

75
आज़ादी का
अमृत महोत्सव

eoffice
A DIGITAL WORKPLACE SOLUTION

राष्ट्र
कर
बाजार



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009

फ़ोन/Phone : 079 - 27544557 ई-मेल/E-Mail : ofad@hq-cgstamdnorth@gov.in फ़ैक्स/Fax : 079-27544463

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. GST/15-22/OA/2022

DIN- 20240464WT000081812E

आदेश की तारीख/Date of Order: - 23.04.2024

जारी करने की तारीख/Date of Issue :- 23.04.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 05/ADC/LD/GST/2024-25

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), 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 No. GADT/TECH/SCN/GST/46/2022-TECH and LEGAL-O/o COMM-R-CGST-ADT-AHMEDABAD dated 05.05.2022 issued to M/s. Sayona Colors Pvt. Ltd., Plot No. 162/163/1, Phase-2, Naroda GIDC, Naroda, Ahmedabad, Gujarat - 382330



BRIEF FACTS OF THE CASE

M/s. Sayona Colors Pvt Ltd, having its Principal Place of Business, at Plot No.162/163/1, Phase-2, Naroda GIDC, Naroda, Ahmedabad, Gujarat-382330 (herein after referred to as the 'Taxpayer'). The Taxpayer having GST Registration No. 24AAKCS8327F1Z8 and are engaged in the supply of goods of Synthetic organic colouring matter falling under chapter heading 3204 and are availing ITC.

2. Hereinafter, wherever the provisions of Central Goods and Service Tax Act' 2017 and Central Goods and Service Tax Rules' 2017 are quoted, the corresponding provisions of Gujarat State Goods and Service Tax Act' 2017 and Gujarat State Goods and Service Tax Rules' 2017 would apply simultaneously. The provisions of CGST Act' 2017 have been made applicable to the IGST Act'2017 vide Section 20 and provisions of CGST Rules' 2017 have been made applicable to the IGST Rules' 2017 vide Rule 2 thereof.

3. Whereas, audit of records of the Tax payer was conducted for the period from July' 2017 to March' 2019 by the officers of CGST Audit Commissionerate, Ahmedabad. Based upon the observations noticed during the audit and submissions made by the taxpayer in this regard, a Final Audit Report No. 427/2021-22 date 24.01.2022 (RUD-1) (hereinafter referred to as "the FAR") was issued. The revenue paras which were not agreed by the taxpayer are as detailed below: -

Revenue Para -07: Non-reversal of ITC on account of excess availment in GSTR-3B on reconciliation with GSTR-2A including ITC availed on import and RCM.

4.1 Whereas, during the course of audit, on verification of Input Tax Credit availed as per GSTR-3B and ITC received as per GSTR-2A including ITC availed on import and RCM for the FY 2018-19, it was observed that the Tax payer has availed excess ITC of Rs.77568/- (CGST of Rs.38784/- & SGST of Rs.38784/-) in comparison with ITC received in their GSTR-2A including ITC availed on import and RCM during the period 2018-19. The details are as under:

Row No.	Particulars	Tax Head		Total
		CGST	SGST	
A	Total input as per GSTR 3B	12378049	12378049	24756098
B	Less ITC Reversed	0	0	0
C	Net ITC availed as per 3B	12378049	12378049	24756098
D	Total Input as per GSTR 2A	12334217	12334217	24668434
E	Add ITC availed through RCM	10849	10849	21697
F	Less Credit Note Issued by Supplier	5801	5801	11602

G	Eligible ITC as per 2A (B to B, Import) & RCM Purchase	12339265	12339265	24678529
H	Diff if any(G-C)	-38784	-38784	-77568

4.2. A query memo dated 03.12.2021 followed by reminders dated 08.12.2021, 15.12.2021, 23.12.2021 and 03.02.2022 (RUD-2) were issued to the tax payer for clarification on the above. In response, the Tax payer vide their letter dated 31.12.2021 (RUD-3) requested six weeks time period in order to scrutiny and evaluate their books of records and accounts to present their submission. However, after giving enough time for compliance, the tax payer has not submitted any further submission in this regard.

4.3 The eligibility of ITC is provided under Section 16 of the Central Goods and Service Tax Act, 2017 ('CGST Act'). The relevant text of the above cited Section is re-produced as below:

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

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

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

(a)

[(aa)

(b)

(c) subject to the provisions of ³[section 41 or section 43A], 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:

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

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

4.4 Section 39 of CGST Act, 2017 provides the provisions for furnishing returns. The relevant part of Section 39 is reproduced as under:

Section 39. Furnishing of returns.-

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

Provided that every registered person furnishing return under the proviso to subsection (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.]

4.5 Rule 85 of CGST Rules, 2017 : Electronic Liability Register provides how the payment of tax to be made by a taxpayer. The relevant part of Rule 85 – Electronic Liability Register is reproduced as under:-

Rule 85. Electronic Liability Register.-

(3) Subject to the provisions of section 49, ¹[section 49A and section 49B], payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.

4.6 Whereas, it appeared that the taxpayer had contravened the provisions of Section 16 of the Act read with Rule 37 of CGST Rules, 2017 in as much as they have wrongly availed excess ITC in their GSTR-3B returns as compared to ITC actually available to them; and Section 39(7) of the Act read with the provisions of Rule 85(3) of the Rules as they have failed to reverse the ITC wrongly availed by them within the prescribed due dates. The taxpayer could not provide any documents which proves the eligibility of excess credit availed by them. It appeared that the excess ITC wrongly availed and utilized by the taxpayer is required to be disallowed and demanded from them, under the provisions of Section 74(1) of CGST Act, 2017 alongwith interest and penalty.

4.7 The relevant text of the provisions of CGST Act, 2017 related to interest and penalty are reproduced as under:

50. Interest on delayed payment of tax. –

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

74. Section 74(1) of CGST Act, 2017:

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

Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him, to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

4.8. Whereas, it appeared that the Taxpayer had availed ITC in contravention to the provisions of Section 16 of the Act. The taxpayer had not reversed the ITC availed by them in excess during the period 2018-19 within the prescribed due dates. It, therefore, appeared that there is a case of suppression of facts with an intent to wrongly avail and utilise ITC in excess of what was available to them. The input tax credit amounting to Rs 77,568/- appeared inadmissible to the taxpayer and is to be disallowed and recovered from the Tax Payer, under the provisions of Sections 74(1) of CGST Act, 2017. The taxpayer also appeared liable to pay interest on the excess ITC availed under the provisions of Sections 50(3) of the Act. The tax payer had suppressed the facts with an intent to wrongly avail and utilize excess ITC, therefore, liable for penalty under the provisions of Sections 74(1) of the Act.

5. Revenue Para-8: Non-payments of interest on payment made to the sundry creditors after 180 days as per Section 16(2) of CGST Act, 2017 read with rule 37 of CGST rule 2017.

5.1 During the verification and scrutiny of records, it was found that the taxpayer had delayed payments (beyond 180 days) to some of its supplier.

5.2 According to Section 16(2) of CGST Act'2017 read with Rule 37 of CGST Rule' 2017, in case of failure to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient is

required to be added to his output tax liability, along with interest under Section 50 (1) of the CGST Act, 2017.

5.3. The eligibility and conditions for taking ITC is provided under Section 16 of the Central Goods and Services Act' 2017 ('CGST Act').

The reversal of input tax credit in the case of non-payment of consideration are laid in Section 37 of CGST Act' 2017. The relevant text of the above cited Sections are re-produced as below:

Section 16(2). Eligibility and conditions for taking input tax credit.-

(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)

(b)

(i)

(ii)

(c)

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

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

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Section 37 : Reversal of input tax credit in the case of non-payment of consideration:

1. *A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM*

GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

[Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.]

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

5.4 It has been observed that during the audit period, the taxpayer had made the payments to their suppliers a tax amounting to Rs. 12,26,431/- (IGST Rs. 2451/- + CGST Rs.6,11,990/- + SGSAT Rs. 6,11,990/-) beyond the period of 180 days in contravention of second proviso to Section 16(2) of the said Act read with Section 37 thereof. Thus, it appeared interest @ 18% in terms of Section 50(1) ibid is required to be recovered from the said taxpayer. The summary of such late payment of value of goods/services including tax payments and calculation of interest thereon are as per table below. The detailed calculations are shown in Annexure-A Part I & Part II.

Tax Head	2017-18	2018-19	Total	Interest 2017-18	Interest 2018-19	Total
IGST	0	2451	2451	0	348	348
CGST	486685	125305	611990	110432	18255	128687
SGST	486685	125305	611990	110432	18255	128687
Total	973370	253061	1226431	220864	36858	257722

5.5 A query memo dated 03.12.2021 followed by reminders dated 08.12.2021, 15.12.2021, 23.12.2021 and 03.01.2022 were issued to the tax payer seeing clarification. In response, the Taxpayer vide their letter dated 31.12.2021 had requested six weeks time period in order to scrutinise and evaluate their books of records and accounts to present their submission. However, after giving enough time for compliance, the tax payer has not submitted any further submission in this regard.

5.6 Whereas the taxpayer was explained during the course of audit that as per statutory provisions under second proviso to Section 16 (2) of CGST Act' 2017, in case of failure to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply alongwith tax payable thereon within a period of one hundred

and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient is required to be added to his output tax liability alongwith interest thereon. It was further explained that as per the provision to the said section, the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both with tax payable thereon.

5.7 Whereas, it appeared from the above statutory provisions that the taxpayer was required to add Input Tax Credit (ITC), involved in the transactions where payment of consideration including tax was not made to the supplier of goods/service within the specified time limit, to their output tax liability alongwith interest, in view of the second proviso of section 16(2) of CGST Act'2017. Further in view of the third proviso of the said section, the taxpayer would be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both alongwith tax payable thereon. The taxpayer, however, failed to comply with the statutory provisions as per the aforesaid proviso. Whereas, in view of the payment of value of supply including tax amounting to Rs.12,26,431/- (IGST Rs. 2451/- + CGST Rs. 611990/-+ SGAT RS. 611990/-) to the suppliers beyond the specified time limit, it appeared that the taxpayer is liable to pay interest @18% under section 50(1) of the CGST Act' 2017 readwith section 20 of IGST Act'2017 amounting to Rs. 2,57,722/- (Rs. 348/- on IGST + Rs. 1,28,687/- on CGST + and Rs. 1,28,687/- on SGST) as per annexure-A part I and II of this notice.

5.8. Whereas, it appeared that the taxpayer did not report the above transaction of non-payment of consideration within the specified time limit and they also failed to add the said amount of ITC to the output tax liability as required under the above statutory provisions, in violation of the conditions and requirements of Rule 37 of CGST Rules'2017 readwith Section 16 of CGST Act'2017 with an intent to evade payment of tax. The said transaction of non-payment of consideration within the stipulated time came to the notice of the department only when the records of the taxpayer were taken up for audit verification. Therefore, it appeared that the wrong availment/retention of ITC is by way of willful mis-statement and suppression of facts to evade payment of tax and therefore, in addition to the interest amount payable by the taxpayer, the taxpayer also appeared to be liable for imposition of penalty under Section 122(2) (b) of the CGST Act' 2017 readwith Section 20 of IGST Act'2017.

6. Revenue Para No. 09: Non-Reversal of ITC due to non-payment to the Creditors (Suppliers).

6.1 During the verification of records of the taxpayer, it was observed that the tax payer had not paid consideration to some of the creditors (Suppliers). The taxpayer has availed ITC in respect of the said input supplies but did not reverse the credit even as the

same amount was not paid to the supplier. Therefore, ITC amounting to Rs. 1,01,63,184/- (Annexure-C) is required to be disallowed and recovered from the taxpayer under Section 74(1) of the CGST Act 2017.

6.2 A query memo dated 03.12.2021 followed by reminders dated 08.12.2021, 15.12.2021, 23.12.2021 and 03.01.2022 were issued to the tax payer seeing clarification on the issue. In response, the Taxpayer vide their letter dated 31.12.2021 requested six weeks time period in order to scrutiny and evaluate their books of records and accounts to present their submission. However, after giving enough time for compliance, the tax payer has not submitted any further submission in this regard.

6.3 Whereas, as per provision of Section 16(2) of CGST Act, 2017 read with Rule 37 of the CGST Rules, 2017, in case of failure to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient is required to be added to his output tax liability, along with interest under Section 50 (1) of the CGST Act, 2017.

6.4 The eligibility of ITC is provided under Section 16(2) of the Central Goods and Services Act, 2017 ('CGST Act'). The relevant text of the above cited Section are re-produced as below:

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

(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)

1[(aa)

(b)

(c)

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

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

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

6.5 Section 39 of CGST Act, 2017 provides the provisions for furnishing returns. The relevant part of Section 39 is reproduced as under:

Section 39: Furnishing of returns.-

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

Provided that every registered person furnishing return under the proviso to subsection (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

Provided further that every registered person furnishing return under subsection (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.]

6.6 Rule 85, Electronic Liability Register provides how the payment of tax to be made by a taxpayer. The relevant part of Rule 85 – Electronic Liability Register is reproduced as under:

Rule 85. Electronic Liability Register.-

(3) Subject to the provisions of section 49, [section 49A and section 49B], payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.

6.7 It appeared that the Taxpayer has contravened the provisions of:

- 2nd proviso to Section 16 of the Act in as much as they have wrongly availed the ITC without making payments of the value and tax to their suppliers; and failed to add the said ITC wrongly availed by them in their output tax liability alongwith interest thereon, in such a manner as may be prescribed; and
- Sections 39(7) of the Act read with the provisions of Rule 85(3) of the Rules in as much as they have failed to file correct returns;

6.8 Since, the taxpayer has not made payment towards the value of supply along with tax thereon to the above mentioned suppliers (Annexure-C), therefore, the tax amounting to Rs. 1,01,63,184/-

(IGST of Rs.1,20,600/-, CGST of Rs. 50,21,292/- and SGST of Rs. 50,21,292/-) is to be demanded/recovered from the taxpayer along with applicable interest and penalty under the provision of Section 74(1) of the CGST Act, 2017 read with section 20 of the IGST Act, 2017.

6.9. The relevant text of the provisions of CGST Act'2017 related to interest and penalty re reproduced as under:

50. Interest on delayed payment of tax.-

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the Council;

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

74: Section 74 (1) of CGST Act' 2017:

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

Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and a penalty equivalent to the tax specified in the notice."

6.10. Whereas, it appeared that the Taxpayer had wrongly availed ITC on receipt of goods in contravention to Section 16 of CGST Act'2017. As required under the provisions of Section 16 of the Act, the taxpayer had not reversed the excess ITC availed by them during the period 2018-19 within the prescribed due dates. It, therefore, appeared that there is a case of suppression of facts with an intent to wrongly avail, and utilise ITC in excess of what was available to them. The input tax credit amounting to Rs. 1,01,63,184/- is to be disallowed and recovered from the Taxpayer, under the provisions of Sections 74(1) of CGST Act'2017. The taxpayer would also be liable to pay interest on the non-reversal of ITC, under the provisions of Sections 50(1) of the Act read with the provisions of 16 of the CGST Act, 2017. It appeared that the tax payer have suppressed the facts

with an intent to wrongly avail and utilize ITC in excess, as stated above. Accordingly, they also liable for penal action under the provisions of Sections 74(1) of the Act.

7. Revenue Para No. 10: Interest not paid on reversal of ITC due to non-payment to Creditors (Suppliers).

7.1 During the verification of records, it was observed that the Taxpayer had not paid consideration to creditor (Supplier) namely M/s. Omega Axim. The Taxpayer has also availed ITC in respect of the said input supplies and reversed the ITC amounting Rs.1,03,51,080/- without interest through GSTR-3B for the month of September-2020. Therefore, Interest amounting to Rs.30,87,072/- (Annexure-B) is required to be recovered under section 50(1) of CGST Act, 2017. Worksheet of interest to be recovered from the taxpayer is detailed as under:

Annexure-B

Supplier's name & GSTN No : M/s. Omega Axim, 24ENOPS0523P1ZF

Invoice No. & date	Taxable Value	Tax amount		ITC availed date	Reversal date	No. of days	Interest on CGST (18%)	Interest on SGST (18%)
		CGST	SGST					
OETAX/005 DT. 27.11.2018	218610 00	196749 0	196749 0	10-12- 2018	17-10- 2020	677	656872	656872
OETAX/019 DT. 02.01.2019	312500 0	281250	281250	18-01- 2019	17-10- 2020	638	88490	88490
OETAX/046 DT. 04.03.2019	162000 0	145800	145800	13-04- 2019	17-10- 2020	553	39761	39761
OETAX/066 dt. 29.03.2019	309000 00	278100 0	278100 0	13-04- 2019	17-10- 2020	553	758413	758413
		517554 0	517554 0				1543536	1543536

7.2 A query memo dated 03.12.2021 followed by reminders dated 08.12.2021, 15.12.2021, 23.12.2021 and 03.01.2022 were issued to the tax payer seeing clarification on the issue. In response, the Taxpayer vide their letter dated 31.12.2021 requested six weeks time period in order to scrutiny and evaluate their books of records and accounts to present their submission. However, after giving enough time for compliance, the tax payer has not submitted any further submission in this regard.

7.3 Whereas, as per provision of Section 16(2) of CGST Act, 2017 read with Rule 37 of the CGST Rules, 2017, in case of failure to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the

recipient is required to be added to his output tax liability, along with interest under Section 50 (1) of the CGST Act, 2017:

7.4 The eligibility and conditions for taking ITC is provided under Section 16 of the Central Goods and Services Act, 2017 ('CGST Act'). The reversal of input tax credit in the case of non-payment of consideration are laid in Section 37 of CGST Act, 2017.

The relevant text of the above cited Sections are re-produced as below:

Section 16(2). Eligibility and conditions for taking input tax credit.-

(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)

(b)

(c)

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

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

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Section 37 : Reversal of input tax credit in the case of non-payment of consideration:

1. *A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:*

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

[Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.]

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

7.5 Whereas, the taxpayer was explained during the course of audit that as per statutory provisions under second proviso to Section 16 (2) of CGST Act'2017, in case of failure to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply alongwith tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient is required to be added to his output tax liability alongwith interest thereon. It was further explained that as per the provision to the said section, the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both with tax payable thereon.

7.6. Whereas, it appeared from the above statutory provisions that the taxpayer was required to add Input Tax Credit (ITC), involved in the transactions where payment of consideration including tax was not made to the supplier of goods/service within the specified time limit, to their output tax liability alongwith interest, in view of the second proviso of section 16(2) of CGST Act' 2017. Further in view of the third proviso of the said section, the taxpayer would be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both alongwith tax payable thereon. The taxpayer, however, failed to comply with the statutory provisions as per the aforesaid proviso. Whereas, in view of the payment of consideration amounting to Rs. 1,03,51,080/- (CGST Rs. 51,75,540/- + SGST Rs. 51,75,540/-) to the suppliers beyond the specified time limit, it appeared that the taxpayer is liable to pay interest @18% under section 50(1) of the CGST Act'2017 readwith section 20 of IGST Act, 2017 amounting to Rs.30,87,072/- (Rs. 15,43,536/- on CGST + and Rs. 15,43,536/- on SGST) as per Annexure-B of this notice.

7.7 Whereas, it appeared that the taxpayer did not report the above transaction of non-payment of consideration within the specified time limit and they also failed to add the said amount of ITC to the output tax liability as required under the above statutory provisions, in violation of the conditions and requirements of Rule 37 of CGST Rules' 2017 readwith Section 16 of CGST Act' 2017 with an intent to evade payment of tax. The said transaction of non-payment of consideration within the stipulated time came to the notice of the department only when the records of the taxpayer were taken up for audit verification. Therefore, it appeared that the wrong availment/retention of ITC is by way of wilful misstatement and suppression of facts to evade payment of tax and therefore, in addition to the interest amount payable by the taxpayer, the taxpayer also appeared to be liable for imposition of penalty under Section 122(2)(b) of the CGST Act, 2017 readwith section 20 of IGST Act, 2017.

8. Revenue Para No. 11: Non-reversal of IGST Refund due to non realization of export/Foreign proceeds.

8.1 During the verification of export documents, it was observed that the Tax payer had received IGST refund on supply of zero rated export with payment of tax. However, in some of the zero rated supply of exports with payment of tax, foreign proceeds have not been received by the Tax payer within the time limit as prescribed by the Reserve Bank of India. The details of the same are as under:

Sr. No.	Export Invoice No.	Shipping Bill No.	Port Code	IGST Refund	IGST Refund Date
1.	038/2018-19/ 28.08.2018	7193221/ 28.08.2018	INSBI6	4446576	17.09.2018
2.	044/2018-19/ 26.09.2018	7865427/ 27-09-2018	INSBI6	4615834	17.10.2018
3.	056/2018-19/ 28-11-2018	9212831/ 29-11-2018	INSBI6	3974582	20.12.2018
4.	080/2018-19/ 29-03-2019	3120666 /29-03.2019	INSBI6	5610168	01.05.2019
		Total		18647160/-	

8.2 A query memo dated 03.12.2021 followed by reminders dated 08.12.2021, 15.12.2021, 23.12.2021 and 03.01.2022 were issued to the tax payer seeing clarification on the issue. In response, the Taxpayer vide their letter dated 31.12.2021 requested six weeks time period in order to scrutiny and evaluate their books of records and accounts to present their submission. However, after giving enough time for compliance, the tax payer has not submitted any further submission in this regard.

8.3 Whereas, as per Rule 96B of Central Goods and Services Tax Rule'2017 inserted vide Central Tax Notification 16/2020 dated 23/03/2020, if any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to the applicant but the sale proceeds in respect of such export have not been realised, the taxpayer should have deposited amount so refunded, to the extent of non- realization of sale proceeds, along with applicable interest within thirty days of the expiry of the said period. The RBI Vide Circular No. RBI/2019-20/206 A.P. (DIR Series) Circular No. 27 dated 01.04.2020 granted

relaxation in realisation and repatriation of export. The relevant part of the said circular is reproduced as under:

RBI/2019-20/206
A. P. (DIR Series) Circular No. 27

April 01, 2020

Export of Goods and Services-
Realisation and Repatriation of Export
Proceeds-Relaxation

The Government of India as well as the Reserve Bank has been receiving representations from Exporters Trade bodies to extend the period of realisation of export proceeds in view of the outbreak of pandemic COVID- 19. It has, therefore, been decided, in consultation with Government of India, to increase the present period of realization and repatriation to India of the amount representing the full export value of goods or software or services exported, from nine months to fifteen months from the date of export, for the exports made up to or on July 31, 2020.

2. The provisions in regard to period of realization and repatriation to India of the full export value of goods exported to warehouses established outside India remain unchanged.

3. AD Category - I banks may please bring the contents of this Circular to the notice of their constituents concerned.

4. The directions contained in circular have been issued under Section 10(4) and 11(1) of Foreign Exchange Management Act, 1999 (42 of 1999) and without prejudice to permissions / approvals, if any, required under any other law.

8.4 Whereas, it appeared that the taxpayer had neither received the Realisation of the export proceeds of the above mentioned exports as shown in para 8.1 till the date of audit by the officers of the Audit Commissionerate, nor deposited the said erroneous refund amount of Rs.1,86,47,160/- alongwith the applicable interest with the Government. The taxpayer also could not produce any documents showing extension for period of realisation of export proceeds having been granted to them by the competent authority. It appeared, that the taxpayer had contravened the provisions of Rule 96 B of CGST Rules'2017, therefore the said erroneous refund amounting to Rs. 1,86,47,160/- should be demanded/recovered, from the taxpayer under Section 74(1) of CGST Act'2017 along with interest and penalty. The relevant part of Rule 96B of CGST Rules, 2017 is reproduced as under.

[Rule 96B. Recovery of refund of unutilized input tax credit or integrated tax paid on export of goods where export proceeds not realized.-

(1) Where any refund of unutilized input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realized , in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non- realization of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realized by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realization within a period of three months from the date of realization of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realization of sale proceeds, provided the sale proceeds have been realized within such extended period as permitted by the Reserve Bank of India.]

8.5 It also appeared that the taxpayer had not furnished any such documents/orders to the audit officers under which the Reserve bank of India had written off the requirement of realization of sale proceeds on merits that allowed them to avail refund of unutilized input tax credit on account of export of goods or of integrated tax paid on export of goods as provided in Rule 96 B of CGST Rules, 2017.

8.6 Whereas, it appeared that, the IGST amounting to Rs. 1,86,47,160/- is to be demanded and recovered from the supplier under the provisions of Section 74(1) of the Act read with Rule 96B of Central Goods and Services Tax Rules'2017 read with the provisions of Section 20 of the IGST Act' 2017. The taxpayer would also be liable to pay interest on the non-payment of tax, under the provisions of Section 50(1) of the Act read with the provisions of Section 20 of the IGST Act. It appeared that the taxpayer had suppressed the facts with an intent to avail refund of tax, as stated above. Accordingly, they are also liable for penalty under the provisions of Section 74(1) of the Act Section 122(2) (b) of the Act and read with the provisions of Section 20 of the IGST Act, 2017.

9. The Government has from the very beginning placed full trust on

the Taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the Taxpayer; therefore, the governing statutory provisions create a liability when any provision is contravened or there is a breach of trust placed on the Taxpayer.

10. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of the CGST Act' 2017/Gujarat GST Act'2017 which reads as "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39. " It appeared that the said taxpayer suppressed the short payment of GST ; wrong availment of ITC ; non-payment of interest and thereby it appeared has knowingly failed to correctly self assess the tax payable with an intent to evade payment of proper tax.

11. In the scheme of self-assessment, the Department comes to know about the supplies made and ITC availed only during the audit of the statutory returns filed by the taxpayers under the statute. Therefore, it places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns. Explanation 2 to Section 74 of the CGST Act' 2017 has defined suppression as under:

"Explanation 2.--For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer"

12. From the Information/data of the taxpayer verified during the course of audit, it appeared that the taxpayer have wrongly availed ITC; non-reversal of ITC due to non-payment to the creditors; non-reversal of IGST refund due to non-realisation of export proceedings ; not discharged its interest liability. It appeared that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax/Interest liabilities is utter disregard to the requirements of law and breach of trust deposed on them is outright act in defiance of law by way suppression. The above said wrong availment of ITC; non-payment of interest is unearthed after audit was conducted by the officers of Central Tax Audit, Ahmedabad and therefore had the said wrong availment of ITC ; non-payment of interest not been detected during audit, it would have remained unnoticed. It appeared that, all the above facts of contravention on the part of the Taxpayer have been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded from them under Section 74(1) of the CGST Act2017/Gujarat GST Act2017 read with Section 20 of IGST Act'2017 alongwith interest and penalty by invoking extended period of five years.

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

14. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC - 01A was issued to the said taxpayer on 12.4.2022 intimating their liability under Section 74(5) of the CGST Act, 2017 or to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 27.04.2022. The taxpayer has neither submitted any documents of payments made by them nor submitted any reply to the DRC-01 A dated 12.4.2022 issued to them.

15. Therefore, Show Cause Notice No. GADT/TECH/SCN/GST/46/2022-TECH and LEGAL-O/o COMMRCGST-ADT-AHMEDABAD dated 05.05.2022 was issued to M/s. Sayona Colors Pvt Ltd, having its principal place of business located at Plot No. 162/163/1, Phase-2, Naroda GIDC, Naroda, Ahmedabad, Gujarat - 382330, called upon to show cause to the Additional Commissioner of Central Tax, Ahmedabad North Commissionerate, 1st Floor, Customs House, Nr. Akashvani, Navrangpura, Ahmedabad - 380009 as to why:

(1). (i) Tax amounting to Rs. 77,568/- (CGST Rs. 38,784/- + SGST Rs. 38,784/-) (Rupees Seventy Seven Thousand Five Hundred Sixty Eight only) should not be demanded and recovered from them under the provisions of Sections 74(1) of CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 (Revenue Para 7).

(ii) Interest at the prescribed rate under the provisions of Section 50(3) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be demanded and recovered from them on tax demanded at (i) above.

(iii) Penalty under the provisions of the Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be imposed and recovered from them on the amount of tax demanded at 1(i) above.

(2). (i) Interest amounting to Rs. 2,57,722/- (CGST of Rs.1,28,687/- + SGST of Rs.1,28,687/- + IGST of Rs.348/-) (Rupees Two Lakhs Fifty Seven Thousand Seven Hundred Twenty Two only) on late payment of value of supply including ITC, under the provisions of Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be charged and recovered from them (Revenue Para 8).

(ii) Penalty should be imposed upon the taxpayer under Section 122(b)(c) of CGST Act, 2017 (Revenue Para 8).

(3). (i) ITC amounting to Rs.1,01,63,184/- (IGST Rs. 1,20,600/- + CGST Rs. 50,21,292/- + SGST Rs. 50,21,292/- (Rupees One

Crore One Lakhs Sixty Three Thousand One Hundred Eighty Four Only) should not be demanded and recovered from them under the provisions of Sections 74(1) of CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 (Revenue Para 9).

(ii) Interest at the prescribed rate under the provisions of Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be demanded and recovered from them on tax demanded at 3(i) above.

(iii) Penalty under the provisions of the Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 should not be imposed and recovered from them on the amount of tax demanded at 3(i) above.

(4).(i) Interest Rs. 30,87,072/- (CGST of Rs. 15,43,536/- + SGST of Rs. 15,43,536/-) (Rupees Thirty Lakhs Eighty Seven Thousand Seventy Two Only) under the provisions of Section 50(1) of the CGST Act, 2017 should not be charged and recovered from them on reversal of ITC due to non payment to creditors (suppliers) (Revenue Para 10).

(ii) Penalty should be imposed upon the taxpayer under Section 122(b)(c) of CGST Act, 2017 (Revenue Para 10).

(5).(i) IGST Refund of Rs. 1,86,47,160/- (Rupees One Crore Eighty Six Lakh Fourty Seven Thousand One Hundred sixty only), should not be demanded and recovered from them under the provisions of Sections 74(1) of CGST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 read with the provisions of Rule 96B of CGST Rules, 2017 (Revenue Para 11).

(ii) Interest should not be charged and recovered from them, under the provisions of Sections 50(1) of the Act read with the provisions of Section 20 of the IGST Act, 2017 on the amount of tax demanded at 5(i) above.

(iii) Penalty should not be imposed on them, under the provisions of Sections 74(1) of the Act read with the provisions of Sections 122(2) (b) of the Act and Section 20 of the IGST, 2017 from the on the tax demanded at 5(i) above.

DEFENCE REPLY

16. M/s. Sayona Colors Pvt Ltd has filed their defense reply vide letter dated 29.06.2022 received on 29.06.2022 wherein they have submitted as under:-

16.1 Taxpayer's reply in respect of issue raised in Revenue Para 7:-

(a) In revenue Para 7, it is alleged that they have availed excess input tax credit of Rs. 77,568/- on reconciliation of GSTR-2A and GSTR-3B for the year

2018-19. They submitted that the alleged Input Tax Credit is Rs. 77,568/- which is extremely nominal in comparison with the ITC availed by them. Even, if they are not allowed to avail the ITC of Rs. 77,568/-, there is excess Input Tax Credit available at the end of the year, therefore, even if the aforementioned ITC is reversed, there is no tax liability on them. As there is sufficient Input Tax Credit available, therefore, levy of Interest without utilization of Input tax credit is bad and illegal.

(b) Input Tax credit of Rs. 77,568/- is availed by them with reference to professional service availed by them from Areion Corporate Advisors towards payment of fees and they have charged Rs. 180000/- IGST from them and therefore they have claimed the said amount of ITC in their GSTR-3B.

(c) They possess all the documents such as Invoice as well as payment proof as it is made through Bank, therefore, merely disallowing the credit on the basis of 2A is unlawful and against rule of natural justice.

16.2 Taxpayer's reply in respect of issue raised in Revenue Para 8:-

(a) All the condition to avail input tax credit are satisfied even the suppliers have shown supply to them in their return, however, in some cases, because of quality issues there was late payment of consideration. However, the suppliers have duly notified the transactions in their GSTR-3B returns as well as deposited the tax on the said transactions in to government treasury on prescribed date, there is no default on the part of suppliers. Hence, merely because of late payment of consideration of levy of interest is bad in law.

(b) There is no intention to evade tax as the transactions were duly recorded in the books of accounts as well as properly reflected in the returns filed and even tax is deposited on the transaction. Therefore, there is no malafide intention on part of them therefore levy of penalty without any intention to evade tax is bad in law and against the principle of justice.

16.3 Taxpayer's reply in respect of issue raised in Revenue Para 9:-

(a) It is alleged that they have availed Input Tax Credit of Rs. 10,16,31,84/- and further they have not made payment to the creditors. They submitted that the said credit has been reversed by paying the same through DRC-03. They stated that the transaction was genuine. In sake of revenue, they paid the alleged amount for peace of mind under Form DRC-03.

(b) The supplier has already reflected the same into their books of accounts and monthly return and also has discharged the tax liability by paying cash or using ITC, therefore, there is no question of levying interest on the said amount as on the same transactions, both the supplier and receiver has discharged tax which also resulted in double taxation. They stated that there is no intention to evade tax as the transactions were duly recorded in the books of accounts as well as properly reflected in the returns filed and even tax is deposited on the transaction, therefore, there is no malafide intention, therefore, levy of penalty without any intention to evade tax is bad in law and against principal of justice.

(c) They have paid the consideration to below mentioned dealers which are part of Annexure-C of the Show Cause Notice:-

- Nishit Dilipkumar Shah (Mishit Marketing)
- Tarul Plasto Pack
- Lotus Enterprise

They requested to consider the payments made to aforementioned creditors.

16.4 Taxpayer's reply in respect of issue raised in Revenue Para 10:-

(a) It is alleged that they have availed Input Tax Credit of Rs. 10351080 and further has not made payment after the completion of 180 days to the supplier Omega Exim. They submitted that said credit has been reversed in GSTR-3B for the month Sep 2020-21. The applicant dealer despite the transactions was genuine, in sake of revenue, paid the alleged amount for peace of mind under GSTR-3B return.

(b) The supplier has already reflected the transaction into their books of accounts and monthly return and also has discharged the tax liability by paying cash or using ITC, therefore, there is no question of levying interest on the said amount as on the same transactions both the supplier and receiver has discharged tax which also results in double taxation.

(c) They stated that there is no intention to evade tax as the transactions were duly recorded in the books of accounts as well as properly reflected in the returns filed and even tax is deposited on the transaction, therefore, there is no malafide intention on part of the applicant dealer, therefore, levy of penalty without any intention to evade tax is bad in law and against principal of justice.

(d) Despite the said credit was reversed, there was still excess balance of input tax credit available at the end of the year, therefore, keeping in mind the principle laid down by the Hon Gujarat High Court in the matter of Cosmos International vs The State of Gujarat, it was held that no interest and penalty is leviable if there is excess credit available at the end of the year. Therefore, the proceedings for levying interest and penalty should be dropped.

16.5 Taxpayer's reply in respect of issue raised in Revenue Para 11:-

(a) They submitted that they have undergone genuine transaction of export and after submitting each and every detail of export, the refund was processed by the portal. Due to quality disputes, they have still not received the payment. However, they have reversed the refund claimed under protest as per the directions of the authorities.

(b) They have exported goods on payment of tax further refund has been claimed after duly submitting the details of export such as shipping bill and other related documents, therefore, there was no intention to claim any bogus refund or any other malafide intention, therefore, the notice to levy penalty on the same is bad and illegal.

16.6 They have already paid certain amount under Interest and penalty in Form DRC-03, the details of the same are as under:-

F.Y.	Interest	Penalty
2018-19	7408363	1000000
2019-20	1781844	2467169

PERSONAL HEARING

17. Personal Hearing in the instant case was held on 04.03.2024. Shri Pareshkumar Dayaljibhai Patel, Director of M/s. Sayona Colors

Pvt Ltd appeared for Personal Hearing. He re-iterated their written submission dated 29.06.2022 received on 29.06.2022. He further requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

18. I have carefully gone through the records of the case, defense reply dated 29.06.2022 received on 29.06.2022 and submission made by the Taxpayer during the course of personal hearing and proceeds to decide the case.

19. On recapitulating, I find that the issues involved in the present show cause notice are:-

(i) Non-reversal of ITC on account of excess availment in GSTR-3B on reconciliation with GSTR-2A including ITC availed on import and RCM (Amount Rs. 77,568/- (CGST of Rs. 38,784/- & SGST of Rs. 38,784/-)),

(ii) Non payment of interest on payment made to the sundry creditors after 180 days as per Section 16(2) of CGST Act, 2017 read with Rule 37 of CGST Rules, 2017 (Interest amount of Rs. 2,57,722/- (Rs. 348/- on IGST + Rs. 1,28,687/- on CGST + Rs. 1,28,687/- on SGST)),

(iii) Non reversal of ITC due to non payment to the creditors (suppliers) (ITC amounting to Rs. 1,01,63,184/- (IGST Rs. 1,20,600/-, CGST Rs. 50,21,292/-, SGST Rs. 50,21,292/-)),

(iv) Interest not paid on reversal of ITC due to non-payment to Creditors (Suppliers) (Interest amount of Rs. 30,87,072/- (Rs. 15,43,536/- on CGST + Rs. 15,43,536/- on SGST)),

(v) Non reversal of IGST refund due to non realization of export/Foreign proceeds (IGST refund of Rs. 1,86,47,160/-).

Thus, I am going to discuss issues one by one and examine the Taxpayer's response to reach a conclusion in the matter.

20. Non-reversal of ITC on account of excess availment in GSTR-3B on reconciliation with GSTR-2A including ITC availed on import and RCM:-

20.1 I find that during the course of audit, on verification of Input Tax Credit availed as per GSTR-3B return and ITC received as per GSTR-2A including ITC availed on import and RCM for the FY 2018-19, it was observed that the Taxpayer has availed excess ITC of Rs. 77,568/- (CGST of Rs. 38,784/- & SGST of Rs. 38,784/-) in comparison with ITC received in their GSTR-2A including ITC availed on import and RCM during the period 2018-19. The details are as under:-

Row No.	Particulars	Tax Head		Total
		CGST	SGST	
A	Total input as per GSTR 3B	12378049	12378049	24756098
B	Less ITC Reversed	0	0	0
C	Net ITC availed as per 3B	12378049	12378049	24756098
D	Total Input as per GSTR 2A	12334217	12334217	24668434
E	Add ITC availed through RCM	10849	10849	21697
F	Less Credit Note Issued by Supplier	5801	5801	11602
G	Eligible ITC as per 2A (B to B, Import) & RCM Purchase	12339265	12339265	24678529
H	Diff if any(G-C)	-38784	-38784	-77568

20.2 In this regard, the Taxpayer has made contention that even if they are not allowed to avail the ITC of Rs. 77,568/-, there is excess Input Tax credit available at the end of the year. They further contested that disallowing the Input Tax Credit merely relying upon GSTR-2A is bad and illegal. They also contested that said ITC is availed by them with reference to professional service availed by them from M/s. Areion Corporate Advisors towards payment of fees towards various services availed by them and they have charged Rs. 1,80,000/- IGST from the Taxpayer.

20.3 I have gone through the contention raised in the Show cause Notice, reply submitted by the Taxpayer and relevant provisions of CGST Act, 2017 in this regard. I find that eligibility of ITC is governed under the provisions of Section 16 of the Central Goods and Service Tax Act, 2017, relevant extract of the same is reproduced as under:-

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

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

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

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

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

(c) subject to the provisions of ³[section 41 or section 43A], 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:

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

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Further, I find that Section 39 of the Central Goods and Service Tax Act, 2017 provides the provisions for furnishing returns. The relevant extract of the same is reproduced as under:-

Section 39. Furnishing of returns.-

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

Provided that every registered person furnishing return under the proviso to subsection (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.]

20.4 I find that the Taxpayer has availed excess ITC of Rs. 77,568/- (CGST of Rs. 38,784/- & SGST of Rs. 38,784/-) in GSTR-3B return, in comparison with ITC received in their GSTR-2A including ITC availed on import and RCM during the period 2018-19 in contravention of the provisions of Section 16 of the Central Goods & Service Tax Act, 2017 read with Gujarat State Goods & Service Tax Act, 2017. Further, contentions made by the Taxpayer in this regard is not tenable in the eyes of law as conditions of Section 16 of CGST Act, 2017 read with Gujarat State Goods & Service Tax Act, 2017 are not satisfied in the present matter.

20.5 In view of the material evidences available on records and as discussed above, I find that Taxpayer has contravened following provisions of CGST Act, 2017 and SGST Act, 2017:-

- (i) Section 16 of the CGST Act, 2017 read with Rule 37 of CGST Rules, 2017 read with corresponding provisions of Gujarat State GST Act, 2017 in as much as they have wrongly availed excess ITC in their GSTR-3B returns as compared to ITC actually available to them.
- (ii) Section 39(7) of the CGST Act, 2017 read with Rule 85(3) of the CGST Rules, 2017 as they have failed to reverse the ITC wrongly availed by them within the prescribed due dates.

20.6 In view of the above, I find that excess availed ITC of Rs. 77,568/- (CGST of Rs. 38,784/- & SGST of Rs. 38,784/-) is required to be recovered from M/s. Sayona Colors Pvt Ltd by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with corresponding provisions of Gujarat State GST Act, 2017. Now, I would like to discuss the applicability of interest. I find that M/s. Sayona Colors Pvt Ltd has wrongly availed and utilized Input Tax Credit of Rs. 77,568/- (CGST of Rs. 38,784/- & SGST of Rs. 38,784/-) as discussed above, therefore, the said Taxpayer is liable to pay interest under the provisions of Section 50(3) of the CGST Act, 2017 read with corresponding provisions of Gujarat State GST Act, 2017.

20.7 Now, coming to the next limb regarding imposition of penalty under the provisions of Section 74(1) of the CGST Act, 2017. I find from facts of case elaborated in the notice that demand of wrongly availed ITC of Rs. 77,568/- (CGST of Rs. 38,784/- & SGST of Rs. 38,784/-) has been proposed by invoking the provisions of Section 74(1) of the CGST Act, 2017 and penalty is also proposed under the provisions of Section 74(1) of the CGST Act, 2017. Before going ahead, it would be pertinent to look into the provisions of Section 74(1) of CGST Act, 2017 first, the same is reproduced as under:-

Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

20.8 On plain reading of the above provisions, it is evident that Section 74(1) speaks about the penalty in case of wrongly availed or utilized input tax credit by reason of fraud, or any willful-misstatement or suppression of facts to evade tax. Further, it is also evident that quantum of penalty is equivalent to tax due from such

person, for reason of fraud or any willful misstatement or suppression of facts to evade tax. Looking to the facts of the case and discussion as above, the wrong availment of ITC has been soundly established in the instant case under Section 74 of CGST Act, 2017 read with corresponding provisions of Gujarat State GST Act, 2017. Accordingly, M/s. Sayona Colors Pvt Ltd has made themselves liable for penalty under the provisions of Section 74(1) of CGST Act, 2017 read with corresponding provisions of Gujarat State GST Act, 2017.

21. Non payment of interest on payment made to the sundry creditors after 180 days as per Section 16(2) of CGST Act, 2017 read with Rule 37 of CGST Rules, 2017

21.1 I find that during the verification and scrutiny of records, it was found that the taxpayer had made payment to their suppliers, a tax amounting to Rs. 12,26,431/- (IGST Rs. 2451/- + CGST Rs. 6,11,990/- + SGST Rs. 6,11,990/-) beyond the period of 180 days in contravention of second proviso to Section 16(2) of CGST Act, 2017. Thus, they appeared liable for interest @ 18% in terms of Section 50(1) of CGST Act, 2017. The summary of interest payable is as under:-

Tax Head	2017-18	2018-19	Total	Interest 2017-18	Interest 2018-19	Total
IGST	0	2451	2451	0	348	348
CGST	486685	125305	611990	110432	18255	128687
SGST	486685	125305	611990	110432	18255	128687
Total	973370	253061	1226431	220864	36858	257722

21.2 In this regard, the Taxpayer has made contention that all the condition to avail input tax credit are satisfied and even the suppliers have shown supply to them in their return, however, in some cases because of quality issues, there was late payment of consideration. They further submitted that the suppliers have duly notified the transactions in their GSTR-3B returns as well as deposited the tax on the said transactions in to the Government treasury on prescribed date.

21.3 I have gone through the contention raised in the Show cause Notice, reply submitted by the Taxpayer and relevant provisions of CGST Act, 2017 in this regard. I find that eligibility of ITC is governed under the provisions of Section 16 of the Central Goods and Service Tax Act, 2017, relevant extract of the same is reproduced as under:-

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

(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)

(b)

(c)

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

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

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

21.4 I find that as per statutory provisions under second proviso to Section 16(2) of CGST Act, 2017, in case of failure to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient is required to be added to his output tax liability alongwith interest thereon. It was further explained that as per third proviso to the said section, the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both with tax payable thereon.

21.5 I further find that as per above statutory provisions, the Taxpayer was required to add Input Tax Credit (ITC), involved in the transactions where payment of consideration including tax was not made to the supplier of goods/service within the specified time limit, to their output tax liability alongwith interest, in view of second proviso of Section 16(2) of CGST Act, 2017. Further, in view of the third proviso of the said section, the taxpayer would be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both alongwith tax payable thereon. The taxpayer, however, failed to comply with the statutory provisions as per the aforesaid proviso. I find that the taxpayer has made payment of value of supply including tax amounting to Rs. 12,26,431/- (IGST Rs. 2451/- + CGST Rs. 6,11,990/- + SGST Rs. 6,11,990/-) to the suppliers beyond the specified time limit, thus, I find that the Taxpayer is liable to pay interest @ 18% amounting to Rs. 2,57,722/- (Rs. 348/- on IGST + Rs. 1,28,687/- on CGST + Rs. 1,28,687/- on SGST) under Section 50(1) of the CGST Act, 2017 read with corresponding

provisions of Gujarat State GST Act, 2017 read with Section 20 of IGST Act, 2017.

21.6 Further, in the Show Cause Notice, penalty under Section 122(2)(b) of the CGST Act, 2017 has also been proposed. For the sake of reference, I reproduce Section 122(2)(b) of the CGST Act, 2017, which is as under:-

(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,—

(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.

I find that penalty under Section 122(2)(b) of CGST Act, 2017 is leviable when any registered person supplies any goods or services or both on which any tax has not been paid or short paid or erroneously refunded or where the input tax credit has been wrongly availed or utilized for reason of fraud or any willful misstatement or suppression of facts to evade tax. In the present Show cause Notice, recovery of only interest amount has been proposed. Further, no demand of tax/wrongly availed ITC has been proposed in the Show Cause Notice. Thus, I find that tax amount is not disputed in the present para. As, tax amount is not disputed in the Show Cause Notice, I refrain from imposing penalty under Section 122(2)(b) of CGST Act, 2017 read with corresponding provisions of Gujarat State GST Act, 2017 read with Section 20 of IGST Act, 2017.

22. Non reversal of ITC due to non-payment to the Creditors (Suppliers)

22.1 I find that during the verification of records of the Taxpayer, it was observed that the taxpayer had not paid consideration to some of the creditors (suppliers). The Taxpayer has availed ITC in respect of the said input suppliers but did not reverse the credit even as the same amount was not paid to the supplier. Therefore, ITC amounting to Rs. 1,01,63,184/- for the F.Y. 2018-19 was proposed to be disallowed and recovered from the Taxpayer under Section 74(1) of the CGST Act, 2017.

22.2 In this regard, the Taxpayer has made contention that they have reversed said credit by paying the same through DRC-03. They further submitted that the supplier has already reflected the same into his books of accounts and monthly return and also has discharged the tax liability by paying cash or using ITC, therefore there is no question of levying interest on the said amount. They further contested that there is no intention to evade tax as the transactions were duly recorded in the books of accounts as well as

properly reflected in the returns filed and even tax is deposited on the transactions, therefore, levy of penalty without any intention to evade tax is bad in law.

22.3 I have gone through the contention raised in the Show cause Notice, reply submitted by the Taxpayer and relevant provisions of CGST Act, 2017 in this regard. I find that eligibility of ITC is governed under the provisions of Section 16 of the Central Goods and Service Tax Act, 2017, relevant extract of the same is reproduced as under:-

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

(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)

(b)

(c)

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

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

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

22.4 I find that as per statutory provisions under second proviso to Section 16(2) of CGST Act, 2017, in case of failure to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient is required to be added to his output tax liability alongwith interest thereon.

22.5 In view of the material evidences available on records and as discussed above, I find that Taxpayer has contravened following provisions of CGST Act, 2017 and SGST Act, 2017:-

- (i) 2nd proviso to Section 16 of the CGST Act, 2017 in as much as they have wrongly availed the ITC without making payments of the value and tax to their suppliers; and failed to add the said ITC wrongly availed by them in their output tax liability alongwith interest thereon, in such a manner as may be prescribed; and
- (ii) Section 39(7) of the CGST Act, 2017 read with Rule 85(3) of the CGST Rules, 2017 in as much as they have failed to file correct returns.

22.6 In view of the above, I find that as per above statutory provisions, the Taxpayer was required to add Input Tax Credit (ITC), involved in the transactions where payment of consideration including tax was not made to the supplier of goods/service within the specified time limit, to their output tax liability alongwith interest, in view of second proviso of Section 16(2) of CGST Act, 2017. The taxpayer, however, failed to comply with the statutory provisions as per the aforesaid proviso. Therefore, the tax amounting to Rs. 1,01,63,184/- (IGST Rs. 1,20,600/-, CGST Rs. 50,21,292/- and SGST Rs. 50,21,292/-) is to be demanded/recovered from the Taxpayer under the provision of Section 74(1) of the CGST Act, 2017 read with corresponding provision of Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017. The Taxpayer is also liable to pay interest on the non-reversal of ITC, under the provisions of Section 50(1) of CGST Act, 2017 read with the provision of Section 16 of the CGST Act, 2017 read with corresponding provisions of Gujarat State GST Act, 2017 read with Section 20 of IGST Act, 2017.

22.7 Further, the Taxpayer has submitted that they have reversed the said credit by paying through form DRC-03. They also submitted that the supplier has already reflected the same into his books of accounts and monthly return and also has discharged the tax liability by paying cash or using ITC. In this regard, I find that period of demand involved in this matter is F.Y. 2018-19. The Taxpayer alongwith their reply has submitted one DRC-03 having ARN 'AD240322033845B' dated 29.03.2022 pertaining to F.Y. 2018-19. On the said DRC-03, reason is mentioned as "*Unsigned Invoices received from party and the party is not reachable also GST department has cancelled its registration suo moto, Hence ITC availed but not utilized has been reversed*".

I find that the issue involved in the present para is that the Taxpayer has failed to pay to the supplier of goods or services or both, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, therefore, an amount equal to the input tax credit availed by the recipient is required to be added to his output tax liability alongwith interest thereon. However, the said DRC-03 dated 29.03.2022 has been deposited in respect of Party's which are not reachable and whose registration has been cancelled by the department suo-moto. Thus, it is clear that

payment through said DRC-03 has been made by the Taxpayer for some other irregularity and not against the present para. Accordingly, I find that the Taxpayer has not made payment against the present demand.

22.8 Now, coming to the next limb regarding imposition of penalty under the provisions of Section 74(1) of the CGST Act, 2017. I find from facts of case elaborated in the notice that demand of wrongly availed ITC of Rs. 1,01,63,184/- has been proposed by invoking the provisions of Section 74(1) of the CGST Act, 2017 and penalty is also proposed under the provisions of Section 74(1) of the CGST Act, 2017. Before going ahead, it would be pertinent to look into the provisions of Section 74(1) of CGST Act, 2017 first, the same is reproduced as under:-

Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

22.9 On plain reading of the above provisions, it is evident that Section 74(1) speaks about the penalty in case of wrongly availed or utilized input tax credit by reason of fraud, or any willful-misstatement or suppression of facts to evade tax. Further, it is also evident that quantum of penalty is equivalent to tax due from such person, for reason of fraud or any willful misstatement or suppression of facts to evade tax. Looking to the facts of the case and discussion as above, the wrong availment of ITC has been soundly established in the instant case under Section 74 of the Act. Accordingly, M/s. Sayona Colors Pvt Ltd has made themselves liable for penalty under the provisions of Section 74(1) of CGST Act, 2017 read with corresponding provisions of Gujarat State GST Act, 2017 read with Section 20 of IGST Act, 2017.

23. Interest not paid on reversal of ITC due to non-payment to Creditors (Suppliers)

23.1 I find that during the verification of records, it was observed that the taxpayer had not paid consideration to creditor (Supplier) namely M/s. Omega Axim. The taxpayer has also availed ITC in respect of the said input supplies and reversed the ITC amounting to Rs. 1,03,51,080/- without interest through GSTR-3B for the month of September-2020. Therefore, interest amounting to Rs.

30,87,072/- appeared to be recovered from the Taxpayer under Section 50(1) of CGST Act, 2017. Worksheet of interest to be recovered from the Taxpayer is detailed as under:-

Annexure-B

Supplier's name & GSTN No : M/s. Omega Axim, 24ENOPS0523P1ZF

Invoice No. & date	Taxable Value	Tax amount		ITC availed date	Reversal date	No. of days	Interest on CGST (18%)	Interest on SGST (18%)
		CGST	SGST					
OETAX/005 DT. 27.11.2018	218610 00	196749 0	196749 0	10-12-2018	17-10-2020	677	656872	656872
OETAX/019 DT. 02.01.2019	312500 0	281250	281250	18-01-2019	17-10-2020	638	88490	88490
OETAX/046 DT. 04.03.2019	162000 0	145800	145800	13-04-2019	17-10-2020	553	39761	39761
OETAX/066 dt. 29.03.2019	309000 00	278100 0	278100 0	13-04-2019	17-10-2020	553	758413	758413
		517554 0	517554 0				1543536	1543536

23.2 In this regard, the Taxpayer has made contention that said credit has been reversed in the GSTR-3B for the month September, 2020-21. They further submitted that the supplier has already reflected the transaction into his books of accounts and monthly return and also has discharged the tax liability by paying cash or using ITC, therefore, there is no question of levying interest on the said amount. They also contested that there is no intention to evade tax as the transactions were duly recorded in the books of accounts as well as properly reflected in the returns filed and even tax is deposited on the transaction, therefore, there is no malafide intention on part of them, therefore, levy of penalty without any intention to evade tax is bad in law and against the principle of justice. They further contended that despite the said credit was reversed, there was still excess balance of input tax credit available at the end of the year, thus, as per principle laid down by the Hon'ble Gujarat High Court in the matter of Cosmos International vs. The State of Gujarat, it was held that no interest and penalty is leviable.

23.3 I have gone through the contention raised in the Show cause Notice, reply submitted by the Taxpayer and relevant provisions of CGST Act, 2017 in this regard. I find that eligibility of ITC is governed under the provisions of Section 16 of the Central Goods and Service Tax Act, 2017, relevant extract of the same is reproduced as under:-

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

(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)

(b)

(c)

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

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

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

23.4 I find that as per statutory provisions under second proviso to Section 16(2) of CGST Act, 2017, in case of failure to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient is required to be added to his output tax liability alongwith interest thereon. It was further explained that as per the provision to the said section, the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both with tax payable thereon.

23.5 I further find that as per above statutory provisions, the Taxpayer was required to add Input Tax Credit (ITC), involved in the transactions where payment of consideration including tax was not made to the supplier of goods/service within the specified time limit, to their output tax liability alongwith interest, in view of second proviso of Section 16(2) of CGST Act, 2017. Further, in view of the third proviso of the said section, the taxpayer would be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both alongwith tax payable thereon. The taxpayer, however, failed to comply with the statutory provisions as per the aforesaid proviso. I find that the taxpayer has reversed ITC amounting to Rs. 1,03,51,080/- through GSTR-3B for the month of September-2020,

however, failed to pay interest amounting to Rs. 30,87,072/- (CGST Rs. 15,43,536/- + SGST Rs. 15,43,536/-) under Section 50(1) of the CGST Act, 2017 read with corresponding provisions of Gujarat State GST Act, 2017.

23.6 Further, in the Show Cause Notice, penalty under Section 122(2)(b) of the CGST Act, 2017 has also been proposed. For the sake of reference, I reproduce Section 122(2)(b) of the CGST Act, 2017, which is as under:-

(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,—

(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.

I find that penalty under Section 122(2)(b) of CGST Act, 2017 is leviable when any registered person supplies any goods or services or both on which any tax has not been paid or short paid or erroneously refunded or where the input tax credit has been wrongly availed or utilized for reason of fraud or any wilful misstatement or suppression of facts to evade tax. In the present Show cause Notice, recovery of only interest amount has been proposed. Further, no demand of tax/wrongly availed ITC has been proposed in the Show Cause Notice. Thus, I find that tax amount is not disputed in the present para. As, tax amount is not disputed in the Show Cause Notice, I refrain from imposing penalty under Section 122(2)(b) of CGST Act, 2017 read with corresponding provisions of Gujarat State GST Act, 2017.

24. Non-reversal of IGST refund due to non realization of export/foreign proceeds

24.1 I find that during the verification of export documents, it was observed that the taxpayer had received IGST refund on supply of zero rated export with payment of tax, however, in some of the zero rated supply of exports with payment of tax, foreign proceeds have not been received by the Taxpayer within the time limit as prescribed by the Reserve Bank of India. The details of the same are as under:-

Sr. No.	Export Invoice No.	Shipping Bill No.	Port Code	IGST Refund	IGST Refund Date
1.	038/2018-19/ 28.08.2018	7193221/ 28.08.2018			
2.	044/2018-19/ 26.09.2018	7865427/ 27-09-2018	INSBI6	4446576	17.09.2018
3.	056/2018-19/ 28-11-2018	9212831/ 29-11-2018	INSBI6	4615834	17.10.2018
4.	080/2018-19/ 29-03-2019	3120666 /29-03-2019	INSBI6	3974582	20.12.2018
		Total		5610168	01.05.2019..
				18647160/-	

24.2 In this regard, the Taxpayer has submitted that they have undergone genuine transaction of export and after submitting each

and every detail of export, the refund was processed by the portal. They further submitted that due to certain quality disputes, they have still not received the payment. They contested that they have reversed the refund claimed under protest as per the direction of the authorities. In respect of interest, they submitted that they have exported goods on payment of tax and refund has been claimed after duly submitting the details of export such as shipping bill and other related documents, therefore, there was no intention to claim any bogus refund or any other malafide intention, therefore, the notice to levy penalty on the same is bad and illegal.

24.3 I have gone through the contention raised in the Show cause Notice, reply submitted by the Taxpayer and relevant provisions of CGST Act, 2017 in this regard. I find that as per Rule 96B of CGST Rules, 2017 inserted vide Notification No. 16/2020-Central tax dated 23.03.2020, if any refund of unutilized Input Tax Credit on account of export of goods or of integrated tax paid on export of goods has been paid to the applicant but the sale proceeds in respect of such export have not been realized, the Taxpayer should have deposited the amount so refunded, to the extent of non-realization of sale proceeds along with applicable interest within thirty days of expiry of the said period. In this regard, RBI vide circular No. RBI/2019-20/206 A.P. (DIR Series) Circular No. 27 dated 01.04.2020 granted relaxation in realization and repatriation of export. The relevant part of the said circular is reproduced as under:-

RBI/2019-20/206
A. P. (DIR Series) Circular No. 27

April 01, 2020

Export of Goods and Services-
Realisation and Repatriation of Export
Proceeds-Relaxation

The Government of India as well as the Reserve Bank has been receiving representations from Exporters Trade bodies to extend the period of realisation of export proceeds in view of the outbreak of pandemic COVID- 19. It has, therefore, been decided, in consultation with Government of India, to increase the present period of realization and repatriation to India of the amount representing the full export value of goods or software or services exported, from nine months to fifteen months from the date of export, for the exports made up to or on July 31, 2020.

2. The provisions in regard to period of realization and repatriation to India of the full export value of goods exported to warehouses established outside India remain unchanged.

3. AD Category - I banks may please bring the contents of this Circular to the notice of their constituents concerned.

4. The directions contained in circular have been issued under Section 10(4) and 11(1) of Foreign Exchange Management Act,

1999 (42 of 1999) and without prejudice to permissions / approvals, if any, required under any other law.

The relevant part of Rule 96B of CGST Rules, 2017 is reproduced as under:-

[Rule 96B. Recovery of refund of unutilized input tax credit or integrated tax paid on export of goods where export proceeds not realized.-

(1) Where any refund of unutilized input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realized, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realization of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realized by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realization within a period of three months from the date of realization of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realization of sale proceeds, provided the sale proceeds have been realized within such extended period as permitted by the Reserve Bank of India.]

24.4 I find that the Taxpayer in their reply has submitted that due to certain quality disputes, they have still not received the payment. Further, the Taxpayer in their written submission has neither contested that Reserve bank of India had written off the requirement of realization of sale proceeds on merits nor they have produced any such document/order to the Department in this regard. Thus, the said erroneous refund amounting to Rs. 1,86,47,160/- is recoverable from the Taxpayer under Section 74(1) of CGST Act, 2017 read with Section 20 of IGST Act, 2017.

24.5 Further, the Taxpayer in their defense reply has submitted that they have reversed the refund claim under protest. In this

regard, it is clarified in CBIC Circular No. 172/04/2022-GST dated 06.07.2022 that electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash. I find that refund of IGST paid on zero rated supply of goods/service has been sanctioned to the Taxpayer in cash. Thus, the Taxpayer is required to deposit the said erroneous IGST refund by debiting electronic cash ledger. However, the Taxpayer has not produced any payment proof viz DRC-03 vide which such erroneous refund of IGST has been deposited by them by debiting electronic cash ledger. Thus, I find that the Taxpayer has not deposited said erroneous refund of IGST of Rs. 1,86,47,160/-. Therefore, the said erroneous refund amounting to Rs. 1,86,47,160/- is recoverable from the Taxpayer under Section 74(1) of CGST Act, 2017 alongwith interest under Section 50(1) of CGST Act, 2017. I further find that the Taxpayer had suppressed the facts from the Department with an intent to avail refund of tax as stated above. Has audit not been conducted for the said period, such availment of erroneous refund would not come to notice of the Department. Accordingly, they are liable for penalty under the provisions of Section 74(1) of CGST Act, 2017 read with Section 122(2)(b) of CGST Act, 2017 read with Section 20 of IGST Act, 2017.

25. In view of the above discussion and findings, I pass the following order :-

ORDER

- (1) (i) I confirm the demand of Tax amounting to Rs. 77,568/- (CGST Rs. 38,784/- + SGST Rs. 38,784/-) (Rupees Seventy Seven Thousand Five Hundred Sixty Eight only) and order to recover the same from them under the provisions of sub-section (1) of Section 74 of the CGST Act, 2017 read with corresponding provisions of the Gujarat State Goods and Services Tax Act, 2017;
- (ii) I order to demand interest at the rates prescribed and recover the same from them under the provisions of Section 50(3) of the CGST Act, 2017 read with corresponding provisions of the Gujarat State Goods and Services Tax Act, 2017 in respect of the demand at Sr. No. 1(i) above;
- (iii) I impose a penalty of Rs. 77,568/- (CGST Rs. 38,784/- + SGST Rs. 38,784/-) (Rupees Seventy Seven Thousand Five Hundred Sixty Eight only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 on the taxpayer in respect of the demand at Sr. No. 1(i) above. In terms of sub section (11) of Section 74 ibid, where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded;

- (2) (i) I order to demand interest amounting to Rs. 2,57,722/- (CGST of Rs.1,28,687/- + SGST of Rs.1,28,687/- + IGST of Rs.348/-) (Rupees Two Lakh Fifty Seven Thousand Seven Hundred Twenty Two only) and recover the same from them under the provisions of Section 50(1) of the CGST Act, 2017 read with corresponding provisions of the Gujarat State Goods and Services Tax Act, 2017 read with Section 20 of IGST Act, 2017;
- (ii) I refrain from imposing penalty under Section 122(2)(b) of the CGST Act 2017 read with corresponding provisions of the Gujarat State Goods and Services Tax Act, 2017 read with Section 20 of IGST Act, 2017 as discussed above.
- (3) (i) I confirm the demand of ITC amounting to Rs. 1,01,63,184/- (IGST Rs. 1,20,600/- + CGST Rs. 50,21,292/- + SGST Rs. 50,21,292/- (Rupees One Crore One Lakh Sixty Three Thousand One Hundred Eighty Four Only) and order to recover the same from them under the provisions of sub-section (1) of Section 74 of the CGST Act, 2017 read with corresponding provisions of the Gujarat State Goods and Services Tax Act, 2017 read with Section 20 of IGST Act, 2017;
- (ii) I order to demand interest at the rates prescribed and recover the same from them under the provisions of Section 50(1) of the CGST Act, 2017 read with corresponding provisions of the Gujarat State Goods and Services Tax Act, 2017 read with Section 20 of IGST Act, 2017 in respect of the demand at Sr. No. 3(i) above;
- (iii) I impose a penalty of Rs. 1,01,63,184/- (IGST Rs. 1,20,600/- + CGST Rs. 50,21,292/- + SGST Rs. 50,21,292/- (Rupees One Crore One Lakh Sixty Three Thousand One Hundred Eighty Four Only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the taxpayer in respect of the demand at Sr. No. 3(i) above. In terms of sub section (11) of Section 74 ibid, where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded;
- (4) (i) I order to demand interest amounting to Rs. 30,87,072/- (CGST of Rs. 15,43,536/- + SGST of Rs. 15,43,536/-) (Rupees Thirty Lakh Eighty Seven Thousand Seventy Two Only) and recover the same from them under the provisions of Section 50(1) of the CGST Act, 2017 read with corresponding provisions of the Gujarat State Goods and Services Tax Act, 2017;
- (ii) I refrain from imposing penalty under Section 122(2)(b) of the CGST Act 2017 read with corresponding provisions of the

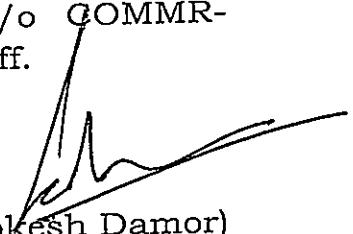
Gujarat State Goods and Services Tax Act, 2017 as discussed above.

(5) (i) I confirm the demand of erroneous IGST refund of Rs. 1,86,47,160/- (Rupees One Crore Eighty Six Lakh Forty Seven Thousand One Hundred Sixty Only) and order to recover the same from them under the provisions of sub-section (1) of Section 74 of the CGST Act, 2017 read with corresponding provisions of the Gujarat State Goods and Services Tax Act, 2017 read with Section 20 of IGST Act, 2017;

(ii) I order to demand interest at the rates prescribed and recover the same from them under Section 50(1) of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 read with Section 20 of IGST Act, 2017 in respect of the demand at Sr. No. 5(i) above;

(iii) I impose a penalty of Rs. 1,86,47,160/- (Rupees One Crore Eighty Six Lakh Forty Seven Thousand One Hundred Sixty Only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the taxpayer in respect of the demand at Sr. No. 5(i) above. In terms of sub-section (11) of Section 74 ibid, where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded;

26. Accordingly, the Show Cause Notice No. GADT/TECH/SCN/GST/46/2022-TECH and LEGAL-O/o GOMMR-CGST-ADT-AHMEDABAD dated 05.05.2022 is disposed off.


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

F.NO.GST/15-22/OA/2022

DT. 23.04.2024

By RPAD

To,

M/s. Sayona Colors Pvt Ltd,
Plot No.162/163/1, Phase-2,
Naroda GIDC, Naroda,
Ahmedabad, Gujarat-382330

