



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. GST/15-18/OA/2023

DIN-20240364WT000000E3F9

आदेश की तारीख/Date of Order: - 07.03.2024

जारी करने की तारीख/Date of Issue :- 07.03.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 93/ADC/ 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), केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। 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।

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच 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 बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GEXCOM/AE/FU/1015/2021-A.E-I/Gr-I/98 dated 30.03.2023 issued to (1) M/s Rathod Enterprise (GSTIN-24DOBPR4069Q1Z9) and (2) Rathod Mahendra Bharatbhai, Room No. 212, Floor No 2/A, Shyamkunj Society, 269, Nava Naroda Road Nava Naroda, Ahmedabad, Gujarat-382330.





BRIEF FACTS OF THE CASE

M/s Rathod Enterprise (hereinafter referred to as "the taxpayer" or "the noticee" for the sake of brevity), having their declared principal place of business situated at Room No 212, Floor No 2/A, Shyamkunj Society, 269, Nava Naroda Road Nava Naroda, Ahmedabad, Gujarat, 382330 were holding GSTIN:24DOBPR4069Q1Z9 w.e.f. 16/06/2020 engaged in activity of wholesale/ retail business of "Waste, Parings and Scrap of Rubber (other than Hard Rubber) and Powders and Granules obtained therefrom (HSN-4004), Fuel Wood, In Logs, In Billets, In Twigs, In Faggots or In Similar Forms; Wood In Chips or Particles; Sawdust and Wood Waste and Scrap, Whether or Not Agglomerated In Logs, Briquettes, Pellets or Similar Forms (HSN-4401) Waste and Scrap of Precious Metal or of Metal Clad with Precious Metal; Other Waste and Scrap Containing Precious Metal or Precious Metal Compounds, Of a Kind Used Principally for the recovery of Precious Metal - Ash Containing Precious Metal or Precious Metal Compounds (HSN-71123000)" under the jurisdiction of Range-III, Division-I, Ahmedabad-North Commissionerate, Gujarat. The said taxpayer was registered as a Proprietorship concern and Mr. Rathod Mahendra Bharatbhai its Proprietor. The said GST registration has been cancelled Suo-moto (effective from 04/08/2021) by the Tax Authority.

2. INTELLIGENCE INPUT RECEIVED REGARDING GOODS AND SERVICES TAX (GST) EVASION BY WAY OF AVAILMENT/ PASSING ON/ UTILIZATION OF FAKE INPUT TAX CREDIT (ITC):

WHEREAS intelligence information No. CIU/VZ/39/2021 issued vide letter F. No. IV/16-02/V/DAC/19-20 dated 03.06.2021 issued by the Principal Chief Commissioner, CGST & CX, Vadodara Zone under which it was communicated that multiple number of taxpayers have been registered using single mobile number, email address or bank account. The pattern of data analysis and research have led to strong apprehension that these registrations have been done by using the fake addresses, electricity bills, telephone bills or using identities of other persons. On the basis of data obtained from Business Intelligence and Fraud Analytics (BIFA) platform, a list of such taxpayers was shortlisted and supplied to various Commissionerate's for further verification and necessary action.

3. ACTION TAKEN ON THE INTELLIGENCE INPUT:

3.1 Acting on the above intelligence input, visit to the registered principal place of business of M/s Rathod Enterprise, situated at Room No 212, Floor No 2/A, Shyamkunj Society, 269, Nava Naroda Road Nava Naroda, Ahmedabad, Gujarat, 382330 under proper Authorisation in FORM INS-01 were made on 11/06/2021 under the provisions of Section 67(1) of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act, 2017" read with similar provisions under the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as "the GSGST Act, 2017"). During the course of inspection proceedings, it revealed that Shyam Kunj Society was exist but no "Room No 212, Floor No 2/A" was there in Society. Therefore, neither the address declared by M/s Rathod Enterprise in GST registration, was found in existence nor the proprietor of the firm namely Mr. Rathod Mahendra Bharatbhai was found known. Further, Mr. Rathod Mahendra Bharatbhai was contacted on mobile no. 9408514671 registered under GST Registration, however, the said mobile number found not reachable.

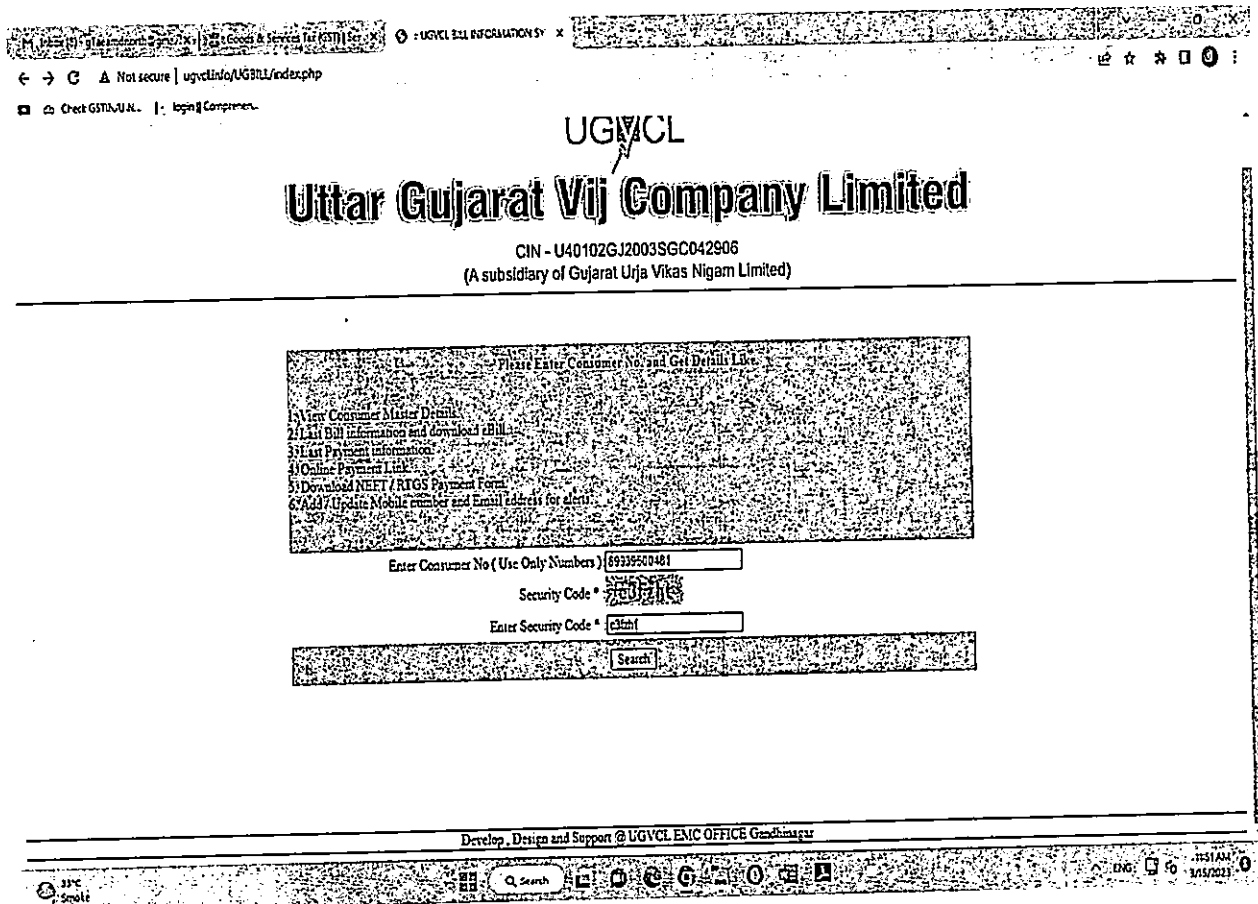


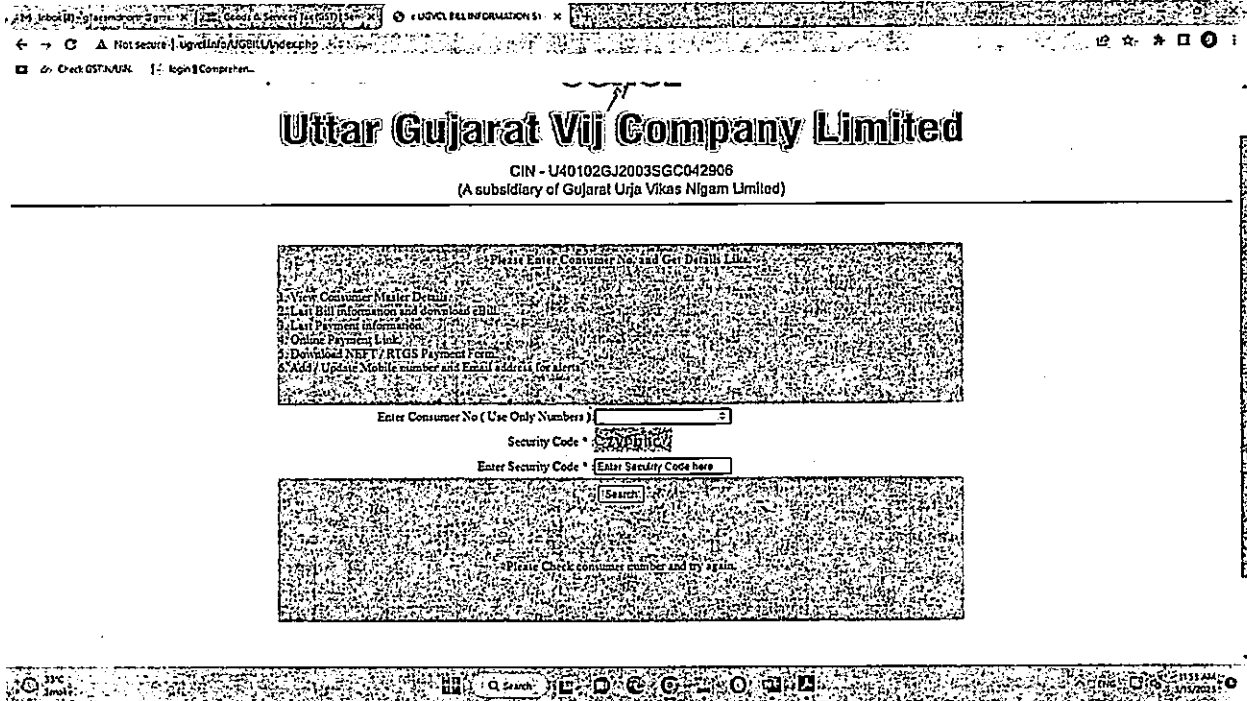
4. PERIOD COVERED BY THE PRESENT INVESTIGATION:

As stated *supra*, **M/s Rathod Enterprise** had obtained GST Registration on 16/06/2020 and the said GSTIN (24DOBPR4069Q1Z9) was cancelled by the Tax Authority **suo-moto** effective from 04/08/2021. Before cancellation, **M/s Rathod Enterprise** had furnished details of purported outward supplies in FORM GSTR-1 for the period from June-2020 to June-2021 under section 37 of the Act read with rule 59 of the Rules and furnished returns in FORM GSTR-3B under section 39 of the Act read with rule 61 of the Rules for the period from June-2020 to June-2021. Further, GSTR-2A in respect of **M/s Rathod Enterprise** (GSTIN: 24DOBPR4069Q1Z9) are available on GSTN Portal for the period from Nov-2020 to Jan-2021. Thus, in view of the above, the period of the present investigation against **M/s Rathod Enterprise** has been taken as from June-2020 to June-2021.

5. EXAMINATION OF DOCUMENTS SUBMITTED AT THE TIME OF GST REGISTRATION:

5.1 Mr. Rathod Mahendra Bharatbhai had obtained registration in the name of M/s Rathod Enterprise at Room No 212, Floor No 2/A, Shyamkunj Society, 269, Nava Naroda Road Nava Naroda, Ahmedabad, Gujarat, 382330. A copy of UGVCL electricity bill dated 08.11.2019 on the name of Mr. Rathod Mahendra Bharatbhai (Consumer No. 89939500481) for the aforesaid premises was uploaded by the taxpayer on GSTIN Portal at the time of obtaining registration. On verifying Consumer No. 89939500481 at UGVCL website-<http://ugvcl.info/UGBILL/index.php>, result shown as "please check consumer number and try again".





From the above, it appeared that copy of electricity bill submitted by Mr. Rathod Mahendra Bharatbhai is a fake and fictitious document.

5.2 M/s Rathod Enterprise has declared the aforesaid premise as "owned" under registration details but the same was found a made-up address during inspection proceedings dated 11.06.2021.

Therefore, it appeared that the taxpayer had obtained GST registration with the culpable mindset on their part to defraud the Govt. Exchequer and that the firm was opened for the sole and limited purpose of passing fake and fraudulent ITC to secure monetary gains.

6. SCRUTINY OF THE DOCUMENTS AVAILABLE ON RECORD AND OUTCOME THEREOF

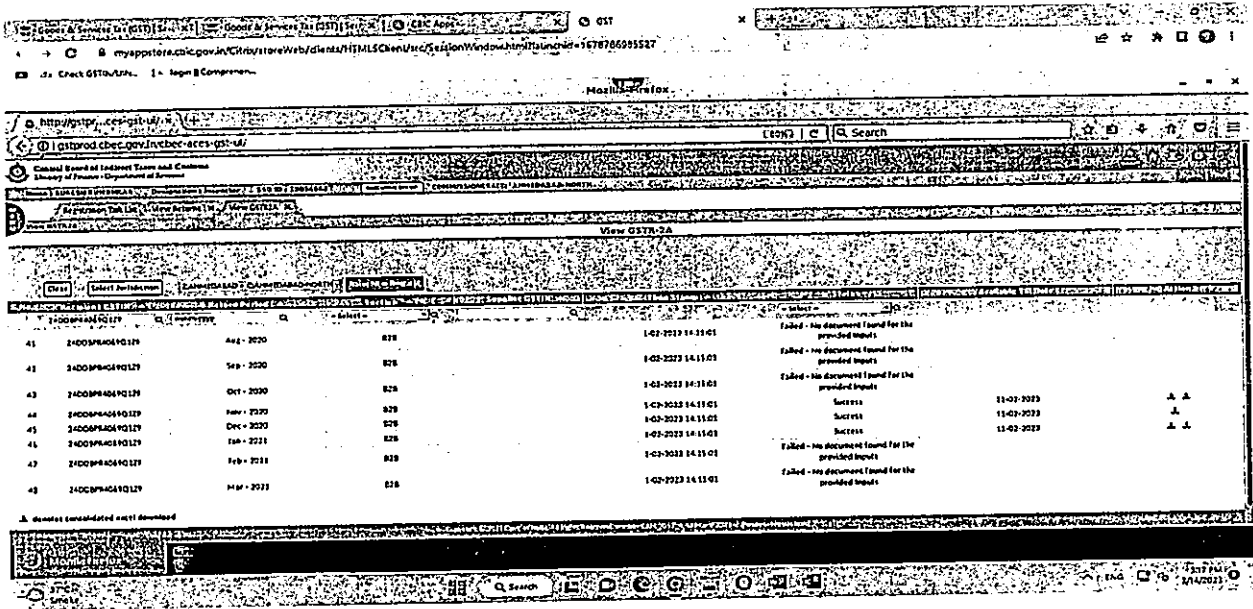
6.1 As discussed hereinabove, M/s Rathod Enterprise was found non-existent during the visit at the said premise under proper Authorisation in FORM INS-01, which clearly indicated that **M/s Rathod Enterprise** was a non-existent firm created for generating fake supply invoices for availing / utilizing and passing on input tax credit fraudulently. Thus, the transaction shown in the name of **M/s Rathod Enterprise** were merely paper transactions driven by *malafide* intention. However, during investigation, it was deemed appropriate to scrutinize such transactions in order to corroborate the findings as above.

6.2 Under the GST regime, the flow of ITC from a supplier firm to recipient firm is triggered with the raising of tax-invoices wherein the value of taxable supply of goods/services and the GST payable are reflected. The supplier firms are obligated to file a summary of the tax-invoices raised by them during a particular month in the form of GSTR-1/GSTR-1M returns. Based on such returns filed by the supplier firms, the GSTN Portal processes GSTR-2A return which reflects summary of all the tax-invoices issued by different supplier firms to a particular recipient firm. Subsequently, the GSTR-2A return for any recipient firm is auto-populated on the GSTN Portal.



6.3 GSTR-2A:

6.3.1 GSTR-2A in respect of **M/s Rathod Enterprise** (GSTIN: 24DOBPR4069Q1Z9) are available only for the period from November-2020 to Jan-2021 on the GSTN Portal.



Details of input tax credit availed by **M/s Rathod Enterprise** in GSTR-2A returns for the aforesaid period is shown in **Table-1** below:

Table-1

(All values in INR)

Month	ITC availed in GSTR-2A			Total ITC
	IGST	CGST	SGST	
Nov-20	0	6,633,286	6,633,286	13,266,572
Dec-20	0	27,699,775	27,699,775	55,399,550
Jan-21	0	7,501,110	7,501,110	15,002,220
Total	0	41,834,171	41,834,171	83,668,342

It is also observed that **M/s Rathod Enterprise** have received ITC from 02 taxpayers only i.e. **M/s Mercury Enterprise (24AQUPC8538K1ZA)** & **M/s M. K. Enterprise (24ERRPP5287G1Z3)** whose registrations have been cancelled suo-moto by the Tax officer. Further, as discussed supra, **M/s Rathod Enterprise** was not found in existence at its declared place of business during inspection proceedings, therefore, it appeared that ITC amounting to Rs. 8,36,68,342/- availed by **M/s Rathod Enterprise** in GSTR-2A returns is fake and ineligible.

6.4 GSTR-1M RETURNS:

6.4.1 M/s Rathod Enterprise (GSTIN: 24DOBPR4069Q1Z9) had obtained GST registration on 16/06/2020 and had furnished the details of purported outward supplies in FORM GSTR-1 for the period from June-2020 to June-2021 under section 37 of the Act read with rule 59 of the Rules before the registration was cancelled by the Tax Authority **suo-moto** effective from 04/08/2021. **M/s Rathod Enterprise** for the period from June-2020 to September-2020 & Feb-2021 to June-2021, had furnished the details of outward supplies as '0'. Details of purported outward supplies in FORM GSTR-1 furnished by **M/s Rathod Enterprise** for the aforesaid period is shown in **Table-2** below:

Table-2

Table showing details of purported outward supplies made as per GSTR-1M filed by *M/s Rathod Enterprise* for the aforesaid period is shown in Table-2 below:

(All values in INR)

Month	Taxable Value	Liability			Total GST
		IGST	CGST	SGST	
Apr-Jun-2020	0	0	0	0	0
Jul-Sep-2020	0	0	0	0	0
Oct-Dec-2020	299,812,612	0	27,881,842	27,881,842	55,763,684
Jan-21	83,513,964	0	7,501,110	7,501,110	15,002,220
Feb-21 to Jun-21	0	0	0	0	0
Total	383,326,576	0	35,382,952	35,382,952	70,765,904

6.4.2 WHEREAS from **Table-2** above, it appeared that during the said period, *M/s Rathod Enterprise* had shown **B2B outward supplies** of taxable value amounting to **Rs.38,33,26,576/-** involving CGST of **Rs. 3,53,82,952/-** and SGST of **Rs. 3,53,82,952/-**. As discussed *supra*, ITC of Rs. 8,36,68,342/- were availed by *M/s Rathod Enterprise* in its GSTR-2A returns from the 02 taxpayers whose registrations have already been cancelled suo-moto by the Tax Authority. Further, *M/s Rathod Enterprise* was not found in existence at its declared place of business under proper Authorisation in FORM INS-01, it appeared that the purported outward supply amounting to **Rs.38,33,26,576/-** made during the above period was only on paper and that by way of furnishing details of outward supplies in FORM GSTR-1, *M/s Rathod Enterprise* had passed on the ineligible/fake ITC amounting to **Rs. 7,07,65,904/-** to its recipients.

6.5 GSTR-3B RETURNS:

6.5.1 *M/s Rathod Enterprise* had furnished returns in FORM GSTR-3B for the period June-2020 to June-2021, declaring therein outward supplies, tax liabilities and its discharge. Scrutiny of the GSTR-3B Returns furnished by *M/s Rathod Enterprise* revealed that they had filed such returns declaring therein the outward supplies, tax liabilities and its discharge during the period June-2020 to June-2021. Summary of the said GSTR-3B Returns furnished by *M/s Rathod Enterprise* is shown in **Table-3** below:

Table-3

Table showing outward supplies effected and GST liability discharged as per GSTR-3B Returns filed by *M/s Rathod Enterprise*

All values in INR

Month	Taxable Value	Liability				Payment				
		IGST	CGST	SGST	Total GST	ITC			Cash	Total
						IGST	CGST	SGST		
Jun-20 to Oct-20	0	0	0	0	0	0	0	0	0	0
Nov-20	66,022,183	0	6,633,290	6,633,290	79,288,763	0	6,633,290	6,633,290	0	13,266,580
Dec-20	299,812,612	0	27,881,873	27,881,873	355,576,358	0	27,881,873	27,881,873	0	55,763,746
Jan-21	83,513,964	0	7,501,110	7,501,110	98,516,184	0	7,501,110	7,501,110	0	15,002,220
Feb-21 to Jun-21	0	0	0	0	0	0	0	0	0	0
Total	449,348,759	0	42,016,273	42,016,273	84,032,546	0	42,016,273	42,016,273	0	84,032,546

Month	ITC Availed in GSTR-3B			
	IGST	CGST	SGST	Total ITC
Jun-20 to Oct-20	0	0	0	0
Nov-20	0	6,633,385	6,633,385	13,266,770



Dec-20	0	27,881,890	27,881,890	55,763,780
Jan-21	0	7,501,099	7,501,099	15,002,198
Feb-21 to Jun-21	0	0	0	0
Total	0	42,016,374	42,016,374	84,032,748

6.5.2 Thus, from **Table-2 & 3** above, it appeared that during the period from June-2020 to June-2021, total value of purported outward supplies made by **M/s Rathod Enterprise** as per GSTR-1 were amounting to **Rs.38,33,26,576/-** involving **CGST of Rs. 3,53,82,952/-** and **SGST of Rs. 3,53,82,952/-**; whereas in GSTR-3B returns, outward supplies have been declared as taxable value amounting to **Rs.44,93,48,759/-** involving **CGST of Rs. 4,20,16,273/-** and **SGST of Rs. 4,20,16,273/-** during the aforesaid period. Further, the whole of the GST liability was discharged by **M/s Rathod Enterprise** by utilization of ITC as shown in **Table-4** below:

Table-4

Table showing manner of payment of GST liability by **M/s Rathod Enterprises** as per the GSTR-3B Return filed
Period: June-2020 to June-2021

All values in INR

Name /GSTIN of supplier	ITC available as per GSTR-2A	ITC availed as per GSTR-3B	Excess ITC availed	ITC utilised as per GSTR-3B	GST Payment in cash as per GSTR-3B
	(a)	(b)	(c) = (b) - (a)	(d)	(e)
M/s Rathod Enterprise(24DOBPR4069Q1Z9)	8,36,68,34 2	8,40,32,74 8	3,64,40 6	8,40,32,54 6	0

As mentioned *supra*, **M/s Rathod Enterprise** was not found in existence during the visit at the said premise under proper Authorisation in FORM INS-01. Therefore, it appeared that ITC availed and passed on by **M/s Rathod Enterprise** (GSTIN: 24DOBPR4069Q1Z9) in GSTR-2A & GSTR-3B returns, was ineligible and fake.

6.5.3 In view of the above, it appeared that the modus operandi adopted by M/s Rathod Enterprise (24DOBPR4069Q1Z9) was to avail ineligible ITC in their GSTR-2A & GSTR-3B Returns which was subsequently passed to their purported buyers. Therefore, the payment made exclusively through utilization of ITC is indicative of the fact that the sole purpose for creation of the fake entity namely **M/s Rathod Enterprise (24DOBPR4069Q1Z9)** was to corner the benefit of availment of ITC without there being any actual physical receipt or onward supply of goods and to pass on such fraudulent ITC to the buyers.

6.6. ANALYSIS OF DATA AVAILABLE ON THE E-WAY BILL PORTAL:

6.6.1 INWARD SUPPLIES:

Scrutiny of the data available on the E-way Bill Portal (<https://mis.ewaybillgst.gov.in/>) in respect of inward supplies effected by **M/s Rathod Enterprise** during the aforesaid period revealed that the taxpayer had received 406 inward e-way bills having assessable value Rs.26,00,55,254/-

involving CGST of Rs. 2,43,70,879/- and SGST of Rs. 2,43,70,879/- during the period from November-20 to January-2021.

6.6.2 OUTWARD SUPPLIES:

Scrutiny of the data available on the E-way Bill Portal (<https://mis.ewaybillgst.gov.in/>) in respect of outward supplies effected by **M/s Rathod Enterprise** for the aforesaid period has revealed that the taxpayer has generated 406 e-way bills during the period from November-20 to January-2021 having assessable value amounting to Rs. 26,00,55,254/- involving CGST of Rs. 2,43,70,879/- and SGST of Rs. 2,43,70,879/-.

As discussed *supra*, the principal place of business of **M/s Rathod Enterprise** was not found in existence during the visit at the said premise under proper Authorisation in FORM INS-01, therefore, it appeared that the above e-way bills were received and generated with intend to provide a proper cover to the fake invoices generated by **M/s Rathod Enterprise**.

6.7 In view of the discussions made in **Para 6.1 to 6.6** above, it appeared that:

(i) **M/s Rathod Enterprise** was a fake and non-existent firm which had indulged into availing and passing on of fake and fraudulent ITC without making any actual physical inward and outward supply of goods or services or both.

(ii) Scrutiny of the GSTR-2A & GSTR-3B returns revealed that **M/s Rathod Enterprise** had availed ITC from fake firms and therefore, it appeared that the invoices issued by them in respect of supply of goods or services as reported in the GSTR-1M filed for the aforesaid period appeared to be fake. By way of issuance of such fake invoices without making any physical/actual supply of goods or services or both, **M/s Rathod Enterprise** had acted as availer and issuer of fake ITC, also the GSTIN of **M/s Rathod Enterprise** was cancelled *suo-moto* by the Tax Authority effective from 04/08/2021.

Therefore, it appeared that **M/s Rathod Enterprise (24DOBPR4069Q1Z9)** was created purposefully and with the sole intention to avail illegitimate/fraudulent/in-admissible ITC to set off their GST liability in their GSTR-3B Returns and to pass on the same illegitimate/fraudulent/in-admissible ITC to other entities by issuing fake invoices without actual supply of corresponding goods or services.

7. QUANTIFICATION OF FAKE ITC AVAILED AND PASSED ON BY **M/s Rathod Enterprise (24DOBPR4069Q1Z9)**:

7.1.1 Quantification of fake ITC passed on by **M/s Rathod Enterprise** has been arrived at by placing reliance on the data available on the GSTN Portal and the e-way bill portal. **M/s Rathod Enterprise** had filed the GSTR-1M & GSTR-3B returns for the period from June-2020 to June-2021 wherein they had declared their outward supplies and issued invoices total amounting to **Rs.44,93,48,759/-** involving **CGST of Rs. 4,20,16,273/-** and **SGST of Rs. 4,20,16,273/-**. Since, **M/s Rathod Enterprise** was found to be fake and non-existent entity, it appeared that fake and fraudulent ITC of Central Tax of Rs. 4,20,16,273/- and State Tax of Rs. 4,20,16,273/- were passed on by them to its recipients. Further, from Table-1 & Table-3 by way of values taken at higher side, ITC availed by **M/s Rathod Enterprise** has been quantified as shown in **Table-5**.

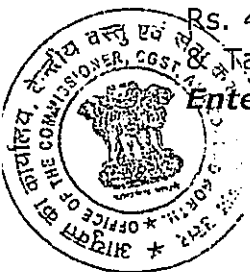


Table-5

(All values in INR)

Month	ITC availed by M/s Rathod Enterprise (Values taken at higher side from GSTR-3B & GSTR-2A for the corresponding months)			
	IGST	CGST	SGST	Total ITC
June-2020 to Oct-2020	0	0	0	0
Nov-20	0	6,633,385	6,633,385	13,266,770
Dec-20	0	27,881,890	27,881,890	55,763,780
Jan-21	0	7,501,110	7,501,110	15,002,220
Feb-21 to Jun-21	0	0	0	0
Total	0	42,016,385	42,016,385	84,032,770

7.1.2 Thus, the total GST liability of **M/s Rathod Enterprise** has been quantified as shown in Table-6 below:

Table-6

(All values in INR)

Table showing details of GST liability of M/s Rathod Enterprise					
Period	Taxable Value/(Assessable Value)	Tax involved			
		Integrated Tax	Central Tax	State Tax	Total Tax
June-2020 to June-2021 as per GSTR-3B & 2A – ineligible ITC availed		0	4,20,16,385	4,20,16,385	8,40,32,770
June-2020 to June-2021 as per GSTR-1 & 3B – ineligible ITC passed on	44,93,48,759	0	4,20,16,273	4,20,16,273	8,40,32,546
Total		0	8,40,32,658	8,40,32,658	16,80,65,316

7.1.3 Total fake ITC passed on by **M/s Rathod Enterprise** has been quantified as **Rs.8,40,32,546/-** which was further passed on to its recipients and fake ITC availed by **M/s Rathod Enterprise** in has been quantified as **Rs.8,40,32,770/-**.

8. EXAMINATION OF THE ITC AVAILED AND PASSED ON BY M/s Rathod Enterprise:

This claim is liable to be examined in light of provisions under Section 16(2) of the CGST Act, 2017, which reads as under:

“(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both. [Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services— (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise; (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

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

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

....."

HAS THE TAX CHARGED BEEN PAID TO THE GOVERNMENT?

Section 16(2)(a), 16(2)(b) and 16(2)(c) of the CGST Act, 2017:

Perusal of the provision under section 16 as above reveal that Section 16(2)(a), Section 16(2)(b) and Section 16(2)(c) of the CGST Act, 2017 clearly prescribe that the taxpayer:

- (i) should have **possession of a tax invoice** issued by a registered taxpayer under this Act,
- (ii) should have **received goods or services or both** along with respective tax invoices, and
- (iii) the **tax charged in respect of such supply should have been actually paid to the Government**, either in cash or through utilisation of input tax credit admissible in respect of the said supply made along with respective invoices.

As discussed hereinabove, the investigations have revealed that the **M/s Rathod Enterprise** had availed ITC fraudulently and had not paid any tax to the Government exchequer and they are non-existent/non-functional.

Therefore, ITC of **Rs.8,40,32,770/-** availed and **Rs.8,40,32,546/-** passed on by **M/s Rathod Enterprise** is irregular and fraudulent and in contravention of the provisions under Section 16(2)(a) and 16(2)(c) of the CGST Act, 2017 as the conditions prescribed therein have not been fulfilled. Thus, the amount of tax shown as paid on the invoices issued by **M/s Rathod Enterprise** has never been paid to the Government.

HAVE THEY RECEIVED THE GOODS OR SERVICES OR BOTH?

Sub-section (b) of Section 16(2) of the CGST Act, 2017: The sub-section (b) of Section 16(2) of the CGST Act, 2017 clearly prescribes that to avail ITC, the recipient must receive the goods or services or both but investigations appear to be indicated that no goods or services or both have been received by M/s Rathod Enterprise as substantiated by the following:

- M/s Rathod Enterprise has been found non-existent and non-operational at their declared principal place of business.
- The inward supply was found to be a fake.

Therefore, **Section 16(2)(a), 16(2)(b) and 16(2)(c)** of the CGST Act, 2017 were contravened by **M/s Rathod Enterprise** and its proprietor **Mr. Rathod Mahendra Bharatbhai** by availing irregular/inadmissible ITC of **Rs. 8,40,32,770/-** and passing on the said irregular/inadmissible ITC of **Rs.8,40,32,546/-** and therefore, appeared to be liable for penalty under the provisions of section 122 of CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of IGST Act, 2017.



9. LEGAL PROVISIONS APPLICABLE TO PRESENT CASE:

9.1 All the Sections of the CGST Act, 2017 are pari-materia to Gujarat GST Act, 2017 and Vice-Versa. Further, **Section 6** of Gujarat GST Act, 2017 provides for Cross empowerment of officers of Central Tax to act as Proper Officers against the taxpayers which are assigned to the State Tax Officers. It reads as under:

“6. (1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),

(a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.”

Thus, in the instant case of M/s Rathod Enterprise and its proprietor Mr. Rathod Mahendra Bharatbhai, by virtue of the above-mentioned Section 6 of the Gujarat State GST Act, the Central Tax Officers are authorized to be Proper Officers under the said Act.

9.2 Section 20 of the IGST Act, 2017 provides for application of provisions of CGST Act and SGST Act to the matters related to IGST, which reads as under:

“20. Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

(i) scope of supply;

(ii) composite supply and mixed supply;

(iii) time and value of supply;

(iv) input tax credit;

(v) registration;

(vi) tax invoice, credit and debit notes;

(vii) accounts and records;

(viii) returns, other than late fee;

(ix) payment of tax

(x) to (xv).....

(xvi) demands and recovery

(xvii) to (xx).....

(xxi) offences and penalties

(xxii) to (xxiv).....

(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

9.3 Eligibility and conditions for taking input tax credit is provided under Section 16 of the CGST Act, 2017, which reads as:

"16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation. —For the purposes of this clause, it shall be deemed that the registered person has received the goods 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;

(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:

....."

In view of the discussions in Para 9.3, it appeared that M/s Rathod Enterprise has contravened the provisions of Section 16 of the CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of IGST Act, 2017 as no goods or services or both were received and ITC was availed without having any legitimate inward supplies as per GSTR-2A.

9.4 Section 25 of the CGST Act, 2017 lays down the procedure for obtaining registration and it reads as:

"Section 25. Procedure for registration. -

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

M/s Rathod Enterprise was registered as Proprietorship firm by Mr. Rathod Mahendra Bharatbhai and had obtained the GST Registration on 16/06/2020 at Room No 212, Floor No 2/A, Shyamkunj Society, 269, Nava



Naroda Road Nava Naroda, Ahmedabad, Gujarat, 382330 and M/s Rathod Enterprise was found non-existent at the time of visit to the said premise under proper Authorization in FORM INS-01. Thus, it was clear that the GST registration of M/s Rathod Enterprise had been taken solely for the purpose of availing and passing on of fraudulent /illegitimate /irregular ITC. The GST registration of M/s Rathod Enterprise was cancelled *suo-moto* effective from 04/08/2021.

9.5 The manner and pattern of issuance of Tax Invoice as envisaged in **Section 31** of the CGST Act, 2017 and rules made thereunder is given below:

"Section 31(1) of the CGST Act, 2017 reads as:

*(1) A registered person **supplying taxable goods** shall, before or at the time of,*

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

(2) A registered person supplying taxable services shall, before or after the provisions of service but within a prescribed period, issue a tax invoices, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

9.6.1 Rule 46 of the CGST Rules, 2017 stipulates the particulars, such as name & GSTIN of the supplier and buyer, value of supply, quantity of supply etc., of the transaction that should be mentioned in an invoice.

"46. Tax invoice. - Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely, -

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as —|| and —/|| respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(e) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more;

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;

(g) Harmonised System of Nomenclature code for goods or services;

(h) description of goods or services;

- (i) quantity in case of goods and unit or Unique Quantity Code thereof;
- (j) total value of supply of goods or services or both;
- (k) taxable value of the supply of goods or services or both taking into account discount or abatement, if any;
- (l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorised representative:

Provided that the Board may, on the recommendations of the Council, by notification, specify-

- (i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention, for such period as may be specified in the said notification; and
- (ii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services, for such period as may be specified in the said notification:

Thus, **M/s Rathod Enterprise** appeared to have contravened the provisions of Section 31 (1) of the CGST Act, 2017 read with Rule 46 of the CGST Rules, 2017 and the similar provisions of the Gujarat State GST Act, 2017 and Gujarat State GST Rules, 2017 read with section 20 of the IGST Act, 2017 for having issued invoices without having made any supply of taxable goods or services or both.

9.7 Section 35 of CGST Act, 2017 obligates every taxable person to maintain proper books of accounts at their principal place of business and all other declared places of business. Section 35 of CGST Act, 2017 reads as:

Section 35: Maintaining Accounts and Other Records

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:



Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

9.7.1. Rule 56 of the CGST Rules, 2017 reads as:

“Rule 56 :Maintenance of accounts by registered persons. -

(1) Every registered person shall keep and maintain, in addition to the particulars mentioned in sub-section (1) of section 35, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.”

It appeared that M/s Rathod Enterprise appeared to have contravened the provisions of Section 35 of the CGST Act, 2017 read with Rule 56 of the CGST Rules, 2017 and the similar provisions of the SGST Act and Rules read with Section 20 of IGST Act, 2017, for not having kept and maintained a true and correct account of (a) inward and outward supply of goods or services or both; (b) stock of goods; (c) input tax credit availed; (d) output tax payable and paid as the registered principal place of business of M/s Rathod Enterprise has been found non-existent at the time of visit under proper Authorisation in FORM INS-01.

9.8 Section 37 of the CGST Act 2017 : Furnishing details of outward supplies:

(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

It appeared that M/s Rathod Enterprise appeared to have contravened the provisions of Section 37 of the CGST Act, 2017 by wrongly declaring their outward supplies without making any outward supplies.

9.9 In terms of Section 45 of the CGST Act, 2017, every tax payer whose registration is cancelled is required to file Final Return. Section 45 of the CGST Act, 2017 reads as:

Section 45. Final return. -

Every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

10.7.1. Rule 81 of the CGST Rules, 2017 reads as:

“Rule 81. Final Return -

Every registered person required to furnish a final return under section 45, shall furnish such return electronically in FORM GSTR-10 through the common

portal either directly or through a Facilitation Centre notified by the Commissioner.”

Thus, in view of the above provisions it appeared that *M/s Rathod Enterprise* have contravened the provisions of section 45 of the CGST Act, 2017 read with Rule 81 of the CGST Rules, 2017 in as much as they have failed to file their Final Return in FORM GSTR-10.

9.10 The CBIC vide Circular No.171/03/2022-GST dated 6th July, 2022 has issued clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices, wherein, it has been clarified that a number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as "fake invoices"), in order to enable the recipients of such invoices to avail and utilize input tax credit (hereinafter referred to as "ITC") fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), in respect of such transactions involving fake invoices. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder.

Sl. No	Issues	Clarification
1	In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act. Also, whether any penal action can be taken against registered person 'A' in such cases.	Since there is only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction. The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.
2	A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above-mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or	Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of

	<i>any other provisions of the CGST Act.</i>	<i>ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.</i>
3	<i>A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</i>	<i>In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act. However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</i>

2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

9.11 Penalty for certain offences as detailed under Section 122 of the CGST Act 2017:

***Section 122:Penalty for certain offences. -**

(1) Where a taxable person who-

- (i)
- (ii) **issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;**
- (iii)
- (iv)

- (v)
- (vi)
- (vii) **takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;**
- (viii)
- (ix)
- (x)
- (xi)
- (xii) **furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;**
- (xiii)
- (xiv)
- (xv)
- (xvi) **fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;**
- (xvii) **fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;**
- (xviii)
- (xix)
- (xx)

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

(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 utilised, — (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher; (b) for reason of fraud or any wilful 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.



(3) Any person who— (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

.....

(e)"

In view of the above discussions, *M/s Rathod Enterprise* had availed fake ITC in GSTR-3B returns without having inward supplies and issued invoices showing outward supplies in their GSTR-1 without underlying any supply of goods or services or both and had passed on the ITC to their supplier. Thus, in view of the clarification issued by the CBIC vide Circular No. 171/03/2022-GST dated 06th July-2022, it appeared that *M/s Rathod Enterprise* are liable for penalty for contravention of the provisions of clauses specified under section 122(1)(ii), section 122(1)(vii), section 122(1)(xii), section 122(1)(xvi) and section 122(1)(xvii) of the CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of IGST Act, 2017 by issuing invoices without supply of any goods or services or both; by way of availing and passing on inadmissible/ineligible ITC without actual supply of corresponding goods or services or both and failed to furnish information or documents during any proceedings under this Act.

10. OBSERVATIONS AND CONCLUSION OF INVESTIGATION:

10.1 Based on the evidences available on record, it appeared that;

- i. ***M/s RATHOD ENTERPRISE***, a Proprietary firm was registered at Room No 212, Floor No 2/A, Shyamkunj Society, 269, Nava Naroda Road Nava Naroda, Ahmedabad, Gujarat, 382330 under the provisions of CGST Act, 2017. Mr. Rathod Mahendra Bharatbhai was its Proprietor and no additional place of business was declared by them.
- ii. No inspection of documents could be carried out during the visit under proper Authorisation in FORM INS-01 at the principal place of business declared by ***M/s RATHOD ENTERPRISE***, as the said address was found a made-up address and untraceable as recorded in the Visit Note dated 11.06.2021.
- iii. ***M/s Rathod Enterprise*** appeared to have no inward supplies and this inference appeared to be consolidated by the fact that the inward supplies have been shown from 02 firms whose registration have already been cancelled suo-moto by the Tax Authority. The fact that *M/s Rathod Enterprise* failed to maintain and keep documents such as purchase invoice, purchase ledger, also points to that the business of *M/s Rathod Enterprise* was non-existent and were merely paper transactions.
- iv. As per GSTR-2A and GSTR-3B for the aforesaid period of ***M/s Rathod Enterprise*** appeared that they had availed fraudulent ITC of Rs.8,40,32,770/- and had passed on the fraudulent ITC of Rs.8,40,32,546/- for the said period. Consequently, the Input Tax Credit of Rs.8,40,32,546/- availed by the next level entity is irregular and is recoverable from that entity under the provisions of Section 74 of the CGST Act, 2017.
- v. As no goods or services or both were purchased by ***M/s Rathod Enterprise***, it appeared to have not made any supply of taxable goods or services or both but have just issued tax invoices without supply of the

corresponding goods or services or both and have thereby fraudulently passed on irregular ITC to its recipients.

In view of the above facts, it appeared that the *M/s Rathod Enterprise* have availed fraudulent ITC of Rs.8,40,32,770/- without actual supply of underlying goods or services or both with sole motive of passing on of the said fraudulent ITC and therefore, *M/s Rathod Enterprise* appeared to be liable for penal action for availing the fraudulent ITC of Rs.8,40,32,770/- under the provisions contained under section 122(1)(vii) of the Act. It also appeared that *M/s Rathod Enterprise* had passed on the said fraudulent ITC of Rs.8,40,32,546/- by issuing fake invoices without supply of corresponding goods or services or both to its recipients in their GSTR-1, in contravention of the provisions contained under section 122(1)(ii) of the Act.

10.2 The various evidences collected during investigation, as discussed hereinabove, appeared to clearly indicate that not only *M/s Rathod Enterprise* was a fake entity and the supplies shown to have been made by *M/s Rathod Enterprise* itself was illegal and the Input Tax Credit of Rs. 8,40,32,770/- availed and Rs. 8,40,32,546/- which was further passed on by them to its recipients appeared to be irregular.

11. In light of the facts discussed hereinabove and the material evidences available on records it is revealed that *M/s Rathod Enterprise* and its proprietor Mr. Rathod Mahendra Bharatbhai jointly and severally have contravened the following provisions of the CGST Act 2017 and IGST Act, 2017:

- (i) Section 16 of the CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017, in as much as they have availed irregular/fraudulent ITC of Rs.8,40,32,770/- without having any actual inward supply and without being in possession of any genuine taxable invoices;
- (ii) Section 31 of the CGST Act 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 read with Rule 46 of CGST Rules, 2017 and the similar provisions of the Gujarat State GST Rules, 2017 and in as much as they have issued invoices without making actual supply of corresponding goods or services or both;
- (iii) Section 35 of the CGST Act,2017 read with Rule 56 of CGST Rules, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017, in as much as they have failed to maintain true and correct account of inward and outward supply of goods or services, stock of goods, input tax credit availed, output tax paid etc.;
- (iv) Section 44 of the CGST Act 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 in as much as they failed to file their annual returns in Form GSTR-9;
- (v) Section 45 of the CGST Act 2017 read with Section 45 of the Gujarat State GST Act, 2017 read with Rule 81 of the CGST Rules, 2017 read with Rule 81 of the Gujarat State GST Rules, 2017 read with Section 20 of the IGST Act, 2017 in as much as they failed to file their Final Return in Form GSTR-10, after cancellation of their registration;

Section 122(1)(ii) of the CGST Act, 2017 read with similar provisions of the Gujarat State GST Act, 2017, in as much as they have issued any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;



- (vii) Section 122(1)(vii) of the CGST Act, 2017 and the similar provisions of the Gujarat GST Act, 2017, in as much as they have availed or utilised input tax credit without actual receipt of goods leading to evasion of tax under this Act;
- (viii) Section 122(1)(xvi) of the CGST Act, 2017 and the similar provisions of the Gujarat GST Act, 2017, in as much as they have failed to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

12.1 M/s Rathod Enterprise appeared to have availed ITC of Rs.8,40,32,770/- without having purchased any goods or services or both whatsoever, as evident from the facts that the ITC availed in GSTR-3B & GSTR-2A returns; and passed on irregular ITC of Rs.8,40,32,546/- through fake invoices without actual supply of underlying goods or services or both. Consequently, it appeared that the irregular ITC of Rs.8,40,32,770/- availed and Rs.8,40,32,546/- passed on by **M/s Rathod Enterprise** is in contravention of the various provisions of the CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with IGST Act, 2017, as discussed, *supra*. All the above acts, of omission and commission, constitute an offence of the nature as described under the provisions of section 122(1)(ii), section 122(i)(vii), section 122(1)(xii), section 122(1)(xvi) and section 122(1)(xvii) of the CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017, rendering themselves liable to penalty under section 122 of the CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017.

13. And whereas the above said penal liabilities have been worked out on the basis of reference received from CGST & CX, Vadodara Zone, verification carried out by this office and the documents/evidences available on record, the present notice relates exclusively to the scope mentioned here-in-above. Further, Form GST DRC-01A issued to the taxpayer has been returned undelivered.

14. Therefore, a Show Cause Notice bearing F.No. GEXCOM/AE/FU/1015/2021-A.E.-I/Gr-I/98 dated 30.03.2023 was issued to M/s Rathod Enterprise (GSTIN-24DOBPR4069Q1Z9), (Proprietor Mr. Rathod Mahendra Bharatbhai), having Principal Place of Business at Room No 212, Floor No 2/A, Shyamkunj Society, 269, Nava Naroda Road Nava Naroda, Ahmedabad, Gujarat, 382330 to show cause to the Additional/Joint Commissioner, CGST & CX, Ahmedabad North having office at 1st Floor, Custom House, Nr. All India Radio Navrangpura, Ahmedabad-380009 as to why:

- (i) penalty should not be imposed upon them for committing offences of taking / utilising Input Tax Credit (ITC) of Rs. 8,40,32,770/- (Central Tax of Rs. 4,20,16,385/- + State Tax of Rs. 4,20,16,385/-) without actual receipt of underlying goods or services or both, contained under Section 122(1)(vii) of the Central Goods and Services Tax Act, 2017 and similar provisions of the Gujarat State GST Act, 2017 read with section 20 of the IGST Act, 2017;
- (ii) penalty should not be imposed upon them for committing offences of passing on of the irregular ITC of Rs.8,40,32,546/- (Central Tax of Rs.4,20,16,273/- + State Tax of Rs.4,20,16,273/-) by issuing invoices without actual supply of underlying goods or services or both, contained under section 122(1)(ii) of the Central Goods and Services Tax Act, 2017

and similar provisions of the Gujarat State GST Act, 2017 read with section 20 of the IGST Act, 2017; and

- (iii) penalty should not be imposed upon them under Section 122 (1)(xii), Section 122(1)(xvi) and Section 122(1)(xvii) of the CGST Act, 2017 and the similar provisions of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017, for failure to furnish information correctly at the time of GST registration; failure to keep, maintain or retain books of accounts and other documents in accordance of the provisions of the CGST Act, 2017 and failure to furnishes information or documents during investigation proceedings under the CGST Act, 2017, respectively.

DEFENSE REPLY

15. In response to the show cause notice (SCN) issued on 30.03.2023, the Taxpayer was intimated to file their defense reply, if any, within 30 days from the receipt of the said SCN. However, despite the lapse of more than eleven months period, neither any defence submission is filed by the Taxpayer nor sought any extension of time to file defence reply. Further, the Taxpayer also never intimated/failed to make any plea for request for personal hearing before this office.

PERSONAL HEARING:

16. Personal haring in this case has been granted to the said taxpayer on 03.08.2023, 21.02.2024 & 04.03.2024 and letters were issued in this matter but the same were returned undelivered from the postal authority with remark "Not known". The letter of personal hearing has also been emailed to the taxpayer's email id provided in the GST portal. I have given enough opportunities to the said taxpayer to present their case in person but neither the Taxpayer or their authorised representative appeared for hearing on scheduled date nor have made any request for adjournment of hearing. The provision of Section 75(4) of the Central Goods & Service Tax Act, 2017 has been complied with, thus, I am left with no option but to decide the case as per available records as the show cause notice can not be kept undecided just because of not attending of hearing.

DISCUSSION AND FINDINGS

17. I have gone through the records of the case viz. show cause notice and the material placed on record. It is found that the Taxpayer has neither replied to the Show Cause Notice issued to them nor appeared for Personal Hearing fixed on various dates to represent their case. It is fact on record that sufficient and adequate opportunities were provided to the Taxpayer to represent their case effectively, but they chose to ignore the same. Under these circumstances, there is no other option except to conclude adjudication proceeding of the case relied upon the materials available and placed on record.

18. In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals, in several judgments/decision, have held that ex-parte decision will not amount to violation of principles of Natural Justice, when sufficient opportunities for personal hearing have been given for defending the case.



In support of the same, I rely upon the following judgments/orders as under:-

a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;

"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

(Emphasis Supplied)"

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, deciding on 13-9-1963, has observed that;

"Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944; the assessee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

(Emphasis supplied)"

(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.), has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

(Emphasis Supplied)"

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;

"Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

(Emphasis Supplied)"

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.), has observed as under:

“Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing.

- If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)”

(f) The Hon’ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), has observed as under;

“7. Our attention was also drawn to a recent decision of this Court in *A.K. Kripak v. Union of India - 1969 (2) SCC 340*, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of *audi alteram partem* and it was argued that an *ex parte* hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality.”

19. With reference to above, it is observed that all the honest efforts were made by the department in present proceedings of the impugned show cause notice, fair opportunities were given to the Taxpayer to file their defense submission as well as to produce documents in support to their claim. Further sufficient time was also given to the Taxpayer to file his reply. Apart from all, sufficient opportunities were also given to the Taxpayer to remain present in personal hearing and defend the case. I avoid the duplication of discussions since already mentioned above at relevant para of “Defense Submission” and “Personal Hearing”. Thus, all the criteria of principal of natural justice have been followed during the adjudicating process. Further, the Taxpayer had been put to warning that if they failed to appear on the next date of hearing then the matter would be decided *ex parte*. Therefore, the adjudication proceedings has taken due care that all principle of natural justice have been followed.

20. In the instant case, on going through the contents/facts narrated in the Show Cause Notice (SCN), it is found that investigation was conducted w.r.t. the taxable person involved in the case viz. M/s Rathod Enterprise having GSTIN-24DOBPR4069Q1Z9; that the said taxable person got the said GST registration for supply of goods i.e. “Waste, Parings and Scrap of Rubber (other than Hard Rubber) and Powders and Granules obtained therefrom (HSN-4004), Fuel Wood, In Logs, In Billets, In Twigs, In Faggots or In Similar Forms; Wood In Chips or Particles; Sawdust and Wood Waste and Scrap, Whether or Not Agglomerated In Logs, Briquettes, Pellets or Similar Forms (HSN-4401) Waste and Scrap of Precious Metal or of Metal Clad with Precious Metal; Other Waste and Scrap Containing Precious Metal or Precious Metal Compounds, Of a Kind Used Principally for the recovery of Precious Metal - Ash Containing Precious Metal or Precious Metal Compounds (HSN-123000)” and they have declared their principal place of business at Room No 202, Floor No 2/A, Shyamkunj Society, 269, Nava Naroda Road Nava Naroda, Ahmedabad, Gujarat, 382330.



21. I find that reference was received from the Principal Chief Commissioner, Central GST and Central Excise, Vadodara Zone vide letter F. No. IV/16-02/V-DAC/19-20 dated 03.06.2021 informing that multiple number of taxpayers have been registered using single mobile number, email address and bank account. It was further informed that the pattern of data analysis and research have led to strong apprehension that these registrations have been done by using fake addresses, electricity bills, telephone bills or using identities of other persons. Further, acting on the above intelligence input, an inspection under authorisation in Form GST INS-01 issued under Section 67(1) of the CGST Act, 2017 was carried out at the principal place of business of the Taxpayer on 11/06/2021. During the course of inspection proceedings, it revealed that Shyam Kunj Society exist but no "Room No 212, Floor No 2/A" was there in society. Therefore, neither the address declared by M/s Rathod Enterprise in GST registration, was found in existence nor the proprietor of the firm namely Mr. Rathod Mahendra Bharatbhai was found known. Further, Mr. Rathod Mahendra Bharatbhai was contacted on mobile no. 9408514671 registered under GST Registration, however, the said mobile number found not reachable.

22. As per the facts narrated in the SCN it has been alleged as under:-

(i) M/s Rathod Enterprise is a fake and non-existent firm which had indulged into availing and passing on of fake and fraudulent ITC without making any actual physical inward and outward supply of goods or services or both;

(ii) As per GST returns for the period from June-2020 to June-2021, the Taxpayer has issued fake/bogus invoices involving taxable value of Rs. 44,93,48,759/- and passed on input tax credit of Rs. 8,40,32,546/- (CGST Rs. 4,20,16,273/- + SGST Rs. 4,20,16,273/-) to their various recipients by issuing invoices, without actual supply of goods or services or both;

(iii) As per GSTR 3B for the period from June-2020 to July-2021, the Taxpayer has availed/utilized, irregular/illegitimate input tax credit of Rs. 8,40,32,770/- (CGST Rs. 4,20,16,385/- + SGST Rs. 4,20,16,385/-) without actual receipt of goods or service or both;

(iv) Thus allegations have been made in the SCN that the said Taxpayer is non-existent/non-operational firm and has availed/utilized irregular/illegitimate input tax credit without actual receipt of the goods or services or both and without having Tax invoice in their possession.

(v) Allegations have also been made in the SCN that they have issued fake/bogus invoices without actual supply of goods or services or both leads to pass on irregular/illegitimate input tax credit to their recipients.

(vi) Allegations have also been made in the SCN that the Taxpayer has failed to furnish information correctly at the time of GST registration; failed to maintain the financial books of account and other relevant documents as required under the provisions of the Act as well as has failed to furnish information or documents during investigation proceedings.

(vii) Therefore, in the SCN, initiation of penal action under the provisions of Section 122 of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017 has been proposed for availment/utilization of irregular/illegitimate ITC ; for issuance of fake/bogus invoices without actual supply of goods or services or both leads to pass on irregular/illegitimate input tax credit to their recipients ; for failure to furnish information correctly at the time of GST registration; failure to keep, maintain or retain books of accounts and other documents in accordance of

the provisions of the CGST Act, 2017 and failure to furnish information or documents during investigation proceedings under the CGST Act, 2017.

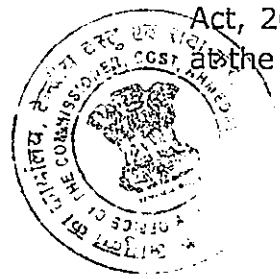
23. In view of foregoing paras, it is to be decided that whether the allegations framed in para 22 supra is correct and legally tenable or otherwise. Therefore, the issue involved in the instant matter has been taken up one by one.

23.1 In the SCN it has been alleged that M/s Rathod Enterprise is non-existent/non-operational firm and has obtained GST registration on the basis of fake/fabricated documents. In this regard, the Taxpayer has not confronted the said allegations in as much as they have neither submitted any written submission in their defense nor have attended the personal hearing granted to them following the principle of natural justice. Therefore, the matter has been observed through the available records pertaining to the instant case.

23.1.1 As per contents/facts narrated in the SCN, an inspection under authorization in Form GST INS-01 issued under Section 67(1) of the CGST Act, 2017 has been carried at the principal place of business of the taxpayer on 11.06.2021 wherein it has been revealed that neither the address declared by M/s Rathod Enterprise in GST registration, was found in existence nor the proprietor of the firm namely Mr. Rathod Mahendra Bharatbhai was found known. Therefore, it is revealed that no business activity on the name and style of M/s Rathod Enterprise was in existence at the said declared principal place of business. In the instant case, during adjudication proceedings letters of personal hearing were issued to the Taxpayer, but neither the proprietor of the firm nor their any representative appeared/represented the case before the adjudicating authority. Therefore, relying on the facts narrated in the SCN, observation made during the adjudication proceedings, non confrontation of the allegations and non attendance of the adjudication proceedings by the Taxpayer, it is found that M/s Rathod Enterprise is non existent/non-operational firm and has got GST registration on strength of false documents by violating the provisions of Section 25 of the CGST Act, 2017 read with the corresponding provisions of SGST Act, 2017 and relevant rules framed thereunder. It is also found that it is well settled law that the silence in respect of the allegations made is considered as acceptance of the allegations.

23.1.2 It has also been alleged in the SCN that the Taxpayer has uploaded a copy of UGVCL electricity bill dated 08.11.2019 on the name of Mr. Rathod Mahendra Bharatbhai (Consumer No. 89939500481) for the aforesaid premises on GST portal at the time of obtaining registration. However, the said electricity bill was found to be fake and fictitious document during investigation. Further, it has also been alleged that M/s. Rathod Enterprise has declared the aforesaid premises as "owned" under registration details but the same was found a made-up address during inspection proceedings dated 11.06.2021. In this regard, the Taxpayer has not confronted the said allegations during adjudication proceedings in as much as they have neither submitted any written submission in their defense nor have attended the personal hearing granted to them following the principle of natural justice.

23.1.3 Hence, in view of para 23.1 and 23.1.1 & 23.1.2 supra, it is found that the allegations made in the SCN that M/s Rathod Enterprise has got GST registration bearing No. 24DOBPR4069Q1Z9 on the strength of the false documents by violating the provisions of the CGST Act, 2017 read with corresponding SGST Act, 2017 & rules framed thereunder and the firm is non-existent/non-operational at the declared principal place of the business is found correct and legally tenable.



23.2 In the impugned SCN, allegations have been made that the Taxpayer has availed irregular/illegitimate input tax credit of Rs. 8,40,32,770/- (Central Tax of Rs.4,20,16,385/- + State Tax of Rs.4,20,16,385/-) without actual receipt of goods or services or both as well as without receipt of valid tax invoices, by violating the provisions of Section 16 of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017. In this regard, the Taxpayer has not confronted the said allegations in as much as they have neither submitted any written submission in their defense nor have attended the personal hearing granted to them following the principle of natural justice. Therefore, the matter has been observed through the available records pertaining to the instant case.

24.2.1 As per contents/analysis of the investigation narrated in the SCN, M/s Rathod Enterprise has availed input tax credit of Rs. 8,40,32,770/- (Central Tax of Rs.4,20,16,385/- + State Tax of Rs.4,20,16,385/-), without actual receipt of the goods or services or both as well as without possession of valid tax invoice, and the said facts came in notice of the investigating authority on analysis of GSTR 3B of the Taxpayer for the tax period June-2020 to June-2021.

The provisions of sub section 2 of Section 16 of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017 is reiterated wherein interalia it is mentioned as *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..... (b) he has received the goods or services or both----- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply----*. From the discussion held supra, it is found that the Taxpayer has availed input tax credit without actual receipt of the goods and has violated the provisions of Section 16 of the CGST Act' 2017 read with the corresponding provisions of Gujarat State GST Act, 2017 in as much as (i) M/s Rathod Enterprise has not in possession of tax invoice or debit note issued by suppliers as well as they have not submitted such tax invoices neither during the investigation proceedings nor during the adjudication proceedings, (ii) Input tax credit has been availed without actual receipt of the goods or services or both; (iii) No evidence of payment of tax charged in respect of supply made by suppliers have been submitted by the Taxpayer.

24.2.2 Therefore, in view of discussion held in foregoing paras, it is found that the Taxpayer has availed irregular/illegitimate input tax credit without actual receipt of the goods or services both. Hence, the allegations made in the SCN that M/s. Rathod Enterprise has availed irregular/illegitimate input tax credit of Rs. 8,40,32,770/- (Central Tax of Rs.4,20,16,385/- + State Tax of Rs.4,20,16,385/-), without actual receipt of the goods or services or both by contravening the provisions of Section 16 of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017, is correct and legally tenable.

24.3 In the impugned SCN, allegations have been made that the Taxpayer has issued fake/bogus invoices leads to pass on input tax credit of Rs. 8,40,32,546/- (Central Tax of Rs.4,20,16,273/- and State Tax of Rs.4,20,16,273/-) to their recipients without actual supply of goods or services or both and has contravened the provisions of the CGST Act,2017 read with the corresponding provisions of Gujarat State GST Act, 2017. In this regard, the Taxpayer has not confronted the said allegations in as much as they have neither submitted any written submission in their defense nor have attended the personal hearing granted to them following the principle of natural justice. Therefore, the matter has been observed through the available records pertaining to the instant case.

24.3.1 As per contents narrated in the SCN, M/s Rathod Enterprise has shown outward taxable supply of taxable value of Rs. 44,93,48,759/- consisting GST of Rs. 8,40,32,546/- (Central Tax of Rs.4,20,16,273/- and State Tax of Rs. 4,20,16,273/-) in their statement/information. Moreover, it has also been revealed in the investigation report as narrated in the SCN that the Taxpayer has issued fake/bogus invoices without actual supply of any goods or services or both. It is also found that it is well settled law that the silence in respect of the allegations made is considered as acceptance of the allegations.

24.3.2 In view of discussion held hereinabove, at para 24.3 and 24.3.1 supra, it is found that the allegations made in the SCN that M/s Rathod Enterprise has issued fake/bogus invoices leads to pass on input tax credit of Rs. 8,40,32,546/- (Central Tax of Rs.4,20,16,273/- and State Tax of Rs. 4,20,16,273/-) to their recipients without actual supply of goods or services or both and has contravened the provisions of the CGST Act,2017 read with the corresponding provisions of Gujarat State GST Act, 2017, is correct and legally tenable.

24.4 In the impugned SCN, it has been proposed for initiation of penal action under the provisions of section 122 (1)(ii), 122(1)(vii), 122 (1)(xii), 122(1)(xvi) and 122 (1)(xvii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017. In this regard, M/s Rathod Enterprise has not confronted the said proposal in as much as they have neither submitted any written submission in their defense nor have attended the personal hearing granted to them following the principle of natural justice. Therefore, the matter has been observed through the available records pertaining to the instant case. In this regard the relevant provisions of Act is discussed herein below:-

(i) the provisions of section 122 (1)(ii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017 is reiterated wherein interalia it is mentioned as *Where a taxable person who ---- issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder----- he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the ----- input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant case it has been observed and found hereinabove that the Taxpayer has issued fake/bogus invoices without actual supply of the goods or services or both leads to pass on irregular/illegitimate input tax credit of Rs. 8,40,32,546/- (Central Tax of Rs.4,20,16,273/- and State Tax of Rs. 4,20,16,273/-) to their recipients, by violating the provisions of the Act. Therefore, in accordance to the provisions of section 122 (1)(ii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017, M/s Rathod Enterprise is liable for penal action. Moreover, as per contents narrated in the SCN the instant matter covers under the clarification provided at Sr. No.3 of the Board's Circular No.171/03/2022- GST dated 06.07.2022 wherein interalia it is mentioned as "*..... However, in such cases, B shall be liable for penal action both under section 122 (1)(ii) and section 122 (1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/utilizaing input tax credit without actual receipt of goods and/or services.*". In the instant matter it is found that activity carried out by the Taxpayer do not constitute as "Supply" in accordance to the provisions of Section 7 of the Act, however they have only issued fake/bogus invoices without actual supply of goods or services or both leads to pass on input tax credit to their non-existent/non-operational firms, therefore in accordance to the said circular as well, M/s Rathod Enterprise is liable for penal action under the provisions of section



122 (1)(ii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017.

(ii) the provisions of section 122 (1)(vii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017 is reiterated wherein interalia it is mentioned as *Where a taxable person who----- takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder-----he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the ----- input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant matter, it is observed and found at discussion held hereinabove that the Taxpayer has availed irregular/illegitimate input tax credit Rs. 8,40,32,770/- (Central Tax of Rs.4,20,16,385/- + State Tax of Rs.4,20,16,385/-), without actual receipt of the goods or services or both by contravening the provisions of Section 16 of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017. Therefore, in accordance to the provisions of section 122 (1)(vii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017, M/s Rathod Enterprise is liable for penal action. Moreover, as per contents narrated in the SCN, the instant matter covers under the clarification provided at Sr. No.3 of the Board's Circular No.171/03/2022- GST dated 06.07.2022 wherein interalia it is mentioned as "*..... However, in such cases, B shall be liable for penal action both under section 122 (1)(ii) and section 122 (1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/utilizaing input tax credit without actual receipt of goods and/or services.*". In the instant matter it is found that the Taxpayer has availed and utilized fraudulently/illegitimate input tax credit of Rs. 8,40,32,770/- (Central Tax of Rs.4,20,16,385/- + State Tax of Rs.4,20,16,385/-) without actual receipt of goods or services or both, therefore in accordance to the said circular as well, M/s Rathod Enterprise is liable for penal action under the provisions of section 122(1)(vii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017.

(iii) the provisions of section 122 (1)(xii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017 wherein interalia it is mentioned as *Where a taxable person who-----furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently -----he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the ----- input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant matter, it is observed and found at discussion held hereinabove that the Taxpayer has obtained GST Registration on the strength of fake documents with intent to avail irregular/illegitimate input tax credit of Rs. 8,40,32,770/- (Central Tax of Rs.4,20,16,385/- + State Tax of Rs.4,20,16,385/-) and passing on of fake and fraudulent ITC of Rs. 8,40,32,546/- (Central Tax of Rs.4,20,16,273/- and State Tax of Rs. 4,20,16,273/-) without actual supply of goods or services or both. Therefore, in accordance to the provisions of section 122 (1)(xii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017, M/s Rathod Enterprise is liable for penal action.

(iv) the provisions of section 122 (1)(xvi) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017 wherein

interalia it is mentioned as *Where a taxable person who-----fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder ---- -----he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the ----- input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant matter, it is observed and found at discussion held hereinabove that during the course of panchnama drawn at the declared principal place of business of the Taxpayer, it was found that Taxpayer was non-existent/non-operational at the said declared address and no books of account and other documents were found at the said premises. Further, investigation report as narrated in the SCN also revealed that during the course of investigation the Taxpayer has failed to produce books of account and other documents. Moreover, it is also found that the Taxpayer has never submitted books of account and other documents either during the course of investigation or during the course of adjudication proceedings. Therefore, it is found that non submission of books of account and other documents either at the time of investigation or at the time of adjudication proceedings shows that they have failed to maintain books of account and other documents pertaining to the business carried out by them with intent to avail irregular/illegitimate input tax credit of Rs. 8,40,32,770/- (Central Tax of Rs.4,20,16,385/- + State Tax of Rs.4,20,16,385/-) and passing on of fake and fraudulent ITC of Rs. 8,40,32,546/- (Central Tax of Rs.4,20,16,273/- and State Tax of Rs. 4,20,16,273/-). Therefore, in accordance to the provisions of section 122 (1)(xvi) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017, M/s Rathod Enterprise is liable for penal action.

(v) the provisions of section 122 (1)(xvii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017 wherein interalia it is mentioned as *Where a taxable person who-----fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Ac----- -----he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the ----- input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant matter it is observed and found from the contents of the investigation report narrated in the SCN that during the course of investigation the taxpayer has failed to produce any documents or information before the investigating officers with intent to avail irregular/illegitimate input tax credit of Rs. 8,40,32,770/- (Central Tax of Rs.4,20,16,385/- + State Tax of Rs.4,20,16,385/-) and passing on of fake and fraudulent ITC of Rs. 8,40,32,546/- (Central Tax of Rs.4,20,16,273/- and State Tax of Rs. 4,20,16,273/-). Therefore, in accordance to the provisions of section 122 (1)(xvii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017, M/s. Rathod Enterprise is liable for penal action.

25. In view of discussion held hereinabove, it is found that the proposal of initiation of penal action against M/s Rathod Enterprise under the provisions of section 122 (1)(ii), 122(1)(vii), 122 (1)(xii), 122(1)(xvi) and 122 (1)(xvii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017 is correct and legally tenable.



26. The proposed allegation & penal action in subject Show Cause Notice and findings and conclusion based on discussion held above are summarized in tabular form as under :-

Sr. No.	Proposal in the Show Cause Notice	Findings and conclusions
1	Penalty under Section 122(1)(ii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017.	Considering the nature of offence/fraud and clenching evidences collected during investigation & narrated in subject Show cause notice, proposed penalty found correct and legally tenable.
2	Penalty under Section 122(1)(vii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017.	
3	Penalty under Section 122(1)(xii), 122 (1)(xvi), 122 (1)(xvii) of the CGST Act, 2017 read with the corresponding provisions of Gujarat State GST Act, 2017.	

27. It is pertinent to mention that the Taxpayer neither submitted any written defence submission nor appeared on personal hearing despite ample opportunities. Hence evidences collected during investigation and allegations made in Show Cause Notice with various legal provisions could not be confronted with defense of the Taxpayer. There is no defence available from Taxpayer on any factual position or legal technical grounds. The adjudicating proceedings have to rely on Show Cause Notice and material placed as case records. However, facts narrated in Show Cause notice and evidences collected during investigation placed in SCN found sufficient to prove nature and fraudulent activity and loss to Govt. Revenue. Hence, this order is being passed as ex party order.

28. In view of foregoing paras and discussion held above, I pass the following order:-

Order

- (i) I impose penalty of Rs. 8,40,32,770/- (Central Tax of Rs.4,20,16,385/- + State Tax of Rs.4,20,16,385/-) (equivalent to Input Tax Credit wrongly availed/utilized), on M/s Rathod Enterprise having GSTIN 24DOBPR4069Q1Z9 for committing offences of taking/utilizing Input Tax Credit without actual receipt of underlying goods or services or both, contained under section 122(1)(vii) of the CGST Act, 2017 read with similar provisions of Gujarat State GST Act, 2017 and order to recover the same under the relevant provisions of the CGST Act, 2017 read with similar provisions of Gujarat State GST Act, 2017;
- (ii) I impose penalty of Rs. 8,40,32,546/- (Central Tax of Rs.4,20,16,273/- and State Tax of Rs. 4,20,16,273/-) (equivalent to Input Tax Credit wrongly passed on), on M/s Rathod Enterprise having GSTIN 24DOBPR4069Q1Z9 for committing offences of passing on of the irregular ITC by issuing invoices without actual supply of underlying goods or services or both, contained under section 122(1)(ii) of the CGST Act, 2017 read with similar provisions of Gujarat State GST Act, 2017 and order to recover the same under the relevant provisions of the CGST Act, 2017 read with similar provisions of Gujarat State GST Act, 2017;
- (iii) I impose penalty equivalent to Input Tax Credit wrongly availed of or passed on, on M/s Rathod Enterprise having GSTIN 24DOBPR4069Q1Z9

under the provisions of Section 122 (1)(xii), Section 122(1)(xvi), Section 122(1)(xvii) of the CGST Act, 2017 read with similar provisions of Gujarat State GST Act, 2017, for failure to furnish information correctly at the time of GST registration; failed to keep, maintain or retain books of accounts and other documents in accordance of the provisions of the CGST Act, 2017 and failure to furnishes information or documents during investigation proceedings under the CGST Act, 2017, and corresponding SGST Act, 2017 respectively and order to recover the same under the relevant provisions of the CGST Act, 2017 read with similar provisions of Gujarat State GST Act, 2017.

29. In view of foregoing paras the instant show cause notice F.No. GEXCOM/AE/FU/1015/2021-A.E-I/Gr-I/98 dated 30.03.2023 is disposed off in terms of order mentioned above.

(Lokesh Damor)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

BY RPAD

F.No. GST/15-18/OA/2023

Dt. 07.03.2024

To

1. M/s Rathod Enterprise.
(GSTIN : 24DOBPR4069Q1Z9),
Room No 212, Floor No 2/A, Shyamkunj Society,
269, Nava Naroda Road Nava Naroda,
Ahmedabad, Gujarat, 382330
Registered Email ID :- abhib3688@gmail.com, sivalikcorporation99455@gmail.com
Registered Mobile No. – 9054135232, 9408514671
2. Rathod Mahendra Bharatbhai,
Room No 212, Floor No 2/A, Shyamkunj Society,
269, Nava Naroda Road Nava Naroda,
Ahmedabad, Gujarat, 382330

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Division-I, Ahmedabad North.
3. The Superintendent, Central GST & Central Excise, Range-III, Division-I, Ahmedabad North
- ✓ 4. The Superintendent (System), Central GST & Central Excise, Ahmedabad North for uploading the order on website.
5. Guard File.

