he has received the goods or services or both. [Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—
- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;
- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and (d) he has furnished the return under section 39”.

10.7. Whereas Section 16(2) (aa) has been enacted as per Finance Act, 2021. On combined reading of above provisions, if the ITC taken by the taxpayer as per GSTR3 B



is more than the amount of credit auto populated in his GSTR2A returns during the period from 9<sup>th</sup> Oct,2019 to 31.03.2020 ( during FY 2019-20) and if the said taxpayer have not got the same amended from his respective supplier, then the said taxpayer shall be denied the differential ITC availed by him in his GSTR 3B Returns vis-à-vis corresponding GSTR2A returns as per the above provisions of Section 16(2) (aa) of CGST Act,2017 read with sub Rule 4 of Rule 36 of CGST Rules,2017: The reason for not reflecting of details of inward supply in GSTR2A is that the supplier of the said goods have not filed his GSTR1 return or have not mentioned these invoices in his GSTR1 Returns filed or have mentioned wrong GSTIN No. (instead of GSTIN No. of the said taxpayer may have mentioned GSTIN No. of someone else) in their GSTR 1 Returns or they had availed excess ITC in their GSTR3B on their own. However, the said details were not got rectified either by the supplier or by the said taxpayer. Further the condition of Section 16 (2) ( C) of the Central Goods & Service Tax, 2017 viz.

*(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,—*

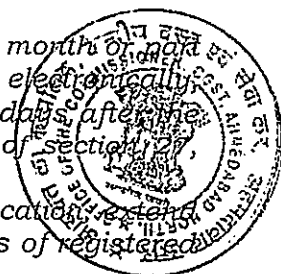
*(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and (d) he has furnished the return under section 39".*

also appeared to have been violated as the tax appears to have not been paid by the supplier of the goods or services.

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

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

- (2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.*
- (3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.*
- (4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.*
- (5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 12, whichever is earlier.*
- (6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:*



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

- (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.
- (8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.
- (9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

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

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

**10.9. 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."

**10.10.** From conjoint reading of Section 39 of CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, it appears that **M/s Cooper Standard India Private Ltd.**, (Presently known as M/s SFC Solutions India (Sealing) Private Limited), AV 3, BOL Industrial Estate, Sanand -2, Sanand, Distt. Ahmedabad Gujarat -380 058 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.

**10.11.** In light of the facts discussed hereinabove and the material evidences available on records, it appeared that since the Annual Return is filed for the period July,17 to March,18 by the taxpayer, therefore it appears they are required to pay **Rs. 27,69,610/-** IGST towards excess availment of ITC as per the provisions of Section 74(1) of CGST Act, 2017 along with interest under Section 50(1) of CGST Act, 2017 and penalty under Section 74(1) thereof read with Section 20 of IGST Act, 2017. Copies of invoices/ ledger of suppliers involved in aforesaid ITC difference amount were called for vide this office letter of even No. dated 17.08.2022 but the taxpayer have failed to submit the same till date.

**Revenue Para 11. Difference in figures of ITC availed as per Purchase Register vis-à-vis GSTR9**

**11.** Whereas, during the course of audit, it was observed that there was difference in ITC availed, as per Purchase Register vis-à-vis GSTR9 (RUD-21), as under, after



mentioning ITC availed by the taxpayer of IGST paid on goods imported by them and ITC availed by them of GST paid on service liable to RCM.

TABLE - 13

(Amount in Rupees)

Period	Description	IGST	CGST	SGST
July,17 to March,18	As per Purchase Register	6,22,59,013	89,83,121	89,83,121
	As per GSTR9	6,94,73,255	1,30,78,640	89,83,490
	Difference as per letter	(72,14,241.52)	(40,95,519)	(369)
	Ineligible ITC availed		40,95,519	
	ITC on imported goods	72,14,241		
	Actual Difference	0.52	0	369
FY 2018-19	As per Purchase Register	6,92,56,915	10,22,11,173	1,02,21,173
	As per GSTR9	8,37,54,350	1,03,17,506	1,03,17,506
	Difference as per letter	(1,44,97,435)	(96,333)	(96,333)
	ITC on imported goods	1,35,63,089.89		
	ITC of tax paid under RCM for 17-18 claimed in 18-19	4,69,909.16	68,186.88	68,186.88
	ITC of tax paid under RCM for 18-19	4,64,434.84	21,533	21,533
Actual Difference	1	6,612.68	6,612.68	
FY 2019-20	As per Purchase Register	6,66,61,000	82,54,735	82,54,735
	As per GSTR9	7,94,64,264	83,60,740	83,60,740
	Difference as per letter	(1,28,03,264)	(1,06,005)	(1,06,005)
	ITC on imported goods	1,25,03,918.45		
	ITC of tax paid under RCM for 19-20	2,96,645	1,07,356	1,07,356
	Actual Difference	(-) 2,700.19	(+) 1,350.88	(+) 1,350.88

11.1. From the above table, it appeared that that the difference of CGST is Rs.6,613/- and SGST is Rs.6,613/- in the FY 2018-19 and difference of SGST is Rs.369/- during the period July,17 to March,18. Similarly, there is difference of CGST is Rs.1,351/- and SGST is Rs.1,351/- in the FY 2019-20.

11.2. Thus, ITC of Rs.7,964/- CGST + Rs.8,333/- SGST irregularly availed and utilized by Tax Payer in contravention of the provisions of Section 16 of CGST Act, 2017/ Gujarat State GST Act,2017 during period July,17 to March,18, FY 2018-19 and FY 2019-20, as mentioned above, is required to be reversed along with interest at appropriate rate under Section 50 of CGST Act,2017 and penalty under provisions of Section 74 of CGST Act, 2017. Also the said taxpayer has reversed Rs.6,613/- CGST and Rs.6,613/- SGST and also paid Rs.8,460/- towards interest which amount appears to be adjusted against the proposed demand of ITC reversal, interest and penalty.

#### Revenue Para 12. Wrong availment and utilization of ITC of blocked credit under Section 17 (5) (d) of CGST Act,2017.

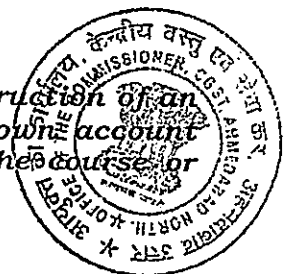
12. For ease of reference, provisions of Section 17 (5) of the CGST Act, 2017 are reproduced as under:-

#### 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) to (c) .....

(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.

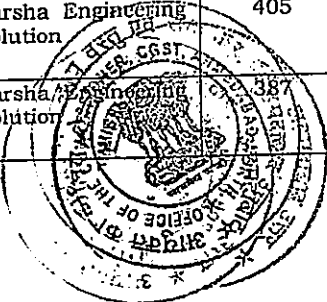
12.1. It appeared that as per provisions of Section 17 (5) (d) of the CGST Act, 2017, read with the explanation, the ITC of GST paid on construction activity, other than for plant & machinery, is blocked.

12.2. Whereas, the said taxpayer have received the goods/services from following suppliers which appears to be for construction of an immovable property (other than plant or machinery), which appears to be blocked as per provisions of Section 17 (5) (d) of CGST Act, 2017.

**TABLE - 14**

**(Amount in Rupees)**

Supplier Name	Invoice No	Invoice Date	Sum of IGST	Sum of CGST	Sum of SGST	Items supplied
APEX METAL INDUSTRIES	065	08-06-2018		770	770	MS Angles/ Pipes/ Channel
APEX METAL INDUSTRIES	066	08-06-2018		10,098	10,098	MS Angles/ Pipes/ Channel
JANTA ELECTRICALS & HARDWARE	T-6488	13-03-2019		40	40	UPVC Items
JANTA ELECTRICALS & HARDWARE	T-6490	13-03-2019		213	213	UPVC Items
JANTA ELECTRICALS & HARDWARE	T-0391	26-04-2019		1,516	1,516	SS Ball Valve, Hose clamp, etc.
KGN Engineering Works	064	12.03.2018	36,000			Canteen Table Granite Top & SS
Devmax Industries LLP	TI-60/DIL/18-19	29-10-2018		14,850	14,850	Single Mast Goods Lift
Sigma Airtech Engineers Pvt. Ltd.	473	02.07.2018	3,015			Refrigerant Piping/ Control Cable
Sigma Airtech Engineers Pvt. Ltd.	474	02.07.2018	13,732			2 OTR Ductable Unit
Varsha Engineering Solution	260	01.08.2018		16,920	16,920	Fiber Sheet, Railing pipe with structure, Erection charges
Varsha Engineering Solution	538	02.03.2020		54,900	54,900	Providing & fixing MS Pipes, MS elbow, heavy Gauze Butt, MS Plate Sorf flanges, Supply and installation steel structure support for fixing anchor,, excavation and back fill underground pipes, Pre-fabricated civil RCC trenc, etc.
Varsha Engineering Solution	447	07.09.2019		17,981	17,981	Aluminum partition, Ceiling Tile Grid, Electrical for office, etc.
Varsha Engineering Solution	405	12.06.2019		2,461	2,461	Fiber Sheets with Erection charges
Varsha Engineering Solution	387	09.04.2019		12,303	12,303	Fiber Sheets with Erection charges



Ventilair India (P) Ltd.	362	17.04.2019	5,760			FRP Sheet for Roof Exactor- part of Industrial Blower
Ventilair India (P) Ltd.	393	09.05.2019	4,914			Service charges of sheet cutting & water proofing work
Ventilair India (P) Ltd.	394	09.05.2019	6,048			Installation Charges
TOTAL			69,469	1,32,052	1,32,052	

12.3. The said Tax Payer have submitted that MS Angle/Pipes/ Channels and UPVC items received from M/s Apex Metal Industries and Janta Electricals were used to establish/laying facilities for cooling air as provided by M/s Sky Air Cooler.

12.4. In view of the above, it appeared that the said Tax payer is required to reverse ITC of IGST of Rs.69,469/-, CGST of Rs.1,32,052/- and ITC of SGST of Rs.1,32,052/-, as calculated above, under Section 74(1) of CGST Act, 2017/ Gujarat State GST Act,2017 read with provisions of Section 17(5) ( d) of CGST Act, 2017/ Gujarat State GST Act,2017 along with 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 read with Section 20 of IGST Act,2017.

**Revenue Para 14: Short Payment of GST under RCM on GTA services received.**

13. Notification No. 13/2017- Central Tax (Rate) dated 28<sup>th</sup> June, 2017, notifies the categories of services on which tax will be payable under reverse charge mechanism under CGST Act. Relevant provision of said Notification is reproduced as under:-

**TABLE - 15**

Sl. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
1	Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to- (a) any factory registered under or governed by the Factories Act, 1948(63 of 1948);or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or (e) anybody corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person.	Goods Transport Agency (GTA)	(a) Any factory registered under or governed by the Factories Act, 1948(63 of 1948); or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or (e) anybody corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person located in the territory.



As per the provisions of the above notification, the said Tax Payer was required to discharge GST on the inward and outward transportation of goods to/ from their premises.

13.1. Whereas, during the course of Audit, on verification of freight expenses, for the period July,17 to 31.03.2020, it was observed that taxpayer have short discharged their GST liability, under RCM, on the GTA services received by Tax Payer as per Section 9 (3) of CGST Act,2017, read with the provisions of Noti. No. 13/2017- Central Tax dated 28.06.2017.

TABLE - 16

(Amount in Rupees)

Period	RCM Liability on GTA Service		RCM Paid on GTA Service		RCM Liability to be paid			
	Taxable Value	Tax	Taxable Value	Tax	Taxable Value	IGST	CGST	SGST
July,17 to March,18	15,909,412	795,471	6,778,450	338,923	9,130,962	3,80,429	38,060	38,060
18-19	12,681,765	634,088	9,423,905	471,195	3,257,860	136369	13,262	13,262
19-20	8,462,100	423,105	8,462,100	423,105	-	-	51,322	51,322
Total	37,053,277	1,852,664	24,664,455.00	1,233,223	12,388,822	5,16,798		
		RCM on GTA to be deposited				6,19,442		

13.2. In view of the above, it appeared that the said Tax payer is required to pay IGST of Rs.5,16,798/-, CGST of Rs.51,322/- and ITC of SGST of Rs.51,322/-, as calculated above, under Section 74(1) of CGST Act, 2017/ Gujarat State GST Act,2017 read with provisions of Section 9 (3) of CGST Act,2017/ Gujarat State GST Act,2017 read with the provisions of Noti. No. 13/2017- Central Tax dated 28.06.2017 alongwith interest under Section 50(1) of CGST Act, 2017/Gujarat State GST Act, 2017/ and penalty under Section 74(1) of CGST Act, 2017/Gujarat State GST Act, 2017 read with Section 20 of IGST Act, 2017.

**Revenue Para 15: Short Payment of GST owing to wrong classification of products.**

14. Whereas, during the course of audit, on verification of Sale Register for the FY 2018-19, it appears that along with other products, they have inter-alia also supplied Body Seal -Front, Glass Run Front/Rear, Inner Belt, Outer Belt, lift gate, Roof Ditch, Seal Hood, etc. and have cleared the said goods on payment of GST @28% under HSN 87089900. None of the products of outward supply have been classified under HSN 8480/84806000.

14.1. However, on verification of Sale Register for the FY 2019-20, it appears that for the goods having description of product supplied by them as Body Seal -Front, Glass Run Front/Rear, Inner Belt, Outer Belt, lift gate, Roof Ditch, Seal Hood, W/S BDY SD and W/S DR GL which were cleared under HSN 87089900 on payment of GST @28% during FY 2018-19 have been cleared on payment of GST @18% under HSN 8480/84806000 to M/s Ford India Pvt. Ltd. and M/s MG Motors India Pvt. Ltd.





14.2. Description of goods mentioned in GST Tariff against HSN 8480 is as under:-

TABLE - 17

Chapter/ Heading/S ub- heading/ Tariff Item	Description of goods	Unit	GST Rates			
			CGST	SGST	IGST	CESS
8480	<b>Moulding boxes for metal foundry, mould bases, moulding patterns, moulds for metal (other than ingot moulds) metal carbides, glass, mineral materials. Rubber or plastics</b>					
84801000	Moulding boxes for metal foundry	Kg.	9%	9%	18%	Nil
84802000	Mould bases	Kg.	9%	9%	18%	Nil
84803000	Moulding patterns	Kg.	9%	9%	18%	Nil
	Mould for metal and metal carbides					
84804100	Injection or compression types	Kg.	9%	9%	18%	Nil
84804900	Other	Kg.	9%	9%	18%	Nil
84805000	Moulds for glass	Kg.	9%	9%	18%	Nil
84806000	Moulds for mineral materials	Kg.	9%	9%	18%	Nil
	Moulds for rubber or plastics					
84807100	Injection or compression types	Kg.	9%	9%	18%	Nil
84807900	Other	Kg.	9%	9%	18%	Nil

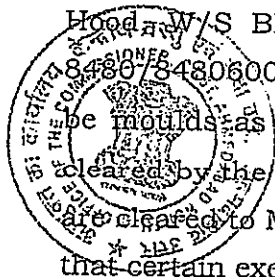
14.3. Further, during the course of Audit, on verification of Sale Register for the period July,17 to March,18, it appears that they have not mentioned description of products supplied by them. However majority of their goods have been cleared on payment of GST @28% under HSN 87089900. From the sale Register, it appears that products cleared under following 3 invoices have been cleared under HSN 8480/84806000 on payment of GST @18%.

TABLE - 18

(Amount in Rupees)

Invoice	GSTN	Customer	Part	Inv Date	SGST @ 9%	CGST @ 9%	Basic Amt.
176218 75	24AAACM445 4H1ZO	Ford India Private Ltd.	919999187	11/30/2 017	256,988	256,988	2,855,420
176218 76	24AAACM445 4H1ZO	Ford India Private Ltd.	919999188	11/30/2 017	7,200	7,200	80,000
					264,188	264,188	29,35,420

14.4. On perusal of the description given in above table with respect to HSN 8480/84806000, it appears that the description of goods mentioned in the said HSNs 8480/84806000 are pertaining to classification of moulds of different materials/patterns. The said tax payer is engaged in the manufacture and supply of parts of motor vehicles. It appeared that the goods cleared by the Tax Payer viz. Body Seal -Front, Glass Run Front/Rear, Inner Belt, Outer Belt, lift gate, Roof Ditch, Seal Hood and W/S BDY SD WDO and W/S DR on payment of GST @18% under HSN 8480/84806000 are parts of motor vehicle and by no stretch of imagination appear to be moulds as classified under the said HSN 8480/84806000. The aforesaid goods cleared by the Tax Payer appears to be parts and accessories of motor vehicles which are cleared to M/s Ford India Pvt. Ltd. and M/s MG Motors India Pvt. Ltd. It appeared that certain exemptions/ concessions have been provided to certain items falling under the said HSN 8708 for the goods cleared for use in manufacture of Tractors. However,



M/s Ford India Pvt. Ltd. and M/s MG Motors India Pvt. Ltd. are in the business of motor vehicles (and not tractors). It appeared that the aforesaid goods cleared by the Tax payer are parts and accessories of Motor Vehicles and same should fall under HSN 8708 and attract 28% GST.

**TABLE - 19**

Chapter/Heading/Sub-heading/ Tariff Item	Description of goods
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705

14.5. As the description of the goods have not been mentioned in sales register for the period July,17 to March,18, it appeared that the goods cleared by them under HSN 8480/84806000 were actually automotive parts and not the moulds. It appears that the said tax payer have also not declared HSN 8480/ 84806000 in its Registration details of supply. In view of the above it appeared that the said taxpayer have short paid GST by wrongly classifying their products under HSN 8480/84806000 on payment of GST @18%, during the period July,17 to March,18 and FY 2019-20, instead of HSN 87089900 on payment of GST @ 28% and thereby they appear to have short paid GST as under:-

**TABLE - 20**

(Amount in Rupees)

Period	Taxable Value of goods wrongly cleared under HSN 8480/84806000 on payment of GST @ 18% instead of 28% under HSN 87089900	Differential GST @ 10% to be demanded and recovered	
		CGST @ 5%	SGST @ 5%
July,17 to March,18	29,35,420	1,46,771	1,46,771
2019-20	16,23,53,000	81,17,650	81,17,650
	<b>TOTAL</b>	<b>82,64,421</b>	<b>82,64,421</b>

14.6. In view of the above, it appeared that the said taxpayer was required to pay CGST of Rs.82,64,421/- and ITC of SGST of Rs.82,64,421/-, as calculated above, under Section 74(1) of CGST Act, 2017/ Gujarat State GST Act,2017 along with interest under Section 50 of CGST Act, 2017/Gujarat State GST Act, 2017/ and penalty under Section 74 of CGST Act, 2017/Gujarat State GST Act, 2017

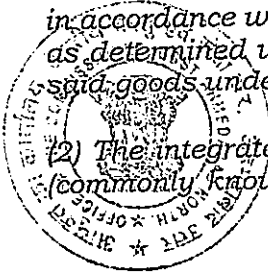
## 15. Legal Provisions

### 15.1 Section 5 of IGST Act,2017 Levy and collection.

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

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

(2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with



effect from such date as may be notified by the Government on the recommendations of the Council.

**15.2 Section 9. Levy and collection of CGST Act, 2017-** (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the **central goods and services tax** on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

The said Tax payer have contravened Proviso to Section 5(1) of the IGST Act read with the provisions of Section 5(3) of the IGST Act and Sr. No. 10 to Notification No. 10/2017-Integrated Tax (Rate) of 28.6.2017 as they have failed to pay tax to the Government account within the prescribed due dates, as discussed herein above.

**15.3 Sub section (3) of Section 9 of CGST Act, 2017 read with Noti. No. 13/2017- Central Tax (Rate)**

As provisions of sub section (3) of Section 9 of CGST Act, 2017 read with Noti. No. 13/2017- Central Tax (Rate) are already discussed at para 7 supra, the same is not repeated here. As per the said provisions, the Tax Payer have short paid GST on GTA services received by them, under Reverse Charge Mechanism.

**15.4 Section 16 of CGST Act, 2017:- Eligibility and conditions for taking input tax credit.—**

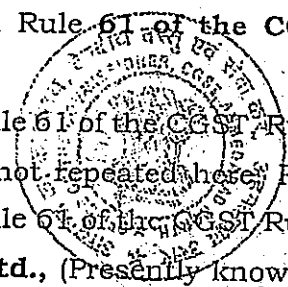
As provisions of Section 16 of CGST Act, 2017 are already discussed at para 6 and para 10 supra, the same is not repeated here. From the above provisions, it appeared that the Tax payer is eligible to take credit of input tax credit charged on any supply of goods or services or both which has been deposited into Govt. account by the supplier. It appeared that the said Tax payer have availed and utilized Excess ITC of GST paid on inward supplies of goods/ services than they were eligible, as discussed in para 10 above. Further, it appeared that they had also availed and utilized ITC on the strength of invoices of inward supplies though the supplier had not filed their returns and had not deposited the tax amount into Govt. account, as discussed in para 6 above.

**15.5 Section 17 (5) of CGST Act, 2017:-**

As provisions of Section 17(5) of CGST Act, 2017 are already discussed at para 3, 7, 8, 9, and 12 supra, the same is not repeated here. From the above provisions, it appears that the Tax payer had wrongly availed and utilized ITC of GST paid on goods/ services which are blocked under the provisions of Section 17(5) of CGST Act, 2017, as discussed above in para 3, 7, 8, 9, and 12 supra.

**15.6 Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017:**

As provisions of Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017 are already discussed at para 10 supra, the same is not repeated here. From conjoint reading of Section 39 of CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, it appears that **M/s Cooper Standard India Private Ltd.**, (Presently known as **M/s SFC Solutions India (Sealing) Private 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; which they haven't.

**15.7. 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."*

15.7.1 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 Cooper Standard India Private Ltd., (Presently known as M/s SFC Solutions India (Sealing) Private Limited) have failed to discharge their GST liability in due time / wrongly availed ITC, they have made themselves liable to pay interest on the same under Section 50 of the CGST Act, 2017 also made applicable to IGST matters as per provisions of Section 20 of IGST Act, 2017.

**15.8. Penalty for certain offences as detailed under Section 122 of the CGST Act, 2017:**

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

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

**15.9 Section 140 of CGST Act, 2017:- Transitional arrangements for input tax credit**

- (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed: Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:*
- (i) where the said amount of credit is not admissible as input tax credit under this Act; or*
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

*Explanation.*—For the purposes of this sub-section, the expression –unavailed CENVAT credit means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) to (4) ....

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, within such time and in such manner as may be prescribed, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub section.

(6) to (10) .....

The said Tax Payer have wrongly availed and utilized ITC thro' Tran-1 in contravention of the provisions of Section 140 of CGST Act,2017.

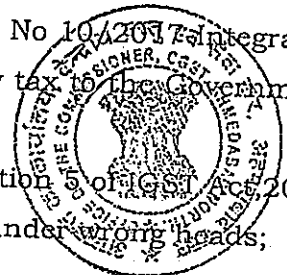
#### 15.10 Sub Rule (4) of Rule 36 of Central GST Rules,2017

As the said provisions are already discussed at para 10 supra, the same is not reiterated here. As per the said provisions, the said Tax Payer have availed excess credit than they were eligible.

#### CONTRAVENTIONS

16 In light of the facts discussed hereinabove and the material evidences available on records, it is revealed that **M/s Cooper Standard India Private Ltd.**, (Presently known as M/s SFC Solutions India (Sealing) Private Limited) have contravened the following provisions of the CGST Act, 2017 and CGST Rules, 2017 :-

- (i) Proviso to Section 5(1) of the IGST Act read with the provisions of Section 5(3) of the IGST Act and Sr. No. 10 to Notification No 10/2017 Integrated Tax (Rate) of 28.6.2017 as they have failed to pay tax to the Government account within the prescribed due dates;
- (ii) provisions of Section 9 of CGST Act,2017 and Section 9 of IGST Act,2017 in as much as they have availed and utilized ITC under wrong heads;



- (iii) provisions of sub section (3) of Section 9 of CGST Act,2017 read with Noti. No. 13/2017- Central Tax (Rate) in as much as they have failed to discharge GST on GTA service under RCM;
- (iv) Section 16 of CGST Act,2017 in as much as they have availed and utilized ineligible/wrong ITC as discussed herein above;
- (v) Section 17(5) (d) of CGST Act,2017 in as much as that the Tax payer wrongly availed and utilized ITC of blocked credit as discussed herein above;
- (vi) Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017 in as much as they failed to file correct GSTR-3 returns, failing which the wrong availment of ITC with an intend to evade payment of tax was unearthed;
- (vii) 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;
- (viii) 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;
- (ix) Section 140 of the CGST Act, 2017, in as much as they have wrongly availed and utilized ITC thro' Tran-1 in contravention of the said provisions;
- (x) Provisions of Sub Rule (4) of Rule 36 of Central GST Rules,2017, as discussed in para 10 supra.

16.1. For the administration and collection of State Goods and Services in respect of Gujarat State, an Act is in operation in respect of Jurisdiction Gujarat state. This Act is titled as "The Gujarat Goods and Services Act, 2017" and it contains the provisions identical to the CGST Act' 2017 as referred above. Since, it is only repetition; the provisions of the Gujarat Goods and Services Act' 2017 are not reproduced in this notice.

**17. Quantification of GST evasion & ITC wrongly availed by M/s Cooper Standard India Private Ltd., (Presently known as M/s SFC Solutions India (Sealing) Private Limited) :**

As discussed herein above in para 3 to 15 of the SCN, the total amount of GST not paid/short paid and ITC wrongly availed & utilized by M/s Cooper Standard India Private Ltd., (Presently known as M/s SFC Solutions India (Sealing) Private Limited) is summarized as under:-

**Table - 19 (Amount in Rs.)**

Sr. No.	Revenue Para No.	IGST		CGST		SGST	
		Demand	Paid	Demand	Paid	Demand	Paid
	R.P.3	0	0	117323	11429	117323	11429
	R.P.4	0	0	1798069	0	0	0
3.	R.P.5	1,12,147	0	24,963	0	24,963	0
4.	R.P.6	11,268	0	6,278	0	6,278	0
5.	R.P.7	85,149	0	2,53,510	39437	2,53,510	39437
6.	R.P.8	1,94,272	0	27,660	0	27,660	0

7.	R.P.9	0	0	7,020	7020	7,020	7020
8.	R.P.10	27,69,610	0	0	0	0	0
9.	R.P.11	0		7,964	6613	8,333	6613
10.	R.P.12	69,469	0	1,32,052	0	1,32,052	0
11.	R.P.14	5,16,798	0	51,322	0	51,322	0
13.	R.P.15	0	0	82,64,421	0	82,64,421	0
<b>TOTAL</b>		3758713	0	1,06,90,582		88,92,882	
<b>Grand Total</b>		<b>Tax Short Paid:- 2,33,42,177/-</b>					

**INVOCATION OF SECTION 74 OF THE CGST ACT, 2017**

**18. 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 willful-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 utilized 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."*

**18.1.** In this regard, 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 has been taken place.

*"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless*

of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.

12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.

13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.

14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the Show Cause Notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words, the Show Cause Notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.

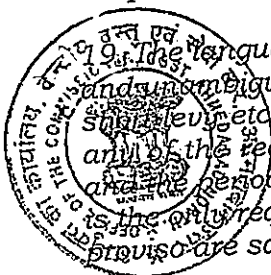
15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly, the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short-levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified there under, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as





to whether the Show Cause Notice has been served within a period of five years there from.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

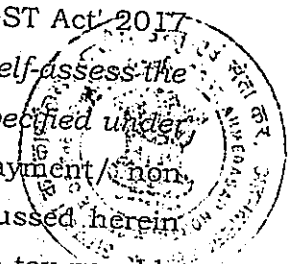
22. The Apex Court in the case of *Rajasthan Spinning and Weaving Mills (supra)* has held thus:

"From sub-section 1 read with its proviso it is clear that in case the short payment, non-payment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priori the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

18.2. The Government has from the very beginning placed full trust on the Tax Payer 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 Tax Payer when any provision is contravened or there is a breach of trust placed on the payer.

18.2.1. 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/non-payment of GST and wrongly availed and utilized irregular ITC as discussed herein above 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.

18.2.2. 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"*

19. From the Information/data of the taxpayer verified during the course of audit, it appears that the taxpayer have suppressed the short payment/ non payment of GST and wrongly availed and utilized irregular ITC and it appears that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax liability 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; wrong availment and utilization of ITC with intent to evade payment of tax. The above said short payment/ non payment of GST and wrong availment and utilization 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 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 read with Section 20 of IGST Act'2017 by invoking extended period of five years.

20. 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.

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

also liable to pay interest as per provisions of Section 50 of CGST Act,2017 read with the provisions of Section 20 of the IGST Act,2017.

**20.2.** By their various acts discussed herein above, **M/s Cooper Standard India Private Ltd.**, (Presently known as M/s SFC Solutions India (Sealing) Private Limited) appears to have rendered themselves liable for penal action under Section 74 of the CGST Act' 2017 read with Section 122 (2) (b) of the CGST, 2017/ the Gujarat GST Act, 2017 read with Section 20 of IGST Act,2017 for failure to file proper statutory GST returns duly discharging the proper tax liability, failure to pay tax, failure to self-assess the tax liability, wrong availment of ITC and suppression of facts, and contravention of various provisions of the CGST Act'2017 and Rules made there under with intent to evade payment of Goods and Services Tax; thereby it appears penalty under Section 74 of the CGST Act' 2017Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act,2017 is to be invoked.

**21.** In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC-01 A was issued to the said taxpayer on 21.12.2022 intimating their liability under Section 74(5) of the CGST Act, 2017 or to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 28.12.2022. However, no compliance has been received from the said taxpayer till date.

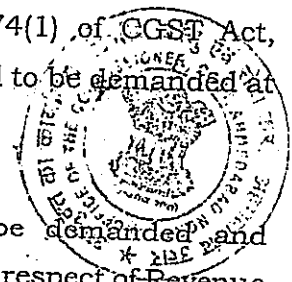
**22.** **M/s Cooper Standard India Private Ltd.**, (Presently known as M/s SFC Solutions India (Sealing) Private Limited), AV 3, BOL Industrial Estate, Sanand -2, Sanand, Distt. Ahmedabad Gujarat -380 058 issued notice to show cause to the Additional/ Joint Commissioner, CGST & Central Excise, Ahmedabad North Commissionerate, 1<sup>st</sup> Floor, Customs House, Near All India Radio, Navrangpura, Ahmedabad- 380 009, as to why:

**22.1**

- (i) GST totally amounting to Rs.2,34,646/- (CGST Rs.1,17,323/- + SGST Rs.1,17,323/-) (Rupees Two Lakh Thirtyfour Thousand Six Hundred and Sixty four only) as per Revenue Para 3 should not be demanded and recovered from them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 and total amount of Rs.22,858/- (CGST Rs.11,429/- + SGST Rs.11,429/-) already paid by them towards their liability should not be adjusted and appropriated towards the proposed demand ;
- (ii) interest on the tax proposed to be demanded as per par 23.1(i) above under Section 50(1) of CGST Act, 2017/Gujarat GST Act, 2017 should not be charged and recovered from them;
- (iii) penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 on the quantum of tax proposed to be demanded at 23.1 (i) above.

**22.2**

- (i) ITC of CGST amounting to Rs.17,98,069/- should not be demanded and recovered from them under Section 74(1) of CGST Act, 2017 in respect of Revenue Para No.4 ;



- (ii) interest on the above ITC reversal as mentioned at 23.2.(i) above, should not be demanded and recovered from them under Section 74(1) read with Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017;
- (iii) Penalty should not be imposed on them under Section 74(1) of CGST Act, 2017 on the quantum of ITC mentioned at para 23.2(i) above.

**22.3.**

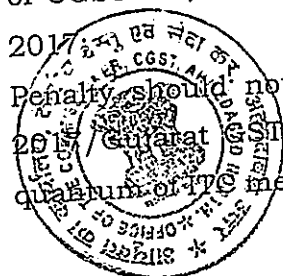
- (i) ITC totally amounting to Rs.1,62,073/- (CGST Rs.24,963/- + SGST Rs.24,963/- + IGST Rs.1,12,147/-) (Rupees One Lakh Sixtytwo Thousand & Seventythree only) should not be demanded and recovered from them in terms of provisions of Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 in terms of Revenue Para No.5 ;
- (ii) interest on the above ITC reversal as mentioned at 23.3.(i) above, should not be demanded and recovered from them under Section 74(1) read with Section 50(3) of CGST Act, 2017;
- (iii) Penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017, on the quantum of ITC mentioned at para 23.3(i) above.

**22.4.**

- (i) ITC totally amounting to Rs.23,824/- (CGST Rs.6,278/- + SGST Rs.6,278/- + IGST Rs.11,268/-) (Rupees Twentythree Thousand Eight Hundred & Twentyfour only) should not be demanded and recovered from them in terms of provisions of Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 in terms of Revenue Para No.6 ;
- (ii) interest on the above ITC reversal as mentioned at 23.4.(i) above, should not be demanded and recovered from them under Section 74(1) read with Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;
- (iii) Penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the quantum of ITC mentioned at para 23.4(i) above.

**22.5.**

- (i) ITC totally amounting to Rs.5,92,169/- (CGST Rs.2,53,510/- + SGST Rs.2,53,510/- + IGST Rs.85,149/-) (Rupees Five Lakh Ninety two Thousand One Hundred & Sixty nine only) should not be demanded and recovered from them in terms of provisions of Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 in terms of Revenue Para No.7 ;
- (ii) interest on the above ITC reversal as mentioned at 23.5.(i) above, should not be demanded and recovered from them under Section 74(1) read with Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;
- (iii) Penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the quantum of ITC mentioned at para 23.5(i) above;



**22.6.**

- (i) ITC totally amounting to Rs.2,49,592/- (CGST Rs.27,660/- + SGST Rs.27,660/- + IGST Rs.1,94,272/-) (Rupees One Lakh Ninety four Thousand Two Hundred & Seventy two only) should not be demanded and recovered from them in terms of provisions of Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 in terms of Revenue Para No.8;
- (ii) interest on the above ITC reversal as mentioned at 23.6.(i) above, should not be demanded and recovered from them under Section 74(1) read with Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;
- (iii) Penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the quantum of ITC mentioned at para 23.6(i) above;

**22.7.**

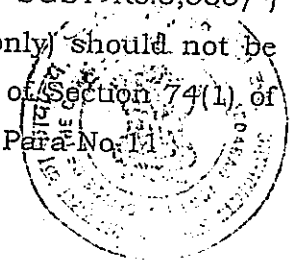
- (i) ITC totally amounting to Rs.14,040/- (CGST Rs.7,020/- + SGST Rs.7,020/-) (Rupees Fourteen Thousand & Forty only) should not be demanded and recovered from them in terms of provisions of Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 in terms of Revenue Para No.9 ;
- (ii) the taxpayer has paid Rs.7,020/- each towards CGST & SGST dues, which appears to be adjusted and appropriated against the demand proposed at 23.7(i) above ;
- (iii) interest on the above ITC reversal as mentioned at 23.7.(i) above, should not be demanded and recovered from them under Section 74(1) read with Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017 ;
- (iv) interest of Rs.10,966/- paid by them towards interest should not be adjusted and appropriated against demand for interest as proposed at para 23.7(iii)
- (v) Penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 on the quantum of ITC mentioned at para 23.7(i) above;

**22.8.**

- (i) IGST totally amounting to Rs.27,69,610/- (Rupees Twenty seven Lakh Sixty nine Thousand Six Hundred & ten only) should not be demanded and recovered from them under Section 74(1) of CGST Act, 2017 read with Section 20 of IGST Act, 2017 in terms of Revenue Para No.10 ;
- (ii) interest should not be charged and recovered from them on the quantum of dues proposed to be confirmed at 23.8(i) above, under Section 74(1) of CGST Act, 2017 read with Section 20 of IGST Act, 2017 ;
- (iii) penalty should not be imposed on them under Section 74(1) of CGST Act, 2017 read with Section 20 of IGST Act, 2017

**22.9.**

- (i) ITC totally amounting to Rs.16,297/- (CGST Rs.7,964/- + SGST Rs.8,333/-) (Rupees Sixteen Thousand Two Hundred & Ninety Seven only) should not be demanded and recovered from them in terms of provisions of Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 in terms of Revenue Para No.11 ;



- (ii) the taxpayer has paid Rs.13,226/- (CGST + SGST) each dues, which appears to be adjusted and appropriated against the demand proposed at 23.9(i) above ;
- (iii) interest on the above ITC reversal as mentioned at 23.9.(i) above, should not be demanded and recovered from them under Section 74(1) read with Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017;
- (iv) interest of Rs.8,460/- paid by them towards interest should not be adjusted and appropriated against demand for interest as proposed at para 23.9(iii)
- (v) Penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 on the quantum of ITC mentioned at para 23.9(i) above;

**22.10.**

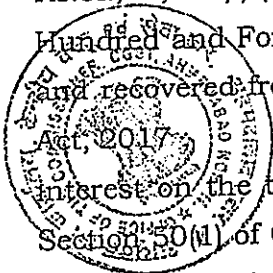
- (i) ITC totally amounting to Rs.3,33,573/- (CGST Rs.1,32,052/- + SGST Rs.1,32,052/- + IGST Rs.69,469/-) (Rupees Three Lakh Thirty three Thousand Five Hundred & Seventy three only) should not be demanded and recovered from them in terms of provisions of Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 in terms of Revenue Para No.12 ;
- (ii) interest on the above ITC reversal as mentioned at 23.10.(i) above, should not be demanded and recovered from them under Section 74(1) read with Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;
- (iii) Penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the quantum of ITC mentioned at para 23.10(i) above;

**22.11.**

- (i) GST totally amounting to Rs.6,19,442/- (CGST Rs.51,322/- + SGST Rs.51,322/- IGST Rs.5,16,798) (Rupees Six Lakh Nineteen Thousand Four Hundred and Forty two only) as per Revenue Para 14 should not be demanded and recovered from them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;
- (ii) interest on the tax proposed to be demanded as per par 23.11(i) above under Section 50(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 should not be charged and recovered from them ;
- (iii) penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the quantum of tax proposed to be demanded at 23.11 (i) above.

**22.12**

- (i) GST totally amounting to Rs.1,65,28,842/- (CGST Rs.82,64,421/- + SGST Rs.82,64,421/) (Rupees One Crore Sixty five Lakh Twenty eight Thousand Eight Hundred and Forty two only) as per Revenue Para 15 should not be demanded and recovered from them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017;
- (ii) interest on the tax proposed to be demanded as per par 23.11(i) above under Section 50(1) of CGST Act, 2017/Gujarat GST Act, 2017 should not be charged and recovered from them ;



- (iii) penalty should not be imposed on them under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 on the quantum of tax proposed to be demanded at 23.12 (i) above.

**Defence Submissions:-**

23. The written submission submitted by the taxpayer vide their letter dated 05.05.2023, 21.08.2023 and 06.11.2023, as under

23.1. **Revenue Para 03 :-** Wrong availment and utilisation of ITC on Food and Beverage Services received which is blocked under Section 17(5) of the CGST Act, 2017:-

Year	IGST	CGST	SGST
July-17 to March-18	-	41,445/-	41,445/-
2018-19	-	68,395/-	68,395/-
2019-20	-	7,483/-	7,483/-
Total		1,17,323/-	1,17,323/-

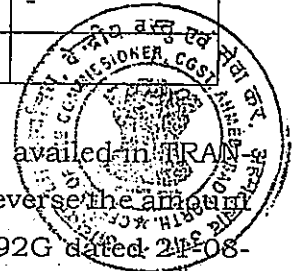
23.1.1. During the course of audit, it was pointed out that supplies received in the form of Sweets purchased & canteen services received from M/s. Ambica, M/s. Aazad Mithai and M/s. Jay Shree Krishna was identified as blocked credit under section 17(5) of CGST Act and hence the same is to be reversed along with interest. With reference to the above point, company would like to submit that we are a manufacturing entity registered under the Companies Act, 2013 and our employee strength is more than 250. Accordingly, as per the provisions of Indian Factories Act, 1948 read with The Gujarat Factories Rules, 1963.

23.1.2. The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. Accordingly, company is under compulsion to provide canteen services to its employees under the provisions of Indian Factories Act 1948 read with the Gujarat Factories Rules 1963 and hence company has claimed ITC on the canteen services amounting to Rs. 2,11,788/- during the FY 2017-18 to FY 2019-20. Hence the said ITC is not blocked and can be claimed as per section 17(2) (b).

23.2. **Revenue Para 4 - Transfer of Excess Credit under Tran-1:-**

Sr. No	Particulars	IGST	CGST	SGST
1	Cash Balance of ER-1	-	62,835/-	-
2	Cash Balance of ST-3	-	12,14,578/-	-
3	Excess claim of Cenvat Credit of Capital Goods	-	73,729/-	-
4	RCM paid not reported in ST-3	-	4,46,927/-	-
	<b>Total</b>		<b>17,98,069/-</b>	

23.2.1 With respect to the S.No.1 above, the Cash balance of ER-1 availed in TRAN-1, they have accepted the liability of same and confirmed that we will reverse the amount of Rs. 62,835/- and paid through DRC-03, vide ARN AD240823011392G dated 21/08-2023.



23.2.2. With respect to the S.No.2 above, the Cash balance of ST-3, we would like to state that the said amount is not pertaining to the cash balance of ST-3 and rather pertaining to tax paid under Reverse Charge Mechanism (RCM) which has been duly discharged through challans having CIN No. 02926680507201725647 dated 05/07/2017 & CIN No. 029266830820720333 dated 03/08/2017.

23.2.3. With respect to the S.No.3, the Bill of entry no. 9963398 dated 06/05/2017, we would like to state that they have not availed the initial 50% of CENVAT Credit for the import of capital goods in Pre-GST period. This can be verified through our ER-1 Return filed of June-2017 which was also submitted during the course of the audit. Since the availment of 50% was not done in pre-GST period, the entire Input tax credit has been availed through TRAN-1. Unavailed CENVAT credit in respect of capital goods, not carried forward in a return furnished under the existing law by them. They have complied with provisions of Section 140 (2) of CGST Act 2017 & hence, they were eligible to avail the ITC for this Transaction.

23.2.4. The amounts mentioned in S. No. 4 of the Para is not pertaining to Reverse Charge Payment. It is pertaining to Service tax paid on services, the Invoices of which have been accounted after 1st July 2017. They were submitting copies of these Invoices and summary of the nature of services with their explanations along with this reply that these are eligible CENVAT credits. Considering the above, they reiterated that the Transitional ITC availed in Table 7 of TRAN-1 fully pertains to Section 140 (5) of CGST Act, 2017 and is fully eligible. This objection may be dropped.

23.2.5. These are Transitional Credits which were availed during the first 6 months post introduction of GST, wherein the clarity in-terms of interpretation as well as legal clarity had not emerged at that time. Even after 5 years the transitional credit window was opened during October & November 2022 as many tax payers had issues in understanding the provisions of GST transition. They have fairly disclosed the wrong Availment of transitional ITC which has been identified from their books and data submitted, which shows their intention not to evade tax or conceal facts. Considering the above, they have requested to treat this to be a matter under Section 73 and NOT under Section 74 and pass order accordingly.

**23.3 Revenue Para 5- Wrong availment and utilisation of ITC of CGST / SGST under ITC of IGST Head and ITC of IGST under CGST/SGST Head and also availment of excess ITC;**

23.3.1. Though they have wrongly availed, they have utilised such wrongly availed ITC for the payment of our outward liability fully. The payment of outward liability is governed by the provisions of Section 49 and as per that only we have utilised such ITC. Hence it is clear that the ITC perse was eligible for them, but the mistake is only with respect to the inter head utilization of ITC.

23.3.2. The said inter-change of head between IGST and C/SGST was done due to oversight. As although, ITC availed in the wrong head but it is utilize in the correct



manner hence there is no loss to revenue. As ITC would have been eligible otherwise, it is a revenue neutral situation. Considering this they requested to not levy any interest liability on them for this erroneous availment.

**23.4. Revenue Para 6-** Wrong availment and utilisation of ITC on the strength of invoices of suppliers, who haven't filed their GST Returns:

The suppliers GSTIN referred in the notice have filed their GST return for the tax period FY 17-18 to FY 19-20 and attached status downloaded from the portal for your verification purposes.

**23.5. Revenue Para 7 & 12-** Wrong availment and utilisation of ITC of blocked credit as per Section 17(5) of CGST Act:

**23.5.1.** With reference to the para 7 & 12 of SCN, it was submitted that the term immovable property has not been defined under the GST Act. *Nevertheless, Sec. 3(26) of the General Clauses Act, 1897 defines "immovable property" as under: "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."*

**23.5.2.** As may be observed from the above, the definition of "Immovable Property" is an inclusive definition and includes all the things attached to the earth or permanently fastened to anything attached to the earth.

**23.5.3.** As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there is a clear demarcation of a works contract as a supply of service under GST.

**23.5.4.** The disallowance of ITC Availment mentioned in the SCN, that none of these ITC availment are with respect to creation of an immovable property nor towards Plant & Machinery which is permanently affixed to earth. the GST paid on these supplies for which ITC is claimed, has not been capitalised. Hence, they have complied with the requirements of Section 16 (3) of CGST / GSGST Act and are eligible for this ITC. With reference to the above explanation, they have also provided the nature of ITC and its nature in detail and submitted copy of all supporting ledgers and invoices.

**23.6. Revenue Para 8-** wrong Availment and utilisation of ITC on the strength on invoices of supplier who have provided bus service for transportation of the employees of Taxpayer :-

**23.6.1.** In the SCN it was highlighted that ITC availed towards receipt of services in the form of Bus Hire Charges towards transportation of employees prior to 01-Feb-2019 is ineligible under Sec.17(5)(a). In this regard, they have submitted that Prior to 01-Feb-2019, the restriction placed in Sec.17(5)(a), was for motor vehicles purchased by the taxpayer and not for hire of motor vehicles. This is evident from the words "leasing, renting or hiring of motor vehicles" inserted in the clause (b) w.e.f. 01-Feb-2019 which makes it clear that the position of the law prior to this amendment was not applicable for hiring of motor vehicles and hence the ITC towards these hire charges are eligible.

**23.7. Revenue Para 9 - Wrong Availment and utilisation of ITC on Rent-a-cab Services** provided by M/s. Rajeev Tourist Services Pvt Ltd, which is blocked under Sec.17(5) of the CGST Act:

**23.7.1.** In the SCN it was highlighted that ITC availed towards RCM payment on Rent-a-cab services received from M/s. Rajeev Tourist Services Pvt Ltd for the year 2018-19, is ineligible under Sec.17(5) and directed to reverse the same. They have accepted the said error and remitted the liability of **Rs.14,040/-** along with interest of **Rs.10,966/-** vide **DRC-03 ARN AD2410220122019 dt.28-10-2022.**

**23.8. Revenue Para 10 - Excess Availment and utilisation of ITC due to difference between GSTR-2A vis-a-vis GSTR-3B:**

**23.8.1.** The supplier from which they have taken the input supply has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of in FORM GSTR-1.

**23.8.2.** As clarified in Circular No. 183/15/2022-GST dated 27-12-2022, they have received the input supply from the supplier and they were in possession of the valid invoices and they have made the payment for the same hence the ITC is eligible. Further the CA certificate & Supplier certificate were also submitted.

**23.9. Revenue Para 11 - Difference in figures of ITC availed as per Purchase Register vis-a-vis GSTR-9:-**

**23.9.1.** They have accepted the liability of Rs. 13,226/- and have duly paid the same along with interest of Rs. 8,460/- vide DRC-03 ARN AD2410220122019 dt.28-10-2022 and the balance liability of **Rs. 3,071/-** has been paid through DRC-03, vide **ARN AD240823011402N dated 22-08-2023.**

**23.10. Revenue Para 14 - Short payment of GST under RCM on GTA Services received:**

**23.10.1.** They have accepted the liability highlighted in the Show cause notice amounting to Rs. 5,16,798/- of IGST & Rs. 51,322/- of CGST & SGST Each and they have paid the liability along with the interest while filling the GSTR-3B for the month of May-23.

**23.11. Revenue Para 15 - Short payment of GST owing to wrong classification of products.**

**23.11.1.** They have undertaken not only the supply of goods as per HSN 8708 (Parts and accessories of the motor vehicles of headings 8701 to 8705), but also supply other motor vehicles parts and scraps & to our customers, more specifically items in HSN 8480 (Moulding boxes for metal foundry; Mould bases; Moulding patterns; Moulds for metal (other than ingot moulds), metal carbides, glass, mineral; materials, rubber or plastics).

**23.11.2.** When those goods supplied as HSN 8480 and IGST rate is 18% and submitted the invoice copies for clarify the nature of these supplies. the HSN and Rate applied for these supplies for the items mentioned under this para in SCN were correctly classified under the respective HSN and there is no short payment of GST in this regard and requested to drop the proceeding by considering their above submission.

23.11.3. They have further submitted that they were undertaking in not only the supply of goods as per HSN 8708 (parts and accessories of the motor vehicles of headings 8701 to 8705) but also other motor vehicles parts and scraps in HSN 8480 (Moulding boxes for metal foundry, Mould bases, Moulding patterns, Moulds for metal (other than ingot moulds), metal carbides, glass, mineral, material, rubber or plastics) and produced tax invoices and relevant purchase orders.

23.11.4. The case under dispute, they have received purchase orders from M/s Ford India Private Limited & M/s. M. G. Motor private Ltd. M/s Ford India Private Limited have issued PO with respect to Tools only & M/s. M. G. Motor private Ltd. issued PO with respect to "Tools" & "Design & Development of Tools" and enclosed copy of the Purchase Orders and corresponding tax invoices.

23.11.5. Further, it is to submit that based on the purchase orders, we have prepared invoices wherein name of the products/items mentioned same as mention in respective PO.

23.11.6. For instance, in PO No. 4600000748 dated 03.07.2019, they have received PO showing details as

Sr. No.	Code/Description/HSN/SAC	Delivery Date	Quantity	UOM	Rate	Tax
1	70001262 for 23592528 /23592529/23592530/2359 HSN : 84806000 For OUTER BELT-BRT for CN202 Project	03.07.2019	1	NO	30,00,000/-	CGST @ 9% SGST @ 9%

Further, they have prepared tax invoice showing details as

Sr. No.	Part No.	Description	SGST %	CGST %	UOM	Quantity	Rate	Taxable value
1	70001262 HSN/SAC : 8480	Outer Belt Bright	9% PO: 460000748	9%	NA	1.00	30,00,000/-	30,00,000/-

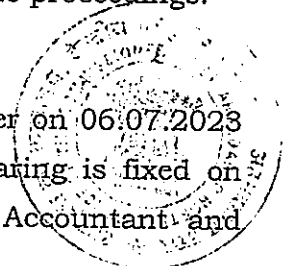
23.11.7. Looking to the PO as well as tax invoice, it is clear that the description of goods mentioned in our tax invoices is for reference purpose only for recipient with respect to the PO. They have received the PO for specialized Tools and Moulds and it is not possible to have so much value of a single part or accessories of motor vehicle supplied by us.

23.11.8. Further, they have received PO from M/s Ford India Private Limited for Tools having value of Rs. 84,00,000/- which was also very high from amount of part and accessories of motor vehicles supplied by us during the period under disputes.

They have requested for considering the above points and drop the proceedings.

#### Personal Hearing

24. Personal hearing in the matter has been offered to the taxpayer on 06.07.2023 which adjourned on request of the taxpayer. The next date of hearing is fixed on 09.08.2023 which was attended by shri Teerth Jain, Chartered Accountant and



authorised representative of the said taxpayer. He reiterated their written submission dated 11.07.2023 and also requested to grant time till 21.08.2023 for additional submission.

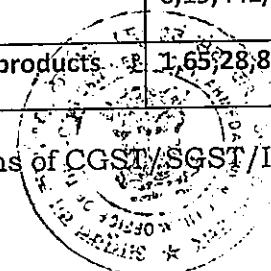
#### DISCUSSION AND FINDINGS

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

26. I find that the present show cause notice is issued based on objections/points noticed during the course of audit of records of the taxpayer by the officers of Central Tax, Audit, CGST, Ahmedabad which remained unsettled (Revenue Paras (3 to 15) and culminated into issuance of show cause notice. I take up the issues for discuss Revenue Paras wise one by one as below.

Revenue Para No.	Issue involved	Amount of ITC
03	Wrong availment and utilization of ITC on Food and Beverage Services received which is blocked under Section 17(5) of the CGST Act, 2017	2,34,646/-
04	Transfer of Excess Credit under TRAN-1	17,98,069/-
05	Wrong availment and utilization of ITC of CGST/SGST under IGST head and ITC of IGST under CGST/SGST head and also availment of excess ITC of IGST.	1,62,073/-
06	Wrong availment and Utilization of ITC on the strength of Invoices of suppliers who haven't filed their GST Returns	23,824/-
07	Wrong availment and utilization of ITC of blocked under Section 17(5) of the CGST Act, 2017	5,92,169/-
08	wrong availment and utilization of ITC on the strength of invoices of suppliers who have provided bus service for transportation of the employees of Tax Payer	2,49,549/-
09	wrong availment and utilization of ITC on Rent-a-cab Services which is blocked under Section 17(5) of the CGST Act, 2017	14,040/-
10	Excess availment and utilization of ITC due to difference between GSTR-2A vis-à-vis GSTR-3B	27,69,610/-
11	Difference in figures of ITC availed as per purchase register vis-à-vis GSTR-9	16,297/-
12	Wrong availment and utilization of ITC of blocked under Section 17(5)(d) of the CGST Act, 2017	3,33,573/-
14	Short Payment of GST under RCM on GTA Services	6,19,442/-
15	Short Payment of GST owing to wrong classification of products	1,65,28,842/-

27. First of all, I take look into the relevant legal provisions of CGST/SGST/IGST Act, 2017 deals with eligibility of availment of input tax credit:-



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

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

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

(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;

(4) A registered person shall not be entitled to take input tax credit in respect

of any invoice or debit note for supply of goods or services or both **after the due date of furnishing of the return under section 39 for the month of September** following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

**Section 17. Apportionment of credit and blocked credits.—**

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

~~(2) to (4) :~~

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

(a) [motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are

used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—



(i) for making the following taxable supplies, namely:—

- (A) further supply of such vessels or aircraft; or
- (B) transportation of passengers; or
- (C) imparting training on navigating such vessels; or
- (D) imparting training on flying such aircraft;

(ii) for transportation of goods

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;]

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

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

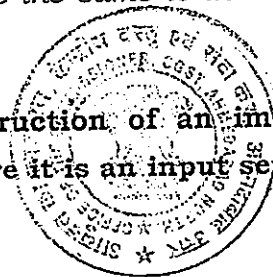
Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable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

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

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

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

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



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

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

- (e) goods or services or both on which tax has been paid under section 10;
  - (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
  - (g) goods or services or both used for personal consumption;
  - (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
  - (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.
- (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.

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

**27.2.** On perusing the provisions of Section 17(5)(b)(i) of the Act with its proviso, the input tax credit shall not be available in respect of canteen expenses and food expenses, hiring of motor vehicles where an inward supply of such goods or services or both is not used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or the provisions of same is not obligatory under the law for the time being in force.

**27.3.** Further, on perusing the provisions of Section 17(5)(c) & (d) of the Act, the input tax credit shall not be available in respect of goods or services or both used for works contract service where the supply is effect for construction of an immovable property (other than plant and machinery & further supply of work contract service) &

construction of immovable property on his own account even when such goods or services are used in the course or furtherance of business.

28. Now, coming to allegations as per show cause notice, as regards **Revenue Para No. 3**, I find the allegation made in the SCN that the taxpayer had availed ITC of Rs. 2,34,646/- towards supply of Breakfast/Snacks, Lunch, Dinner, Tea and Milk, Sweets, etc. for the employees of the taxpayer.

28.1. I find that in terms of provisions of Section 17(5)(b)(i) of the Act explained herein above, the ITC in respect of supply of food and beverages is covered under blocked credit except for provisions of supply of similar category of business or composite supply or obligatory under any law applicable for time being. Further, the Show Cause Notice alleges that the said taxpayer failed to produce any evidence to prove that the number of employees on the pay roll was more than 250. On the other side, I find that the said taxpayer had submitted the sample copy of register of attendance of employees working on pay roll basis having the number of employees working on pay roll basis more than 250 and also submitted a license registered under Factory Act, 1948 issued by the Joint Director, Industrial Safety and Health, Gujarat State for maximum number of worker to be employed on day during the year 500. Further, they have submitted that as per provisions of Gujarat Factories Rules, 1963, a canteen or canteens shall be provided and maintained by the occupier for use of the workers.

As per Section 46 of the Factory Act, 1948 **Canteens**

*“(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.]*

*(2) Without prejudice to the generality of the foregoing power, such rules may provide for*

*(a) the date by which such canteen shall be provided;*

*(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;*

*(c) the foodstuffs to be served therein and the charges which may be made therefor;*

*(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;”*

Further, Rule 72 of the Gujarat Factories Rules, 1963. **Canteens.** :-

*“(1) Rules 72 to 78 shall come into force in respect of any class or description of factories on such dates as the State Government may, by notification in Official Gazette, appoint in this behalf.*

*(2) The occupier of every factory wherein more than 250 workers are ordinarily employed and which is specified by the State Government by a notification in this behalf, shall*





*provide, in or near the factory, an adequate canteen according to the standards prescribed in the Rules.*

*The canteen shall be available for the use of the workers within six months from the date of such notification"*

From the above, it is evident that a canteen is required to be maintained by a factory registered under the Factory Act, 1948 norms as prescribed.

28.2. It would be appropriate to examine factual position of the case first. Ongoing through the submission of the said taxpayer, the number of employees working on pay roll basis more than 250 for instance in the month of the Jan-2018 & May-2018, total employees were 431/- & 358/- respectively on pay roll basis supplied by the various manpower recruitment agencies. From the above, it is evident that the said taxpayer having more than 250 workers on pay roll basis and they have also registered under the Factory Act and as per norm of Factory Act as well as Gujarat Factories Rules, they were required to provide a canteen facility to their employees.

28.3. I, further, find that the said taxpayer submitted that they had provided lunch, dinner, snack, tea etc. to their employees which appears to be obligatory under the factory Act, 1948 as well as Gujarat Factory Rules, 1963 as they have a valid license registered under the factory act, 1948 and they are under compulsion to provide the canteen services to their employees hence as per proviso (iii) to Section 17(5)(b) of the CGST Act, 2017, the input tax credit is admissible to them. The arguments of the said taxpayer appear to be sustainable as it is acceptable that as per provisions of Section 46 of the factory act, 1948 as well as provisions Rule 72 to 78 of Gujarat Factories Rule, 1963, being a registered factory, they are under obligation to comply with the canteen facility to their employees. I observe that as per proviso (iii) to Section 17(5)(b) of the CGST Act, 2017, the credit of input or input service shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. The ITC in respect of supply of food and beverage to the employees by the said taxpayer is admissible.

28.4. I find that expect the basic canteen facility as lunch, dinner, snack, tea etc. the said taxpayer have also purchased sweets and claimed to be provided to their employee, the supply of sweets does not appear to be obligatory under canteen facility, hence the ITC also not admissible on supply of sweets to the said taxpayer. However, on being pointed out by the audit officers, the said taxpayer have agreed with objection regards provisions of sweets to their employees and paid the amount of such ITC and submitted the copy of DRC-03 ARN No. AD2410220122019 dated 28.10.2022 towards payment of Rs. 22,858/- alongwith interest of Rs 17,749/- the same is required to be adjusted and appropriated against the demand.

In view of the above, the out of total ITC of Rs. 2,34,646/- Rs. 2,11,788/- towards food and beverages is admissible and remaining amount of ITC of Rs. 22,858/- had already been reversed by the said taxpayer. The same is required to be adjusted and appropriated against the proposed demand.

29. As regards **Revenue Para No. 04**, I find the allegation made in the SCN that the taxpayer has availed excess ITC of Rs. 17,98,069/- by way of transfer through TRAN-1. The details of said transferred credit is as under:-

Sr. No	Particulars	IGST	CGST	SGST
1	Cash Balance of ER-1	-	62,835/-	-
2	Cash Balance of ST-3	-	12,14,578/-	-
3	Excess claim of Cenvat Credit of Capital Goods	-	73,729/-	-
4	RCM paid not reported in ST-3	-	4,46,927/-	-
	Total	-	17,98,069/-	-

29.1. As regards (Sr. No. 1) **Cash balance of ER-1**, I find that the cash balance of Rs. 62,835/- available in the ER-1 of June-2017 as on 30.06.2017 were carry forwarded by the said taxpayer which is not eligible from transfer through TRAN-1 as per provisions of Section 140 of the CGST Act 2017.

Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017 provides for transfer of transitional credit through TRAN-1 for eligible duties available in.

Explanation 1.—For the purposes of sub-sections (1) and (5), the expression —**eligible duties means**—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- (iv) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (v) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
- (vi) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.
- (vii) The service tax leviable under section 66B of the Finance Act, 1994 in respect of input and input services received on or after the appointed day.

From looking to the above provisions, it transpires that the cash balance available with the taxpayers in their returns filed under existing law is not a part of eligible duties for the purpose of transfer through TRAN-1 in electronic credit ledger in GST regime and transferring the same in electronic credit ledger through TRAN-1 is required to be recovered from the taxpayer under the provisions of Section 74(1) of the CGST Act, 2017. Further, it is noted that the taxpayer had already been reversed the ITC of Rs. 62,835/-. The same is required to be adjusted and appropriated towards the demand as proposed.

29.2. As regards **(Sr. No. 2) cash balance of ST-3**, I find that the show cause notice alleges that the balance of any other credit taken of Rs. 12,14,578/- **pertains to cash balance** as per ST-3 return for the period April-2017 to June-2017. It is evident that there are no more disputes regarding ineligibility of cash balance available in returns of existing law as on 30.06.2017 through TRAN-1 so I do not feel any necessity to discuss the provisions related to transitional credit again here.

29.2.1. On the same time, I take a look towards the submission of the taxpayer and find that they have contested that the said balance of cash available in ST-3 for the month of June, 2017 is **pertains to tax paid under reverse charge mechanism (RCM)** which has been discharged through challans having CIN no. 0292668057201725647 dated 05.07.2017 & CIN No. 02926683020720333 dated 03.08.2017 and the said amount has also been reflected as CENVAT Credit balance in Form ST-3 (Revised).

29.2.2. Now, on verifying the ST-3 (revised) filed on 19.09.2017 for the period from April-2017 to June-2017 submitted by the taxpayer before me, I find that amount of Rs. 12,14,578/- appears to be correctly reported as CENVAT credit towards payment of service tax paid by them under RCM. I find that section 140(1) of the CGST allows the CENVAT Credit of eligible duties carried forward in the return relating to the period prior to implementation of GST. For reference purpose the same is reproduced as under:-

**Section 140 (1).** *A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [within such time and] in such manner as may be prescribed:*

*Provided that the registered person shall not be allowed to take credit in the following circumstances, namely :—*

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or*
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government*

29.2.3. On referring to the above provisions, it is evident the Cenvat credit of eligible duties taken under in returns (ER-1/ST-3) under existing law is entitled to be taken in electronic credit ledger. I find that the disputed ITC is **pertains to payment of service tax of Rs. 12,14,578/-** which was paid under reverse charge basis and the said amount was taken as CENVAT credit in ST-3 returns at the material time, therefore, as per provision of Section 140(1) of the CGST Act, 2017, the said ITC amount is eligible for ITC through TRAN-1.

29.3. As regards **(Sr. No. 3) Excess balance of Capital Goods**, I find that the show cause notice alleges that the taxpayer had transferred excess credit of Rs. 73,729/-

through TRAN -1 towards a Capital Goods involved total credit of Rs. 1,47,457/- which supposed to be availed 50% in a given financial year and remaining 50% in subsequent year as per provisions of existing law. I find that a Bill of Entry No. 9963398 dated 09.05.2017 related to capital Goods involving credit of Rs. 1,47,457/- which have been considered for transferred through TRAN-1.

29.3.1. To better understanding the issue, it would be appropriated to reproduce the relevant provision here first:-

**Section 4(2)(a) of the Cenvat Credit Rules, 2004,**

*" (2)(a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service [or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory, [or in the premises of the job worker, in case capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be]] at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year:"*

On perusing the above provisions, it appears that the above provision is restricted to eligibility of credit of capital goods for an amount upto 50% of total available credit at any point of time in a given financial year.

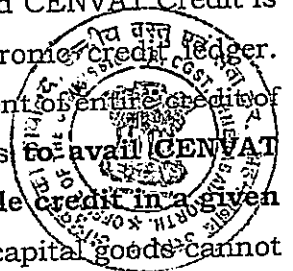
**Section 140 (2) of the CGST Act, 2017.**

*"(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day [within such time and]92 in such manner as may be prescribed:*

*Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.*

*Explanation. — For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law."*

29.3.2. Looking to the above, it is evident that the unavailed CENVAT Credit is refer to the amount of credit which remained for taking credit after subtracting the amount of credit already availed under the existing law and the said unavailed CENVAT Credit is appears to be entitled under transitional credit for ITC in electronic credit ledger. Whereas the facts of the case in my hand are related to non availment of entire credit of capital goods under the existing law and the existing law permits to avail CENVAT credit of capital goods for an amount upto 50% of total available credit in a given financial year. In such a situation, the entire amount of credit of capital goods cannot



be counted as unavailed Cenvat credit and the said taxpayer is entitled to take upto 50% credit of the Capital Goods in his electronic credit ledger. Therefore, the credit of Rs. 73,729/- not eligible for carry forward in GST through TRAN -1 as ITC hence the said credit amount is required to recovered from the taxpayer.

**29.4.** As regards **(Sr. No. 4) RCM payment not reported in ST-3**, I find the allegation made in the show cause notice that the credit of Rs. 4,46,927/- in respect of payment of service tax under RCM has been transferred through TRAN-1 without taking into ST-3 returns. Further, it was also alleged that the ITC towards payment of service tax made RCM was required to be claimed based on ST-3 Returns in terms of provisions of Section 140(1) of the CGST Act, 2017 as elaborated here in above paras. Further, as per clarification issued by CBIC Circular No. 207/5/2017-Service Tax dated 28<sup>th</sup> Sept, 2017, a taxpayer was eligible to transitional credit of service tax paid under RCM based on the ST-3 returns filed by them.

**29.4.1.** On the contrary, I find that the taxpayer had submitted that the credit was not pertains to payment of service tax which requires to be made under RCM. It was related to service tax paid on forward charge basis but the invoices have been accounted after 1st July 2017 and submitted copies of invoices and the transactional ITC availed in TRAN-1 pertains to Section 140(5) of the CGST Act, 2017.

**29.4.2.** Now, on-going through the taxpayer's submission and scrutiny of the invoices, I find that out of the total amount ITC of Rs. 4,46,927/-, the nature of service for amounting to Rs. 3,58,392/- appears in relation to House Keeping Service, Man Power Recruitment Service, Labour Charges, Security Charges and the remaining amount ITC of Rs. 88,535/- pertains to other taxable services wherein invoices showing payment of service tax payable under forward charges. For easy of reference, the details of service providers are as under :-

Sr. No.	Nam of the Service Providers	STC No.	Nature of Service	Amount of Tax
1	Sanjay Maintenance Service Pvt. Ltd.	AAFCS4166HST001	House Keeping Service	31,828/-
2	Allied Resourse Management Services India Pvt. Ltd	AACCR90890DST001	Manpower recruitment agency Service	2,22,325/-
7	Adecco India Pvt. Ltd.	AABCG3636QST002	Manpower recruitment agency Service	76,552/-
8	GAS security Solution India Private Limited	AAACG1625QST002	Security	27,687/-
9	Various Service providers wherein service tax payable under forward charge	Various Service providers	C & F Agenrt, Port/Air Logistic Service etc.	88,535/-

29.4.3. I find that as per Notification No. 30/2012-ST dated 20.06.2012, as amended, para (1)(A)(v) the taxable services provided or agreed to be provided in relation to supply of manpower for any purpose or security services by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory, the service tax is liable to be paid 100% by the recipient of service. it is evident that if the taxable service in respect of supply of manpower or security service is provided by any individual, HUF or partnership firm to a body corporate, then 100% of service tax is requires to be paid by the recipient of service (body corporate) under the reverse charge basis but if the service provider is business entity registered as body corporate then RCM is not applicable and the service tax is required to be paid under forward charges by the service providers itself.

29.4.4. Coming to the submission of the said taxpayer, I find that they have argued that the RCM payment of service tax is not applicable to them and submitted the invoices of the suppliers. on going the documents or invoices submitted by the said taxpayer as detailed in above table, I find the descriptions of services as House Keeping Service, Man Power Recruitment Service, Labour Charges, Security Charges however the service providers were private limited or limited company. The reply of the said taxpayer appears to be tenable as being body corporate entity, the service providers were liable to be discharged service tax on forward charge basis. For easy of reference the sample invoices is reproduced here under :-

No.	Particulars	Qty	Rate	Amount
1	Towards bill for Specialised Services rendered of housekeeping/cleaning. As closing the premises at above mentioned address for the month of June 17 and pay as per annexure Housekeeping Services			171727.00
				<b>Net Amount</b> 171727.00
				Service Charges @ 10% 17172.70
				23344.00
				Machinery Hire Charges 15100.00
				<b>SUB-TOTAL</b> 227343.70
				Service Tax @ 14% 31828.00
				Swachh Bharat Cess @ 0.5% 1137.00
				Krishi Kalyan Cess @ 0.5% 1137.00
				Round-Off 0.30
				<b>261446.00</b>
<p><b>Terms:</b> Payment of this bill should be made within 15 days from the date of bill amount at 24% p.a. will be charged if not paid within due date.</p> <p><b>For SANJAY MAINTENANCE SERVICES PVT LTD</b></p> <p>Authorized Signatory</p>				

*Handwritten notes on invoice:*  
 30/06/17  
 Cleaning Consumables used in the course of provision of services  
 House Keeping  
 T-456/5  
 11/2017

*Official stamps:*  
 PONGE, CGSI, INDIAN...  
 OFFICE OF THE...  
 Ahmedabad

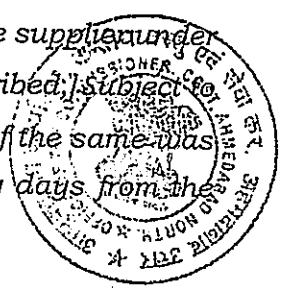
ALLIED RESOURCE MANAGEMENT SERVICES (INDIA) PVT. LTD.				
TAX INVOICE				
OPER STANDARD INDIA PVT. Ltd DC SANAND		No. : L/219 Contract No. :	Date : 28/06/2017	
		PAN No. : AACCR9080D Service Tax No. : AACCR9080DST001 E.C.C. No. :		
No.	Description	Rate of Month	Amount Rs. Pa.	
	MANPOWER SERVICES PROVIDED FOR THE MONTH OF JUN 2017 DATE 26/5/2017 TO 25/6/2017		820597	
	INVOICE AMOUNT 850978			
	TOTAL 850978			
	LESS CANTEEN 30981			
	TOTAL 820597			
	ADD L W F 552 X 2		1104	
	Service Tax @ 14.9%		821701	
	Watch Bharat Cess @ 0.5%		115038	
	TRISHI KALYAN @ 0.5%		4109	
			4109	
	SUB TOTAL		944956	
TOTAL RUPEES : NINE LAKH FORTY FOUR THOUSAND NINE HUNDRED AND FIFTY SIX ONLY			944956	
Payment is required by Cross Cheque within a week.				
Prepared by		Your's faithfully For Allied Resource Management Services (I) Pvt.Ltd.		
Checked by		Authorised Signatory		

Looking to the above, it appears that the service providers in respect of House Keeping Service, Man Power Recruitment Service, Labour Charges, Security Charges were body corporates and they have charged service tax in invoices issued to the said taxpayer as they were liable to pay the same under forward charge basis at the material time under the existing provisions of Finance Act, 1994 and the question of payment under RCM does not sustain on the said services received by the said taxpayer.

29.4.5. In view of the above, I find that entire amount ITC of Rs. 4,46,927/- which comes under payment of service tax by forward charges received by the said taxpayer and the invoices of such services has been taken into account after 1st July, 2017. The credit of which is transferred through TRAN-1 in the as per provisions of the Section 140(5) of the CGST Act, 2017. For ease of reference the provisions of the Section 140(5) of the CGST Act, 2017 is reproduce hereunder:-

Section 140(5) of the CGTS Act, 2017....

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the [existing law, within such time and in such manner as may be prescribed.] subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:



*Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:*

29.4.6. On perusing the above provisions, it is evident that the ITC through TRAN-1 is entitled towards the input or input service received on or after the implementation of GST but duty or tax has been under the provisions of existing law and taken into account by the taxpayer. I find that the case pending before me regards the ITC of Rs. 4,46,927/- where invoices issued prior to 30.06.2017 but taken into books of account in July, 2017 after implementation of GST. In view of above, the ITC of Rs. 4,46,927/- is eligible to the said taxpayer.

30. As regards **Revenue Para 05**, I find the allegation made in the SCN that the taxpayer had availed ITC of 1,62,073/- cross head availment of ITC (i.e. ITC of CGST and SGST availed in IGST head & ITC of IGST availed in CGST & SGST head). The provisions regarding levy and collections of tax is prescribes under Section 9 (1) of the CGST Act, 2017 and eligibility and conditions for taking input tax credit is prescribes under Section 16 of the CGST Act, 2017 and similar provisions of SGST/ Section 5 of the IGST Act, 2017 readwith Section 20 of the IGST Act, 2017: The relevant text are reproduced hereunder for ease of reference :-

**“Section 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.”**

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

**Section 5 of the IGST Act, 2017- Levy and Collection :- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Service Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:**

30.1. On combined reading of the above provisions, it transpires that the input tax charged under this is central goods and service tax and a registered person is entitled to take credit of central goods and services tax charged as input tax in CGST head only under CGST Act, 2017. Identical provisions are also legislated under Gujarat GST Act



of the state and as regards IGST, the levy and collection of IGST is prescribed under Section 5 of the IGST Act, 2017 and eligibility and conditions for taking input tax credit under CGST Act, 2017 is made applicable for IGST matter as per Section 20 of the IGST Act, 2017 and a registered person is entitled to avail credit of integrated goods and services tax charged as input tax in IGST.

30.2. In the era of self assessment, the taxpayer deserves to be well aware with the provisions of GST Rules and Regulations. Further, Section 49(5) of the CGST Act, 2017 has put some restriction on use of credit of IGST, CGST and SGST, for ease of reference, the same is reproduced as under:-

**Section 49. Payment of tax, interest, penalty and other amounts.—**

(1) to (4) .....

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

- (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
- (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
- (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax

[Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

- (d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax:

[Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

- (e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and
- (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

On perusal of the above, it appears that Section 49 (5) places some restriction and order towards payment of tax under head wise from input tax credit available in taxpayer's electronic credit ledger.

30.3. I find that the taxpayer in his submission dated 05.09.2023 has submitted that due to oversight this mistake was happened and agreed to reverse the said credit amount but later vide their submission dated 21.08.2023, they have argued that though they have availed wrong head but the said ITC were utilized for payment of outward liability only and this is a revenue natural hence there is no loss to government. At this stage, it would be appropriate to mention here that such a causal behaviour of taxpayer

is not acceptable for taking ITC and further, Section 155 of the CGST Act, 2017 specify the burden of proof of claims of eligible ITC under the Act shall lie on the taxpayer.

30.4. In view of above, the availment of ITC of 1,62,073/- in cross head (i.e. ITC of CGST and SGST availed in IGST head & ITC of IGST availed in CGST & SGST head) is not admissible to the taxpayer in terms of provisions of Section 16(1) readwith Section 49(5) of the CGST Act, 2017. The same would be treated as inadmissible ITC which is required to be recovered from the taxpayer.

31. As regards Revenue Para 06, I find the allegation made in the SCN that the taxpayer had availed ITC of 23,824/- on strength of invoices of supplier who haven't filed their GST Returns and it was observed that some taxpayers whose name shown in the GSTR-2A of the said taxpayer have not filed their GSTR-3B returns, thus it appeared that the suppliers had not deposited GST into Govt. account.

31.1. I find that Section 16(2)(c) of the CGST Act, 2017 stipulates one of the condition for availing ITC by the recipient of goods or services is that the amount of tax shown in the invoices should be deposited into the Government account by the supplier of such goods or services or both and the deposit of tax is recognised on filing of GSTR-3B only.

31.2. I find that the said taxpayer has submitted that the suppliers reflected in SCN had filed their GST returns for the tax period F.Y. 2017-18 to FY. 2019-20 and produced copy of status of returns downloaded from the portal for verification purpose which shown as filed. On-going through these copies as well as further verify the status of GSTR-3B of the suppliers for the corresponding period on GST portal, I find that the statue of GSTR-3B returns of the suppliers have shown as "filed" for the tax period from September-2022 to June 2023.

31.3. I observe that as per provisions of Section 39(10) of the CGST Act, 2017 the GSTR-3B returns for the tax period F.Y. 2022-23 & June-2023 would have been allowed to be filed by GSTN Portal to a registered taxpayer only once the returns for previous tax period have already been filed by such taxpayers. The relevant provisions of section 39(10) is reproduced as under:-

**Section 39(10):** *A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:*

On perusing the above provisions with the available records, it is evident that the GSTR-3B returns for the previous tax period F.Y. 2017-18 to FY. 2019-20 had been filed by the suppliers, therefore, there appears no merit of the case of inadmissibility of ITC to the said-taxpayer on ground of non-filing of GSTR-3B returns by the suppliers in this case.

Hence, I am of the view that the ITC of Rs. 23,824/- in this matter is admissible to the said taxpayer once the GSTR-3B returns of the suppliers had been filed as the details of the said ITC had already reflected in the GSTR-2A of the said taxpayer (recipient) and I do not find any other allegation except the non filing of GSTR-3B by the

suppliers which is also fulfilled on these counts. Accordingly, the demand is liable to be dropped.

**32.** As regard **Revenue Para 7 & Revenue Para 12**, I find the allegation made in show cause notice that the said tax payer had availed and utilized ITC of Rs. 5,92,169/- & 3,33,373/-, respectively, falls under **blocked credit** as per Section 17(5) of the CGST Act, 2017. Since issue in both the revenue paras are governed under the same provisions under the CGST Act, 2017 and the taxpayer have also submitted their defense reply combined in respect of both the revenue paras, hence I take up collectively to discuss the eligibility of ITC in respect of both the revenue paras.

**32.1.** I find the issues which needs to be decided are as under:-

(i) Whether the inputs or input services utilised in respect of construction of immovable property or work contract services for construction of immovable property (other than plant and machinery) has been capitalized in book of accounts or not ?

(ii) Whether the ITC in respect of such inputs or input services has been admissible ?

**32.2.** I find that in the instant case installation of CCTV cameras by M/s Continental Electricals; construction work done by M/s Siddhi construction; furniture & fixtures supplied by M/s Quality Furniture and Projects Pvt. Ltd. and Services provided by M/s Sky Air Cooler under works contract service has to be dismantled and individual parts are to be removed & transported;

**32.3.** I find that the ITC availed on strength of invoices for providing work contract service and the said construction carried out for immovable property other than plant and machinery. I observe that the works contract service received by the taxpayer is not meant for further supply of works contract service and for plant and machinery, hence, the ITC towards supply of works contract for construction of an immovable property is covered under block credit in term of provisions of Section 17(5)(c) of the CGST Act, 2017.

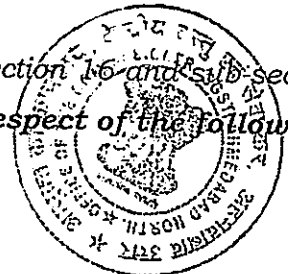
**32.4.** For ease of reference relevant provisions of Section 17 (5) of CGST Act, 2017 are reproduced hereunder:-

**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) to (b) -----*

*(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;

(e) to (i) -----;

**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.

32.5. From the above provisions of Section 17(5)(c) & (d) of CGST Act, 2017 readwith it's explanation, it is evident that the ITC in respect of input or input services utilized for construction of immovable property or work construct services utilized for construction of immovable property services is restricted to the extent of capitalization of such input or input service. It means that if the amount of such input or input services has been capitalized in the book of account, the ITC in respect of such capitalization amount is not admissible.

32.6. Now coming to taxpayer's submission, I find the below details from their submissions as under:-

Suppliers	Description of expense as per Ledger	Taken in books of account under head	IGST	CGST	SGST
<b>R.P. 07</b>					
Continental	Office Equipment (313008)	Capitalization in Balance Sheet	85,149	0	0
SKY Air Cooler	CWIP Utility Equipment (313042)	Capitalization in Balance Sheet	0	66,493/-	66,493/-
Quality Furniture	CWIPM- Fixed Assets (313010)	Capitalization in Balance Sheet	0	20,971/-	20,971/-
Siddhi Construction	Repair & Maintenance	Expense in P&L Account	0	1,66,046/-	1,66,046/-
<b>R.P. 12</b>					

KGN-ENGG/DEVMAX	CWIP- Fixed Assets (313010)	Capitalization in Balance Sheet	36,000/-	14,850/-	14,850/-
SIGMA AIRTECH/VENTILAIR	CWIP Utility Equipment (313042)	Capitalization in Balance Sheet	33,469/-	0	0
APEX	Consumables (706002)	Expense in P&L Account	0	10,868/-	10,868/-
JANTA	Store Spares	Expense in P&L Account	0	1,769/-	1,769/-
VARSA	Repair & Maintenance	Expense in P&L Account	0	1,04,565/-	1,04,565/-

Form the above details, it is evident that out of total amount involving ITC of Rs. 9,25,742/- as alleged in the notice capitalized in the book of account towards works contract or repair/rénovation of immovable property, amount involving of ITC of Rs. 5,66,496/- have been taken into expenses head in the Profit and Account by the said taxpayer and the same was not capitalized in book of account.

32.7. As per Explanation to clause (c) & (d) of the Section 17(2) of the CGST Act, 2017, the input tax credit in respect of goods or service used for construction of an immovable property (other than part or machinery) to extent of capitalization to the said immovable property, covered under block credit and the same is not admissible as ITC. However, In this case the amount in respect of ITC of Rs. 5,66,496/- has not been capitalized in the book of account by the said taxpayer. In support of this, I find that a CA Certificate dated 06.11.2023, issued by Smt. Hetal Kotak, CA, (Membership No. 145357) of M/s Kotak & Kotak, Ahmedabad, has also been produced before me by the said taxpayer wherein the details and information provided by the said taxpayer have been certified and nothing adverse have been noticed by them to the details mentioned in Statement-I based on the information extracted from the GL accounts provided by the said taxpayer company.

In view of above, I hold a view that an amount in respect of ITC of Rs. 5,66,496/- has been taken into expense head in P&L account and the same has not been capitalized in book of account, hence the same is not falls under Blocked Credit in terms of provisions of Section 17(5) of the CGST Act, 2017. Further, it would not be placed out to mention here that the expenses incurred for repair and maintenance of factory premises of the said taxpayer is also intended to be used for business purpose of the said taxpayer. Hence, the ITC of Rs. 5,66,496/- is admissible to them.

32.8. Further, as per the above details as well as CA Certificate dated 06.11.2023, I find the remaining amount of ITC of Rs. 3,59,246/- has been capitalized in book of accounts by the said taxpayer. Further, it appeared that the test of permanency in respect of amount involving ITC of Rs. 3,59,246/- capitalized in books of account by the said taxpayer has been established as the installed cameras along with its cables and other

attachments supplied by M/s Continental Electricals; construction work by M/s Siddhi construction; furniture & fixtures supplied by M/s Quality Furniture and Projects Pvt. Ltd. and Services provided by M/s Sky Air Cooler has been installed and fixed at the factory premises of the said taxpayer and the same can't be shifted from one place to another as such for further use.

32.9. It was observed that the taxpayer received MS Angle/Pipes/Channels and UPVC items for use to establish/lying facilities for cooling air/SS Ball Valve, Hose/ Fiber Sheet/Canteen Table, Granite Top & SS and availed input tax credit towards all such supplies which were used in construction of an immovable property (other than plant and machinery) further, It is observed that these items used or intended to be used for construction of an immovable property other plant and machinery and the ITC availed on strength of invoices for providing construction of an immovable property (other than plant or machinery) which has also been capitalized in book of account by the said taxpayer.

32.10. 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, for ease of reference, the same is reproduced as under:-

*'Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract'*

32.11. As can be seen from the words underlined above, a work contract under the GST Act is in relation to immovable property. The said work is amount to construct of immovable property. It may be noted that immovable property has not been defined under the CGST Act 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". I rely upon decision of the Hon'ble Apex Court in the case of Municipal Corporation of Greater Bombay & Ors V. Indian Oil Corporation Ltd. (199 suppl. CC 18).

32.12. 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 removable 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.

In view of the above, the ITC of Rs. 3,59,246/- in respect of revenue para 7 & 12 with extent to amount of capitalization of inputs or input services towards construction of immovable property is inadmissible to the said taxpayer and the same is required to be recovered from them. Since the ITC of Rs. 78,874/- has been reversed by the taxpayer, the same is required to be adjusted and appropriated against the demand.

33. As regards Revenue para 8, I find the allegation made in the show cause notice that the said taxpayer had availed ITC of 2,49,592/- towards bus services received for transportation of their employees. It was alleged that M/s Rao Tourist Service Pvt. Ltd. had provided Bus Services to the said taxpayer for transportation of their employees to the work place for the period 2017-18 & 2018-19.

33.1. The relevant provisions under Section 17(5)(b)(i) of the CGST Act, 2017 which restricted/blocked the input tax credit of GST paid on hiring of motor vehicles. For ease of reference, the relevant provisions is reproduced hereunder: -

Section 17(5)(b)(i) of CGST Act, 2017 before amendment

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

*“(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;”*

Provisions of Section 17(5)(b)(i) of CGST Act, 2017 after amendment applicable with effect from 01-Feb-2019 as substituted by section 9 of the CGST (Amendment) Act, 2018.

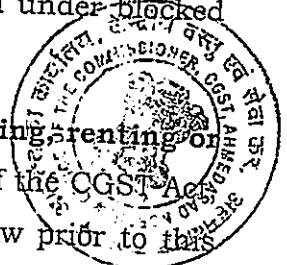
(b) [the following supply of goods or services or both—

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

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

On plain reading of the above amended provisions, it is evident that the ITC on renting or hiring of motor vehicles is inserted with effect from 01-02-2019 and prior to this amendment, the ITC on hiring of motor vehicles are not covered under blocked credit in terms of provisions of Section 17(5) of the CGST Act, 2017

33.2. I find that the taxpayer has contested that that the words “**leasing, renting or hiring of motor vehicles**” inserted in the clause (b) of Section 17(5) of the CGST Act, 2017 w.e.f. 01-Feb-2019 which makes it clear that the position of law prior to this



amendment was not applicable for hiring of motor vehicles. The clause (a) of Section 17(5) of the Act, 2017 is placed restriction of ITC for purchases of motor vehicles except specific uses and not for hire of motor vehicles prior to 01-02-2019.

33.3. I find that the SCN specifies that M/s. Rao Rourist Service Pvt. Ltd. have provided Bus Services to the said taxpayer for transportation of their employees to the work place and such services are being received by the taxpayer for furtherance of business. From the details elaborated in para 8.1 of the SCN, I find that the ITC taken on strength of the invoices issued prior to 01-02-2019, **Hence, I am of the view that the ITC of Rs. 2,49,592/- availed towards hiring of motor vehicles prior to 01-02-2019 is admissible to the said taxpayer.**

34. As regards **Revenue Para No. 9**, I find that the said taxpayer had availed ITC of 14,040/- towards Rent-a-cab Services during the period May-2018 and June-2018. Further, as detailed in foregoing paras the credit of Rent-a-cab service is undoubtedly covered under block credit in terms of provisions of Section 17(5) of the CGST Act, 2017 before amendment w.e.f. 01.02.2019.

34.1. I find that the ITC of Rent -a-cab is exclusively covered under block credit before amendment the provisions of Section 17(5)(b)(iii) of the CGST Act, 2017 w.e.f. 01-02-2019 and the same is not available for ITC, hence, **the said ITC** is required to be recovered from the taxpayer. Since the ITC of Rs. 14,040/- has already been reversed by the taxpayer alongwith interest of Rs. 10,966/-. the same is required to be adjusted and appropriated against the demand.

35. As regards **Revenue Para No. 10**, I find the allegation in the show cause notice that on reconciling the GSTR-2A vis-à-vis GSTR-3B Returns vis-à-vis GSTR-9, there was difference of Rs. 27,69,610/- (IGST) in ITC availed in GSTR-3B as comparison with GSTR-2A during the period July-2017 to March-2018 which resulted into excess availment of ITC.

35.1. I find that the relevant provisions are explained in para 10.3 to 10.07 above which I do not feel necessary to copied here again, however, on combined reading the aforesaid provisions, I observed that if the ITC taken by taxpayer as per GSTR-3B is more than the amount of credit auto populated in the GSTR-2A returns during the period from 9<sup>th</sup> Oct, 2019 to 31.03.2020 (during FY 2019-20) and if the said taxpayer have not got the same amended from his respective supplier, then the said taxpayer shall be denied differential ITC availed by him in his GSTR-3B Returns vis-à-vis corresponding GSTR-2A returns. The reason for not reflecting of details of inwards supply in GSTR-2A is that the supplier of the said goods have not filed GSTR-1 returns or have not mentioned these invoices in his GSTR-1 Returns or have mentioned wrong GSTIN No. (instead of GSTIN No. of the said taxpayer may have mentioned GSTIN No. of someone else) in their GSTR-1 Returns, or they have availed excess ITC in their GSTR-3B on their own. However, the said details were not got rectified either by the supplier of by the said taxpayer.



35.2. Further, Section 16(2)(c) & (d) of the CGST Act, have placed circumstances that the ITC shall be entitled to the credit of any input tax of any supply of goods or service subject to the payment of tax either in cash or through utilization of ITC and furnished return under Section 39 of the Act. Further, I find that Section 39 of the CGST Act, 2017 readwith Rule 61 of the CGST Rules, 2017 lays down to every registered person to file GSTR-3B returns, however the said taxpayer had failed to comply the above provision during the course of audit. Thereby the issue of excess availment of ITC of Rs. 27,69,610/- in terms of provision of Section 74(1) arisen.

35.3. Now, coming to the submission in this matter made by the taxpayer, they have argued that the supplier from whom they have taken input supply had filed FORM GSTR-1 as well as FORM GSTR-3B for the tax period but their supplier had declared the supply with wrong GSTIN in FORM GSTR-1. Further, they have relied upon the CBIC Circular No. 183/15/2022-GST dated 27.12.2022 wherein clarify the issue and they have fulfilled all conditions stipulated in the said circular.

35.4. On going through the contention made by the said taxpayer, I find that the said CBIC Circular has clarified the issue in detail. It would be appropriated to reproduce the relevant text of the said circular as under:-

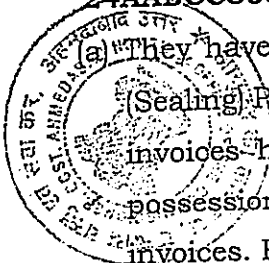
S. No.	Scenario	Clarification
d	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.	<p>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.</p> <p>In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</p>
<p><b>Para 4.</b> The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:</p> <p>i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;</p> <p>ii) that he has received the goods or services or both;</p> <p>iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.</p> <p>Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.</p> <p>4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:</p> <p>4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN.</p>		

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

35.5. I find that the taxpayer has made argument that they have received the input supply from the supplier and they are in possession of the valid invoices and they have also made the payment for the said supplies. Apart from these contentions, they have submitted supplier's certificates/declaration and CA Certificates and other details and main contents of which is reproduced hereunder:-

- (i) The supplier M/s SFC Solutions India (Sealing) Pvt. Ltd. (GSTIN **09AAACW0019N1Z8**) given concerned letter wherein certify that
- They have supplied goods/service, vide invoices detailed in annexure (92 invoices having IGST amount of Rs. 27,69,610/-), to the said taxpayer.
  - In respect of above invoices, they have filed FORM GSTR1 as well as GSTR-3B for the said tax period but could not report the said supply in FORM GSTR-1. However, they have declared that they have made supplies to the said taxpayer and the tax on such supplies has been paid by them in their return in FORM GSTR-3B for the tax period.
  - They have also declared that the GSTIN on which ITC was transferred has not claimed the ITC and attached certificates to this effect from the recipient.
- (ii) A CA Certificates dated 09.08.20223 issued by M/s T R Chandha & Co. LLP UDIN:- 23135556BUXAD6515 is also submitted by the said taxpayer wherein it is certify that M/s SFC Solutions India (Sealing) Pvt. Ltd. bearing GSTIN **09AAACW0019N1Z8**) has actually made supplies to M/s SFC Solution India (Sealing) Pvt. Ltd. bearing **24AAACW0019N1ZG** via tax invoices detailed in annexure 92 invoices having IGST amount of Rs. 27,69,610/-) but while filling GSTR-1 for the month of Aug-2017 indivertibly the invoices are declared with wrong GSTIN in the GSTR-1 but the tax on such supplies have been paid in the returns filed in FORM GSTR-3B.
- (iii) The recipient M/s SFC Solutions India (Sealing) Pvt. Ltd. (GSTIN **24AABCC3665P1ZD**) given concerned letter wherein certify that
- They have not received any inwards supply from M/s SFC Solutions India (Sealing) Pvt. Ltd. bearing GSTIN **09AAACW0019N1Z8**) towards invoices (92 invoices having IGST amount of Rs. 27,69,610/-) and they were not in possession of these invoices and they have not availed GST ITC of the said invoices. Further, they have declared that while filing GSTR-1 for the month of Aug-2017, M/s SFC Solution India (Sealing) Pvt. Ltd. has wrongly shown their GSTIN hence the ITC was reflected in their GSTR 2A.



On going through the above details/documents, I have no hesitation to consider the reply of the said taxpayer and accordingly allow the ITC of Rs. 27,69,610/- as per clarification given in CBIC Circular No. 183/15/2022-GST dated 27.12.2022.

**36. As regards Revenue Para No. 11:** I find the allegation made in the show cause notice that on reconciling the figures of ITC as per purchase register vis-à-vis GSTR-9, there was difference of Rs. 16,297/- which resultant to excess avilment of ITC and contravention to provisions of Section 16 of the CGST Act, 2017. I find that this is an arithmetical calculation-based difference in avilment of input tax credit as per Section 16 of the CGST Act, 2017. The same is required to recovered from the taxpayer under the provisions of Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 readwith Section 20 of the IGST Act, 2017. Further, I find that the taxpayer has accepted the objection and reversed the ITC of Rs. 13,226/- alongwith interest of Rs. 8,460/-. The same is required to be adjusted and appropriated against the demand.

**37. As regards Revenue Para No. 14,** I find the allegation in the show cause notice that the said taxpayer had not paid GST under RCM towards GTA Service in terms of Notification No. 13/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017.

**37.1.** I find that the Notification No. 13/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017 deals the issues/circumstance where a recipient of taxpayer service is liable to pay tax under reverse charge mechanism. The service rendered by a Goods Transport Service (GTA) is also covered under the scope of the said notification.

The relevant text of the said Notification reproduced as under:-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1	Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to- (a) any factory registered under or governed by the Factories Act, 1948(63 of 1948); or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person.	Goods Transport Agency (GTA)	(a) Any factory registered under or governed by the Factories Act, 1948(63 of 1948); or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person located in the taxable territory.

**37.2.** I find that the taxpayer is a private limited company hence covered under body corporate established by or under law, hence as per the provisions of the above notification, the taxpayer is required to discharged GST towards supply of service by a Goods Transport Agency (GTA) under RCM basis. However, during the course of audit,

on verifying the freight expenses incurred by the said taxpayer towards GTA service, a short payment of GST of Rs. 6,19,442/- under RCM towards GTA Service in term of provisions of Section 9(3) of the CGST Act, 2017 read with the provisions of Notification No. 13/2017-Central Tax dated 28.06.2017 was noticed. The said GST payment is required to be recovered from the taxpayer.

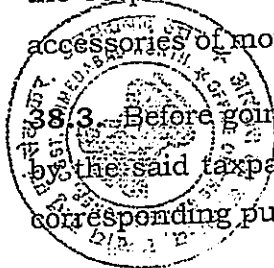
**37.3.** I find that the taxpayer had accepted the said liability and the tax liability of Rs. 6,19,441/- alongwith applicable interest of Rs. 5,68,474/- have been discharged in GSTR-3B filed for the month of May-2023. The same is required to be adjusted and appropriated against the liability.

**38.** As regards Revenue Para No. 15, I find the allegation made in the Show Cause Notice regards short payment of GST of Rs. 1,65,28,842/- owing to wrong classification of products by the said taxpayer. I find that during the course of audit, it was noticed that the said taxpayer had supplied products namely Body Seal Front, Glass Run Front/Rear, Inner Belt, Outer Belt, lift gate, Roof Ditch, Seal Hood etc. on payment of GST @ 28% under the HSN 87089900 in F.Y. 2018-19. However, in 2019-20, these products were cleared on payment of GST @ 18% under HSN 8480/84806000 to M/s Ford India Pvt. Ltd. and M/s MG Motors India Pvt. Ltd. Further, it was also observed that in 2017-18, the taxpayer had cleared their products without mentioning the description of products and on majority of products the GST was paid @ 28% under HSN 87089900 except 03 invoices cleared @ 18% under HSN 8480.

**38.1.** The said taxpayer had submitted in their defense reply that they have undertaken not only the supply of goods as per HSN 8708 (parts and accessories of the motor vehicles of headings 8701 to 8705) but also other parts and scraps falling under HSN 8480 (Moulding boxes for metal foundry, Mould bases, Moulding patterns, Moulds for metal (other than ingot moulds), metal carbides, glass, mineral, material, rubber or plastics) and produced tax invoices and relevant purchase orders. They have contested that the goods under disputes were nothing but Moulds or Tools and produced the copies of relevant invoices and corresponding Purchase Orders raising the issue of classification disputes.

**38.2.** On going through the documents and details produced by the said taxpayer, I find that the taxpayer have received some purchase orders from M/s Ford India Private Limited for "Tools" & from M/s. M. G. Motor private Ltd. specific for "Tools"/Moulds/Patterns/Injections & "Design & Development of Tools" also and the said POs were specialized for Tools and Moulds wherein rate also specified per quantity of the respective Tools which is very high as compared to the price of the parts and accessories of motor supplied by them.

**38.3.** Before going ahead, it would be better idea to look into the documents produced by the said taxpayer before me. The sample copy of an invoice of taxpayer as well as corresponding purchase order of the recipient of supply of goods pasted as under:



Full Cost Tooling Order Amendment		Form(s) Order/Amendment	Term(s) in Integral part of this	Issue Date
		Order/Amendment No. AS0756 / 02	Code G11G	2018-00-07
Supplier: METZELER AUTOMOTIVE PROFILES INDIA AV3 BOL INDUSTRIAL ESTATE 382110 SANAND-2 GJ INDIA		Buyer Name: ANKUR CHAUDHARY	3) Making Symbol: MEL-1 / 1	Page 1 of 1
10) Supplier Code / Legal Name: V3UED METZELER AUTOMOTIVE PROFILES INDIA PVT LTD		4) Order/Amendment No.: AS0756 / 02 5) Prototype order? prefix 'P' with 'WT' 6) Payment Terms: NON-STD PMT TERM	8) Invoice to Address: FORD INDIA PVT (ASSY) VENUE SURVEY NO. 1 VILLAGE NORTHKOTPURA SANAND TALUK GUJARAT INDIA 382170	
11) Buyer Name: ANKUR CHAUDHARY		7) Buyer to Approve Invoice 9) Part Number: E486 A283A66 AA 11) Supplier Part Number	10) Part Name: EXT ASY RR DR WOO GL CHAN FRT 12) Motorcraft Number	13) Estimated Tooling Completion Date: 2018-09-18 14) Engineering Level: F216P127A2783004 15) Loading Capacity (Approx): 3300 (WPKLV) 16) Lifetime of Tools
17) Dear Linked Part Numbers		19) Non-Standard Terms		
21) Remarks: Buyer's QTCs, any supplements and information on Buyer's locations are available through <a href="http://top.covaint.com/">http://top.covaint.com/</a> or from Buyer's Purchasing representative. In addition, any supplements, attachments or other documents noted on this PO are incorporated by reference.		22) Revised Description of Tooling: Y42076-03-001 MOLD-FOR INCREASED CAPACITY 22a) Accounting Information: CD502INDVT 3023 IN : S : BW : 23) Price Per Item: INR 3653470		
24) Price of this Order/Amendment: INR 2855420 25) Cumulative Price Prior to this Amendment: INR 3331820 26) Total Cumulative Price: INR 6186040		Buyer buys its own requirements and as their agent the requirements of the companies identified above. Ford India Private Limited, V-3, P. Col, Compound, 382110, Sanand, India.		

EU3569qd PURCHASE Nov 2008



TAX-INVOICE

PAGE 1 OF 1 EXTRA COPY

Cooper-Standard India Pvt. Ltd.  
 Plot No. AV-3 BOLD Industrial Estate, Sanand-II, NIMHEDAZAD  
 GIDRAX-300078

<b>Bill To:</b> FORD INDIA PRIVATE LIMITED VENUE SURVEY NO. 1 VILLAGE NORTHKOTPURA SANAND TALUK GUJARAT INDIA 382170	<b>Ship To:</b> FORD INDIA PRIVATE LIMITED VENUE SURVEY NO. 1 VILLAGE NORTHKOTPURA SANAND TALUK GUJARAT INDIA 382170	<b>INVOICE NO. 17621875 DATE 30/11/17</b> Range : V (V302001) Division : SANAND NEW Commission : 1% Applicable North New SITE NO. : 245AACH00102120 State Code : 24 Branch Name : Gujarat
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Mode of Dispatch: ROAD  
 Vehicle No. K  
 Transport G.R. No. 111

S.No	Description	Classification/Mark	Units	Qty	Price	Amount (INR)
1	Exc. Duty RTI DR MANDI			1	2855420.00	2855420.00
	Tax 2%					57108.40
	CGST					57108.40
	<b>TOTAL</b>					<b>3483636.80</b>
	<b>TOTAL AMOUNT VALUE</b>					<b>3483636.80</b>
	<b>TOTAL TAX (0.00%)</b>					<b>0.00</b>
	<b>Net Amt. Due</b>					<b>3483636.80</b>



**MG Motor India Pvt. Ltd.**  
 Registered Office: 1801-1803, 18th Floor, Tower-A, Signature Towers, South City I, Sector-28, Gurgaon, Haryana-122001  
 Factory Address: Chandrapura Industrial Estate, Hanoi, District Panchmahal, Gujarat - 389351  
 Phone: 02676-302000  
 PAN: AAKCM0110E  
 GSTIN for Haryana: 06AAKCM0110E12P  
 URL: www.mgmotor.co.in

**PURCHASE ORDER**

Vendor Code: 100000  
 Vendor Name: COOPER-STANDARD INDIA PVT. LTD.  
 Vendor Address: Plot No. AV-3, BOL Industrial Estate Behind-11, SANAND, AHMEDABAD - 380056  
 State: [24] Gujarat, India  
 CIN: PAN: AAACW001HN  
 Contact Person: Mr. ARVIND SHARMA  
 Billing Address: MG MOTOR INDIA PVT. LTD., Chandrapura Industrial Estate, Hanoi, District Panchmahal - 389351  
 State: [24] Gujarat, India  
 PAN: AAKCM0110E  
 GSTIN: 24AAKCM0110E12P

Purchase Order No. 460000020  
 PO Date: 03.08.2018  
 Validity: From 03.08.2018 To 30.09.2018

PR No.: Tooling And Development ID: For LOI dated 7th November 2017  
 Recipient: Pratik Solanki  
 Recipient's Email Id: pratiksolan@mgmotor.co.in  
 Buyer's Name: Ranank Chng  
 Buyer's Email Id: Ranank.Chng@mgmotor.co.in

Jr. No.	Code/Description HSN/SAC	Delivery Date	Quantity	UOM	Rate	Tax	Amount
1	70001234 For 23544122 / 23544123 Rubber Extrusion HSN : 84800000 For GLASS RUN PRT For CN202 Project	31.12.2018	1	NO	3,50,000.00	COST00% SGST06%	3,50,000.00
2	70001235 For 23544122 / 23544123 Rubber Extrusion HSN : 84800000 For GLASS RUN FRT For CN202 Project	31.12.2018	1	NO	1,00,000.00	COST00% SGST06%	1,00,000.00
3	70001236 For 23544122 / 23544123 Rubber Extrusion HSN : 84800000 For GLASS RUN FRT For CN202 Project	31.12.2018	1	NO	3,50,000.00	COST00% SGST06%	3,50,000.00
4	70001237 For 23544122 / 23544123 Rubber Extrusion HSN : 84800000 For GLASS RUN FRT For CN202 Project	31.12.2018	1	NO	1,00,000.00	COST00% SGST06%	1,00,000.00
5	70001238 For 23544122 / 23544123 Rubber Extrusion HSN : 84800000 For GLASS RUN FRT For CN202 Project	31.12.2018	1	NO	3,50,000.00	COST00% SGST06%	3,50,000.00
6	70001239 For 23544122 / 23544123 Rubber Extrusion HSN : 84800000 For GLASS RUN FRT For CN202 Project	31.12.2018	1	NO	1,00,000.00	COST00% SGST06%	1,00,000.00
7	70001240 For 23544122 / 23544123 Mould F.R.A.Pill HSN : 84800000 For GLASS RUN FRT For CN202 Project	31.12.2018	1	NO	31,29,300.00	COST00% SGST06%	31,29,300.00
8	70001241 For 23544122 / 23544123 Mould F.R.D.Pill HSN : 84800000 For GLASS RUN FRT For CN202 Project	31.12.2018	1	NO	31,29,300.00	COST00% SGST06%	31,29,300.00
9	70001242 For 23544122 / 23544123 C.T.F.Pill HSN : 84800000 For GLASS RUN FRT For CN202 Project	31.12.2018	1	NO	2,50,000.00	COST00% SGST06%	2,50,000.00
10	70001243 For 23544122 / 23544123 Moulding Tool HSN : 84800000 For GLASS RUN FRT For CN202 Project	31.12.2018	1	NO	4,00,000.00	COST00% SGST06%	4,00,000.00

**COOPER-STANDARD INDIA PVT. LTD.**  
 Division : SANAND  
 Commission : Ahmedabad North, GSTIN : 24AAKCM0110E12P  
 Email : CO24ind@sanand.com  
 Invoice No: 460000020  
 Date: 03/08/18

**TAX INVOICE** EXTRA COPY

Invoice No: 460000020  
 Date: 03/08/18

Sl. No.	Part No	Description of Goods	HSN	SAC	Qty	UOM	Unit Price	TA	Value
1	70001234	GLASS RUN FRT	8480	0000	1	NO	350000.00		350000.00
2	70001235	GLASS RUN FRT	8480	0000	1	NO	100000.00		100000.00
3	70001236	GLASS RUN FRT	8480	0000	1	NO	350000.00		350000.00
4	70001237	GLASS RUN FRT	8480	0000	1	NO	100000.00		100000.00
5	70001238	GLASS RUN FRT	8480	0000	1	NO	350000.00		350000.00
6	70001239	GLASS RUN FRT	8480	0000	1	NO	100000.00		100000.00
7	70001240	GLASS RUN FRT	8480	0000	1	NO	3129300.00		3129300.00
8	70001241	GLASS RUN FRT	8480	0000	1	NO	3129300.00		3129300.00
9	70001242	GLASS RUN FRT	8480	0000	1	NO	250000.00		250000.00
10	70001243	GLASS RUN FRT	8480	0000	1	NO	400000.00		400000.00
11	70001244	GLASS RUN FRT	8480	0000	1	NO	300000.00		300000.00
12	70001245	GLASS RUN FRT	8480	0000	1	NO	400000.00		400000.00

**Grand Total**

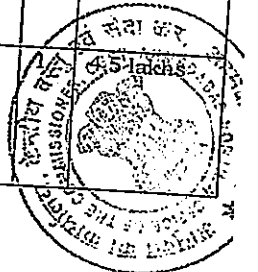
Total Amount: 31,29,300.00  
 Total Tax: 1,93,758.00  
 Grand Total: 33,23,058.00



Looking to the above, it appears that the taxpayer had received a purchase order specific for Tools/Moulds and Design & Development of Tools/Moulds with HSN code 84806000 wherein rate also specified per quantity of the respective Tools/Moulds/Patterns. Further, looking to the details of items in the tax invoices as per corresponding purchase orders, the rate of per quantity appears to be very high, therefore, the said argument of the taxpayer appears to be considerable.

38.4. I, further, find that the description of goods in tax invoices are mentioned as Outer Belt, Glass Run Front/Rear, Inner Belt, lift gate etc and on perusal of these details appears to be as part and accessories of motor vehicle as the same was observed by the audit party however on further corroboration of the description of goods as mentioned in tax invoices with their respective Purchase Orders, I find that the Purchase Orders were issued meant for supply of Tools/Moulds/Patterns/Dies and Design & Development of Tools with HSN code 8480 by both M/s Ford India Private Limited and M/s. M.G. Motor India Pvt. Ltd. For better understanding the factual positions of goods/items having under consideration, some illustrations of descriptions as mentioned in Purchase Orders with the corresponding entry in tax invoices are extracted as under: -

Name of Recipient	Details of Purchase Orders				Details of Purchase Orders				
	PO. No./date	Code/Description /HSN/SAC	Quantity	Rate	Invoice No./date	Part No.	Description	Quantity	Rate
Ford India Pvt. Ltd.	A56756/02 07.09.2015	Part Name:- Ext. Asy RR DR Wdogl Chan FRT Description of Tooling MOLD- For Increased Capacity	1	28,55,420/-	1721875/ 30.11.2017 PO A56756/02	-	Ext. Asy RR DR Wdogl Chan FRT	1	28,55,420/-
Ford India Pvt. Ltd.	B17834/00 dated 21.04.2016	PartName:- MLDG RF O/STOP Description of Tooling Cutting Machine Guide block modification	1	80,000/-	17621876/ 30.11.2017 PO B17834/00	-	MLDG RF O/STOP	1	80,000/-
Ford India Pvt. Ltd.	B80618/00 Dated 18.09.2018	Part Name- W/S BDY SD WDO Description of Tooling Change in extrusion profile of GRWS to address lip deformation an reduce filed warranty	1	84,00,000/-	19611410/ 11.10.2019 PO B80618/00 HSN code 8480	-	W/S BDY SD WDO	1	84,00,000/-
M.G. Motor India Pvt. Ltd.	460000074 8/ 03.07.2019	70001262 For 23592528/ 23592529 / 23592530 /2359 HSN : 84806000 For OUTER BELT- BRT For CN202 Project	1	30 lakhs	20601119 /31.01.2019 PO. 4600000748	7000126 2 HSN/SA C: 8480	Outer Belt Bright	1	30 lakhs
	460000074 9/ 03.07.2019	70001253 For 23546818/ 23546819 / 23546824 /2354 HSN : 84806000	1	4.5 lakhs		7000125 3 HSN/SA C: 8480	Outer Belt Black		



		For OUTER BELT-BLK For CN202 Project							
M.G. Motor India Pvt. Ltd.	460000002 9/ 03.05.2018	70001234 For 23544122/23544123 Rubber Extrusion HSN: 84806000 For GLASS RUN FRT For CN202 project	1	3.5 lakhs	1961507/ 05.09.2019 PO. 460000009	70001234 HSN/SCA: 84806000	Glass Run FRT	1	3.5 lakhs
		70001240 For 23544122/23544123 Moulds FR A-Pilla HSN: 84806000 For GLASS RUN FRT For CN202 project	1	31,29,380/-		70001240 HSN/SCA: 84806000	Glass Run FRT	1	31,29,380/-
		70001243 For 23544122/23544123 Notching Tool HSN: 84806000 For GLASS RUN FRT For CN202 project	1	4 lakhs		70001243 HSN/SCA: 84806000	GLASS RUN FRT	1	4 lakhs
		70001245 For 23544122/23544123 Final Inspection HSN: 84806000 For GLASS RUN FRT For CN202 project	1	2 lakhs		70001245 HSN/SCA: 84806000		1	2 lakhs
		70001263 For 23592528/23592529/23582530/2359 HSN: 84806000 For OUTER BELT-BRT For CN202 project	1	50 lakhs		70001263 HSN/SCA: 84806000	Outer Belt BRT	1	50 lakhs
		70001282 For 23543894/23543895 Corner Moulds HSN: 84806000 For Body Seal Front For CN202 project	10	3 lakhs		70001282 HSN/SCA: 84806000	Body Seal Front	10	3 lakhs
		70001289 For 23545827 Mould HSN: 84806000 For Liftgate For CN202 project	1	2.5 lakhs		70001289 HSN/SCA: 84806000	Lift Gate	1	2.5 lakhs
		70001295 For 23545826 Rubber Extrusion Die HSN: 84806000 For Seal Hood Rear For CN202 project	1	4 lakhs		70001295 HSN/SCA: 84806000	Seal Hood Rear	1	4 lakhs
		70001299 For 23545826 Roll Forming HSN: 84806000 For Roof Ditch For CN202 project	1	29,71,600/-		70001299 HSN/SCA: 84806000	Roof Ditch For CN202	1	29,71,600/-
		10000121 Development & Testing Cost for Glass Run SAC 998391 Design cost for the Glass Run for CN202SR	1	15 lakhs		10000121 HSN/SCA: 998391	Development & Testing Cost for Glass Run	1	15 lakhs





Looking to the above, it is evident that the description of goods mentioned in the tax invoices appears with respect to the PO whereas the PO had been issued for supply of specialized Tools and Moulds/Patterns/Injections/Die/ of Metal/Rubber/Plastic etc.

38.5. Further, I find that a remark also mentioned under the POs received from M/s M.G. Motor India Pvt. Ltd. as "The Parties shall enter Leave & License Agreement regarding the terms and conditions of delivery and maintenance of **Specialized Tools covered under this PO**" and in case of M/s Ford India Private Limited, the POs were specified for Tools only.

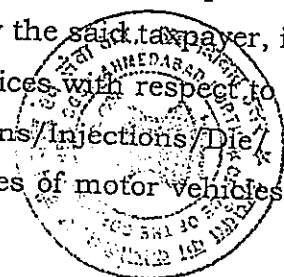
38.6. I do not find any corroborative evidence for classification of disputed goods as part and accessories of motor vehicles except the description mentioned in invoices. Further, I observe from the details of PO No. B80618/00 dated 18.09.2018 & B80619/00 dated 18.09.2018 submitted by the said taxpayer in case of M/s Ford India Private Limited in 2018-19 where is mentioned as Tool capacity wkly Avg /Max and for a single quantity having value of Rs. 84,00,000/- which appears very high from amount of a part and accessories of motor vehicles. This value also appears to be for Tools/Moulds and not for a parts and accessories of motor vehicles.

38.7. Further, I find that the description of goods mentioned in the HSNs 8480/84806000 are pertaining to classification of moulds of different materials/patterns. At this juncture, It becomes incumbent upon me to produce the description of goods in GTS Tariff against HSN 8480 which is as under:-

Description of goods mentioned in GST Tariff against HSN 8480 is as under:-

Chapter/ Heading/ Sub-heading/ Tariff Item	Description of goods	Unit	GST Rates			
			CGST	SGST	IGST	CESS
8480	<b>Moulding boxes for metal foundry, mould bases, moulding patterns, moulds for metal (other than ingot moulds) metal carbides, glass, mineral materials. Rubber or plastics</b>					
84801000	Moulding boxes for metal foundry	Kg.	9%	9%	18%	Nil
84802000	Mould bases	Kg.	9%	9%	18%	Nil
84803000	Moulding patterns	Kg.	9%	9%	18%	Nil
	Mould for metal and metal carbides					
84804100	Injection or compression types	Kg.	9%	9%	18%	Nil
84804900	Other	Kg.	9%	9%	18%	Nil
84805000	Moulds for glass	Kg.	9%	9%	18%	Nil
84806000	Moulds for mineral materials	Kg.	9%	9%	18%	Nil
	Moulds for rubber or plastics					
84807100	Injection or compression types	Kg.	9%	9%	18%	Nil
84807900	Other	Kg.	9%	9%	18%	Nil

Looking to above HSN, it appears that the HSN 8480 is specific in consequence of moulding of different materials/patterns/Injection or compression types purpose and further, looking to the POs as well as tax invoices submitted by the said taxpayer, it is evident that the description of goods mentioned in the tax invoices with respect to the POs received for specialized Tools and Moulds/Patterns/Injections/Die/ of Metal/Rubber/Plastic etc. and not for the parts and accessories of motor vehicles as alleged in the show cause notice.



In view of the above, I hold a view that the objection raised by audit party do not sustain regards the goods supplied by the said taxpayer to be considered as parts and accessories of motor vehicles and amount to attract GST duty @ 28% and from the documents submitted by the said taxpayer and I am inclined to hold a view that the goods under dispute are amply considered as tools/moulding of different materials/patterns/Injection or compression types etc. Accordingly, the demand of short payment of GST in this matter is liable to be dropped.

39. Now, I discuss that the applicability of interest under the provisions of Section 50 of the CGST Act, 2017 read with similar of SGST Act, 2017 and IGST Act, 2017 in respect of Revenue Paras where demand requires to be confirmed. The legal positions towards applicability of interest is as under:-

**Section 50 :- Interest on delayed 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.*

*[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]*

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) where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four percent as may be notified by the Government, on the recommendations of the Council, an interest shall be calculated, in such manner as may be prescribed.]*

The section 50 of the Act contains provisions relating to levy of interest on delayed payment of tax on his own. I find that in the instant case the taxpayer has either reversed ITC on later date or not paid/short paid the tax after due time hence, the liability of interest would automatic be arisen on part of the said taxpayer.

39. I relying upon the judgement of Hon'ble Jharkhand High Court in case of Mahadev-Construction reported at 2020 (36) G.S.T.L. 343 (Jhar.), wherein it was held that

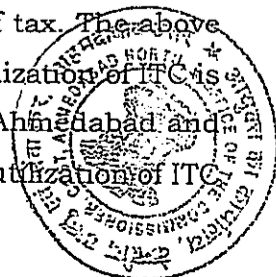
***“Liability of interest is automatic, the same is required to be adjudicated in event of an assessee disputes in computation or vary leviability of interest, by initiation of adjudication proceeding under section 73 or section 74 of the CGST Act.”***

The fact regards delay payment of tax are under dispute hence the interest on delayed payment of tax or non-payment of tax is squarely applicable in the present case and the same is required to be recovered from the said taxpayer under the provisions of Section 50(1)/50(3) of the CGST Act, 2017/Gujarat GST Act, 2017.

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

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

40.2. From the Information/data of the taxpayer verified during the course of audit, it is evident that the taxpayer have suppressed the short payment/ non-payment of GST and wrongly availed and utilized irregular ITC and it appeared that the taxpayer's liabilities are not properly discharged at the material time as discussed above in foregoing paras. The failure to properly discharge their Tax liability is utter disregard to the requirements of law and breach of trust deposed on them is outright act in defiance of law by way suppression, concealment & non-furnishing value of taxable supply; wrong availment and utilization of ITC with intent to evade payment of tax. The above said short payment/ non-payment of GST and wrong availment and utilization 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 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 correctly demanded from them under Section 74(1) of the CGST Act, 2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017 by invoking extended period of five years.

**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 willful-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.*

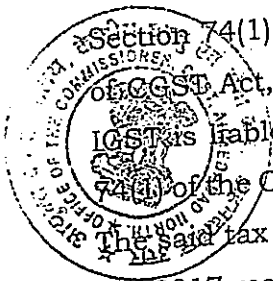
Explanation 2 to Section 74 of the CGST 2017 has defined suppression as under:

*"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"*

40.3. I rely upon 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

40.4. 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.

40.5. Further, it is evident that the taxpayer had not paid/short paid the tax/wrongly availed and utilised ITC within the prescribed due dates. These non-payment/short payment of Tax and wrong availment and utilization of ITC were not shown in their GSTR 3B returns. It, therefore, evident that there is a case of suppression of facts with intent to evade the payment of tax and wrong availment and utilization of ITC. It is evident that short paid/ not paid CGST/SGST and wrongly availed & utilized ITC of CGST/SGST is correctly to be recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act' 2017 along with interest as per provisions of Section 50 of CGST Act, 2017. Similarly, short paid IGST and wrongly availed and utilized ITC of IGST is liable to be demanded/ recovered from them under the provisions of Section 74(1) of the CGST Act' 2017 read with the provisions of Section 20 of the IGST Act,2017. The said tax payer is also liable to pay interest as per provisions of Section 50 of CGST Act,2017 read with the provisions of Section 20 of the IGST Act,2017.



40.6. By their various acts discussed herein above, **M/s Cooper Standard India Private Ltd.**, (Presently known as M/s SFC Solutions India (Sealing) Private Limited) had rendered themselves liable for penal action under Section 74 of the CGST Act' 2017 /the Gujarat GST Act, 2017 read with Section 20 of IGST Act,2017 for failure to file proper statutory GST returns duly discharging the proper tax liability, failure to pay tax, failure to self-assess the tax liability, wrong availment of ITC and suppression of facts and contravention of various provisions of the CGST Act'2017 and Rules made there under with intent to evade payment of Goods and Services Tax; thereby a penalty under Section 74 of the CGST Act' 2017 Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act,2017 is correctly invoked.

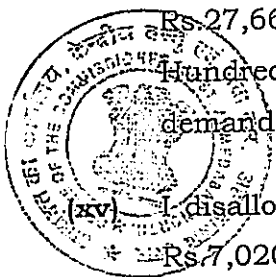
41. In view of the above discussion and findings, I pass the order as under:-

**ORDER**

- (i) Out of Total demand of ITC of Rs. 2,34,646/-, I disallow the ITC amounting to Rs. 22,858/- (Rupees Twenty-Two Thousand Eight Hundred and Fifty-Eight Only) under the provisions of Section 74(9) of CGST Act, 2017 and order to recover the same against the Revenue Para No.3; Since amount of Rs. 22,858/- already paid by them, the same is adjusted and appropriated against the confirmed demand; Further, I allow the ITC amounting to Rs. 2,11,788/- (Rs. Two Lakhs Eleven Thousand Seven Hundred and Eighty-Eight Only) and drop the demand accordingly to extent of eligible ITC against the Revenue **Para No. 3**.
- (ii) I hold the liability of interest on the confirm demand [as per Sr. No. (i) above] under Section 50(1) of CGST Act, 2017/Gujarat GST Act, 2017' An amount of Rs. 17,749/- had already been paid towards interest which is adjusted and appropriated against demand of interest.
- (iii) I impose penalty of Rs. 22,858/- (Rupees Twenty-Two Thousand Eight Hundred and Fifty-Eight Only) on the said taxpayer under Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 on the basis of confirm demand at Sr. No. (i) above.
- (iv) Out of Total demand of ITC of Rs. 17,98,069/-, I disallow the ITC amounting to Rs. 1,36,564/- (Rupees One Lakh Thirty-Six Thousand Five Hundred and Sixty-Four Only) under the provisions of Section 74(9) of CGST Act, 2017 and order to recover the same against the Revenue Para No.4; Since amount of Rs.62,835/- already paid by them, the same is adjusted and appropriated against the confirmed demand; Further, I allow the ITC amounting to Rs. 16,61,505/- (Rs. Sixteen Lakhs Sixty-One Thousand Five Hundred and Five Only) and drop the demand accordingly to extent of eligible ITC against the Revenue **Para No. 4**.
- (v) I hold the liability of interest on the confirmed demand of ITC [as per Sr. No. (iv) above] under the provisions of Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017;
- (vi) I impose penalty of Rs. 1,36,564/- (Rupees One Lakh Thirty-Six Thousand Five Hundred and Sixty-Four Only) upon the said taxpayer under the provisions of Section 74(9) of CGST Act, 2017 on the basis of confirmed demand at Sr. No. (iv) above.

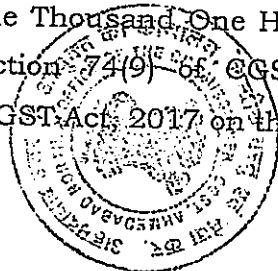


- (vii) I disallow the ITC totally amounting to Rs.1,62,073/- (CGST Rs.24,963/- + SGST Rs.24,963/- + IGST Rs.1,12,147/-) (Rupees One Lakh Sixty-Two Thousand and Seventy-three Only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 and order to recover the same against the Revenue Para No.5;
- (viii) I hold the liability of interest on the confirmed demand of ITC [as per Sr. No. (vii) above] under the provisions of Section 50(3) of CGST Act, 2017;
- (ix) I impose Penalty of Rs. 1,62,073/- (Rupees One Lakh Sixty-Two Thousand & Seventy-Three only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017, on the basis of confirmed demand at Sr. No. (vii) above.
- (x) I allow the ITC totally amounting to Rs.23,824/- (CGST Rs.6,278/- + SGST Rs.6,278/- + IGST Rs.11,268/-) (Rupees Twenty-Three Thousand Eight Hundred and Twenty-Four only) against the Revenue Para No.6 and drop the demand accordingly;
- (xi) Out of Total demand of ITC of Rs. Rs.5,92,169/-, I disallow the ITC amounting to Rs. 2,60,077/- (CGST Rs. 87,464/- + SGST Rs. 87,464/- + IGST Rs.85,149/-) (Rupees Two Lakhs Sixty Thousand and Seventy-Seven Only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 as per the Revenue Para No.7 and order to recover the same; Further, Since amount of Rs. 78,874/- (CGST Rs.39,437/- + SGST Rs.39,437/-) had already been paid by the said taxpayer, the same is adjusted and appropriated against the confirmed demand; Further, I allow the ITC amounting to Rs. 3,32,092/- (Rs. Three Lakhs Thirty-Two Thousand and Ninety-Two Only) and drop the demand accordingly to extent of eligible ITC against the Revenue **Para No. 7**.
- (xii) I hold liability of interest on the confirmed demand of ITC [as per Sr. No. (xi) above] under the provisions of Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;
- (xiii) I impose Penalty of Rs. 2,60,077/- (Rupees Two Lakhs Sixty Thousand and Seventy-Seven Only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the basis of confirmed demand at Sr. No. (xi) above.
- (xiv) I allow the ITC totally amounting to Rs.2,49,592/- (CGST Rs. 27,660/- + SGST Rs.27,660/- + IGST Rs.1,94,272/-) (Rupees Two Lakhs Forty-Nine Thousand Five Hundred and Ninety-Two Only) against the Revenue Para No.8 and drop the demand accordingly;
- (xv) I disallow the ITC totally amounting to Rs.14,040/- (CGST Rs.7,020/- + SGST Rs.7,020/-) (Rupees Fourteen Thousand and Forty Only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 as per the Revenue Para No.9 and order to recover the same; Since the taxpayer has paid Rs.7,020/- each



towards CGST & SGST dues, and the same is adjusted and appropriated against the confirmed demand;

- (xvi) I hold liability of interest on the confirmed demand of ITC [as per Sr. No. (xv) above] under the provisions of Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017; An amount of Rs.10,966/- had already been paid towards interest which is adjusted and appropriated against demand of interest.
- (xvii) I impose Rs.14,040/- (Rupees Fourteen Thousand & Forty only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 on the basis of confirmed demand at Sr. No. (xv) above;
- (xviii) I allow the ITC of IGST totally amounting to Rs.27,69,610/- (Rupees Twenty-Seven Lakhs Sixty-Nine Thousand Six Hundred and Ten only) against the Revenue Para No.10 and drop the demand accordingly;
- (xix) I disallow the ITC totally amounting to Rs.16,297/- (CGST Rs.7,964/- + SGST Rs.8,333/-) (Rupees Sixteen Thousand Two Hundred and Ninety-Seven only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 and order to recover the same as per Revenue Para No.11; Since the taxpayer has already paid amount of Rs.16,297/- against the confirmed demand, the same is adjusted and appropriated against the confirmed demand;
- (xx) I hold the liability of interest on the confirmed demand [as per Sr. No. (xix) above] under the provisions of Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017; Since an amount of Rs. 8,460/- had already been paid towards interest and the same is adjusted and appropriated against demand of interest.
- (xxi) I impose Penalty of Rs. 16,297/- (Rupees Sixteen Thousand Two Hundred and Ninety-Seven Only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 on the basis of confirmed demand at Sr. No. (xix) above;
- (xxii) Out of Total demand of ITC of Rs. 3,33,573/-, I disallow the ITC amounting to Rs. 99,169/- (CGST Rs. 14,850/- + SGST Rs.14,850/- IGST Rs.69,469/-) (Rupees Ninety-Nine Thousand One Hundred and Sixty-Nine Only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 as per the Revenue Para No.12 and order to recover the same; Further, I allow the ITC amounting to Rs. 2,34,404/- (Rs. Two Lakhs Thirty-Four Thousand Four Hundred and Four Only) and drop the demand accordingly to extent of eligible ITC against the Revenue **Para No. 12**
- (xxiii) I hold liability of interest on the confirmed demand of ITC [as per Sr. No. (xxii) above] under the provisions of Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;
- (xxiv) I impose Penalty of Rs. 99,169/- (Rupees Ninety-Nine Thousand One Hundred and Sixty-Nine Only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the basis of confirmed demand at Sr. No. (xxii) above.



(xxv) I confirm the demand of GST totally amounting to Rs.6,19,442/- (CGST Rs.51,322/- + SGST Rs.51,322/- IGST Rs.5,16,798) (Rupees Six Lakh Nineteen Thousand Four Hundred and Forty-Two Only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 as per Revenue Para 14 and order to recover the same; Since the taxpayer had already paid Rs. 6,19,442/-, the same is adjusted and appropriated against the confirmed demand;

(xxvi) I hold liability of interest on the confirmed demand of ITC [as per Sr. No. (xxv) above] under the provisions of Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017; Since the taxpayer has already paid amount of Rs. 5,68,474/- against the interest liability, the same is adjusted and appropriated against the Interest liability;

(xxvii) I impose Penalty of Rs.6,19,442/- (Rupees Six Lakh Nineteen Thousand Four Hundred and Forty-Two only) under the provisions of Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the basis of confirmed demand at Sr. No. (xxv) above.

(xxviii) I drop the demand of GST totally amounting to Rs. 1,65,28,842/- (CGST of Rs. 82,64,421/- + SGST of Rs. 82,64,421/-) (Rupees One Crore Sixty-Five Lakhs Sixty-Four Thousand Two Hundred & Twenty-One Only) as per Revenue Para No.15;

42. The show cause notice bearing F.No. GADT/TECH/SCN/GST/174/2022 dated 30.12.2022 is disposed off in above terms.



*(Signature)*  
10/11/2023

(Lokesh Damor)  
Joint Commissioner,  
Central Excise & CGST,  
Ahmedabad North.  
Date 10/11/2023

Place: Ahmedabad

F.No. GST/15-55/OA/2023  
To,  
**M/s Cooper Standard India Private Ltd.,**  
GSTIN No:- **24AAACW0019N1ZG**  
(Presently known as M/s SFC Solutions India (Sealing) Private Limited)  
having their principal place of business  
located at AV 3, BOL Industrial Estate,  
Sanand -2, Sanand, Distt.  
Ahmedabad Gujarat -380 058.

Copy to:-

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