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OFFICE OF THE COMMISSIONER

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

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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. GST/15-49/OA/23-24

DIN- 20240464WT0000068E4

आदेश की तारीख/Date of Order: - 26.04.2024

जारी करने की तारीख/Date of Issue:- 26.04.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 10/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.

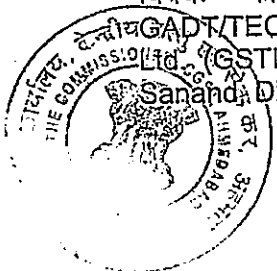
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (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/171/2022 dated 14.06.2023 issued to M/s. Noble Automotive India Pvt. (GSTIN : 24AADCN7799P1ZH), AV-5, Bol Industrial Estate, Sanand GIDC II, Taluka: Sanand, District: Ahmedabad 382110





BRIEF FACTS OF THE CASE

M/s. Noble Automotive India Pvt. Ltd., (GSTIN :- 24AADCN7799P1ZH) having their principal place of business situated at AV-5, Bol Industrial Estate, Sanand GIDC II, Taluka: Sanand, District: Ahmedabad 382110 (herein after referred as 'the said taxpayer' for the sake of brevity) are engaged in the supply of plastic pipes, rubber pipes, valves etc.

2. The audit of the financial records of the said taxpayer was conducted for the period from July-2017 to March-2019 and subsequently Final Audit Report No. :- GST/211 in the Form GST-02 was issued to the said taxpayer. In the said Final Audit Report, 4 Revenue Paras were un-settled Revenue Paras which are discussed in detail in subsequent paras. In this show cause notice all sections/provisions of CGST Act, 2017 (hereinafter referred to as "the said Act") have been referred as 'pari materia', to the same parallel provisions under the Gujarat GST Act, 2017. Further, provisions of IGST Act, 2017 as made applicable vide Section 20 thereof in reference to applicability of provisions of CGST Act, 2017. The revenue paras detected are as follows:

Revenue Para 8:- Non-payment of GST on goods sent for jobwork:-

3. Whereas, it was noticed that the said taxpayer had sent inputs for job work. However, the same were not received by the said taxpayer even after 1 (one) year in terms of the statement prepared on the basis of Form ITC 04. It appeared that the said taxpayer could not submit the relevant documents (details as per Annexure 'B'). Accordingly, it appeared that the taxpayer was liable to pay tax on the non-receipt, in terms of the provisions of Section 143 of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017. The calculation for the same is as under:

(Rupees in actuals)

Description	Central Goods and Services Tax ('CGST')	State Goods and Services Tax ('SGST')	IGST	Total
Tax	3075707	3075707	726851	68,78,265/-

4. The relevant text to Section 143 of the Act reads as under:

"143 - Job work procedure - (1) A registered person (hereafter in this section referred to as the principal) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,-

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out"

The said taxpayer was asked to clarify the difference noticed as per letter/email dated 5.4.2022, 28.4.2022, 19.5.2022 and 30.5.2022 and submit



the relevant documents for verification of the same, but they have not been able to produce any documents.

6. It appeared that the taxpayer has not brought back the inputs sent for job work within the period of 1 year, as envisaged under the provisions of Section 143(1)(a) of the Act *ibid*. It also appeared that they have not produced any documents to clarify their position. It appeared that in terms of the provisions of Section 143(3) of the Act, if the inputs sent for job work are not received within 1 year of being sent out, they shall be deemed to have been supplied to the job worker on the day when they were sent out. It, therefore, appeared that the taxpayer is liable to pay tax on the inputs sent to the job worker.

7. It appeared that the taxpayer has contravened the provisions of:

- *Section 143(1)(a) of the Act as they have failed to bring back the inputs sent for job work within a period of 1 year from the day they were sent out; and*
- *Sections 39(7) of the Act read with the provisions of Rules 85(3) of the Rules as they have failed to pay tax to the Government account within the prescribed due dates.*

8. It appeared that the taxpayer have not brought back the inputs sent for job work within the period of 1 year in terms of the provisions of Section 143(a) of the Act. It appeared that they have also not paid the tax considering them as sent to the job worker, in terms of the provisions of Section 143(3) of the Act. It, therefore, appeared that there is a case of suppression of facts with an intent to evade the payment of tax. It appeared that tax totally amounting to Rs.68,78,265/- (Rs.7,26,851/- (IGST) + Rs.30,75,707/- (CGST) + Rs.30,75,707 (SGST)) is to be demanded and recovered from the taxpayer, under the provisions of Sections 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017. It appeared that the taxpayer would also be liable to pay interest on the non-payment of tax, under the provisions of Sections 50(3) of the CGST Act, 2017/Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017. It appeared that the taxpayer have suppressed the facts with an intent to evade the payment of tax, as stated above. Accordingly, they also appeared to be liable for penal action under the provisions of Sections 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017.

Revenue Para 9 : Wrong availment of ITC as per difference between GSTR 2A and purchase register for FY 2017-18 and 2018-19.

9. Whereas, the taxpayer was asked to justify the ITC availed by them during the year 2017-18 and 2018-19 in GSTR-3B return. The taxpayer in this regard produced ITC/Purchase register for the year 2017-18 and 2018-19. On verification of the tax invoices entered in their ITC/Purchase register vis-a-vis tax invoices reflecting in their GSTR-2A, it was found that the invoices listed in Annexure-C attached to this show cause notice, were not reflected in their GSTR-2A. Therefore, in order to ascertain that the conditions laid down under Section 16(2) were fulfilled, the taxpayer was further asked to produce evidence in the form of tax invoices, payment made to the supplier along with tax and challans showing delivery of goods. However, the taxpayer did not

produce any of these evidences which could prove that the ITC availed by them on the said invoices was legal and proper in terms of Section 16 of CGST Act, 2017. The invoices entered in their ITC/Purchase Register were compared with GSTR-2A and the invoices which were reflected in GSTR-2A, the ITC was allowed. The invoices which were not reflected in GSTR-2A the ITC appeared to be not admissible to the taxpayer as the taxpayer could not prove that the tax on these invoices had been actually paid by the suppliers to the Government account. Hence, there appeared contravention of Section 16(2)(a) and Section 16(2)(c) of the CGST Act, 2017. Section 16(2)(a) of CGST Act, 2017 which lays down the eligibility conditions for taking input tax credit, states that the taxpayer who avails ITC must be in possession of invoice or debit note issued by the supplier registered under the Act. Therefore, it was incumbent upon the taxpayer to show the tax invoices on which they had availed ITC in their GSTR-3B. Since the taxpayer could not produce those tax invoices or any other such duty paying document evidencing payment of duty or tax to the Government by the supplier, it appeared that the said taxpayer was not eligible for ITC on tax invoices which were not possessed by them. The calculation of the same is as under:

(Rupees in actuals)

Description	CGST	SGST	IGST	Total
Tax	361724	361724	35988285	3,67,11,734/-

10. The eligibility of ITC is provided under Section 16(1) of the Act. The relevant text is reproduced below:

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

11. Section 16(2)(a) of the Act says that the taxpayer would not be entitled to ITC if he is not in possession of a tax invoice or debit note or any tax paying document issued by a taxpayer from where goods have been purchased. It appeared that the ITC available from their GSTR 2A return and the one detailed in their purchase register had a mismatch. It appeared that the taxpayer has availed ITC on the strength of those tax invoices which were not in their custody. It, therefore, appeared that in terms of Section 16(2)(a) and Section 16(2)(c) of CGST Act, 2017, the said ITC would not be admissible to them, as tabulated above.

12. It appears that the taxpayer has contravened the provisions of:

- Sections 16(1)/16(2)(a) and Section 16(2)(c) of the Act read with the provisions of Section 20 of the IGST Act as they have wrongly availed the ITC in excess to what was available to them on the strength of the tax invoices; and

Sections 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.



13. It appeared that the taxpayer had availed & utilised the ITC in excess without having proper tax paying documents, as required under the provisions of Section 16(2)(a) and Section 16(2)(c) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act. It appeared that they had not reversed the ITC availed by them in excess within the prescribed due dates. It appeared that the ITC totally amounting to Rs 3,67,11,734/- (Rs.3,59,88,285/- (IGST) + Rs.3,61,724/- (CGST) + Rs.3,61,274/- (SGST)) is to be disallowed and recovered from the taxpayer, under the provisions of Sections 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017. It appeared that the taxpayer would also be liable to pay interest on the non-reversal of ITC, under the provisions of Sections 50(3) of the CGST Act, 2017/Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017. It appeared that the taxpayer have suppressed the facts with an intent to wrongly avail the ITC, as stated above. Accordingly, they also appeared to be liable for penal action under the provisions of Sections 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017.

Revenue Para 10 : Excess availment of ITC in GSTR 3B in comparison to GSTR 2A

14. Whereas, it was observed that the taxpayer had availed excess ITC during the year 2017-18 in their GSTR 3B return as compared to what was available in their GSTR2A return, in terms of Table 8 of their GSTR 9 return for the said financial year. The calculation of the same is as follows:

Table-04

(Amount in Rupees)

Particulars	IGST
ITC as per GSTR2A	19511181
ITC as per Table 6 of GSTR9	20322478
Difference	8,11,296/-

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

16. Eligibility and conditions for taking input tax credit.

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



- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;
- (c) **subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and**
- (d) **he has furnished the return under section 39 “**

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

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

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

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

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

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return,



electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

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

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

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

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

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

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

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

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

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

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

20. It, therefore, appeared that there is a case of suppression of facts with an intent to wrongly avail ITC in excess of what was available to them. It appeared that the ITC amounting to Rs.8,11,296/- (IGST) is to be disallowed and recovered from the taxpayer, under the provisions of Sections 74(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act. It appeared that the taxpayer would also be liable to pay interest on the non-

reversal of ITC, under the provisions of Sections 50(3) of the Act read with the provisions of Section 20 of the IGST Act. It appeared that the taxpayer have suppressed the facts with an intent to wrongly avail the ITC, as stated above. Accordingly, they also appeared to be liable for penal action under the provisions of Sections 74(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act.

Revenue Para 11 : Wrong availment of ITC on Blocked Credit (MM Construction, Kitchen):

21. It was observed that the taxpayer had taken ITC on work related to construction and repairs of building. They have capitalized the same. They have further availed ITC on furniture used in the canteen. It appeared that ITC in respect of construction related work and furniture used in the canteen is ineligible and under blocked credit, as per the provisions of Section 17(5) of the CGST Act, 2017. The calculation of the wrongly availed ITC is as follows:

(Rupees in actuals)

Description	CGST	SGST	IGST	Total
Tax	184725	184725	0	3,69,450/-

22. The relevant text to Section 17(5) of the Act reads as under:

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

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

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

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

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

23. The combined reading of the provisions of Sections 16(1) of the CGST Act, 2017 and the clauses (b)(i), (c) and (d) to Section 17(5) of the Act *ibid*, indicates that ITC appeared to be inadmissible on the input services availed by the taxpayer, as they fall within the purview of ‘blocked credit’.

24. It appears that the taxpayer has contravened the provisions of:

- Sections 17(5) of the Act read with the provisions of Sections 16(1) of the Act as they have wrongly availed ITC which were inadmissible; and



- Sections 39(7) of the Act read with the provisions of Rules 85(3) of the Rules as they have failed to reverse the ITC attributable to ineligible credit within the prescribed due dates.

INVOCATION OF SECTION 74 OF THE CGST ACT., 2017

25. Section 74 of the CGST Act., 2017 :

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

(2) to (6).....

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

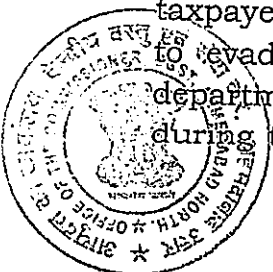
(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

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

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

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

26. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act, 2017 /Gujarat GST Act'2017 which reads as "59. *Every registered person shall self-assess the taxes payable under this Act and furnish a return for the tax period as specified under section 39*". It appeared that the said taxpayer suppressed the short payment/ non payment of GST and wrongly availed and utilized irregular ITC as discussed herein above and thereby it appeared the taxpayer has knowingly failed to correctly self assess tax payable with an intent to evade payment of proper tax. In the scheme of self-assessment, the department comes to know about the supplies made and ITC availed only during the scrutiny of the statutory returns filed by the taxpayers under the



statute. Therefore, it places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns.

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

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

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

29. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC-01 A was issued to the said taxpayer on 16.12.2022 intimating their liability under Section 74(5) of the CGST Act, 2017 or to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 26.12.2022. The taxpayer has neither paid the dues nor filed any submissions for consideration.

30. Accordingly, A Show Cause Notice No.- GADT/TECH/SCN/GST/171/2022 dated 14.06.2023 was issued to M/s Noble Automotive India Pvt Ltd, AV-5, Bol Industrial Estate, Sanand GIDC II, Taluka: Sanand, District: Ahmedabad 382 110 as to why:

i. Tax amounting to Rs.68,78,265/- (Rs.7,26,851/- (IGST) + Rs.30,75,707/- (CGST) + Rs.30,75,707/- (SGST) (Rupees Sixty Eight Lakh Seventy Eight Thousand Two Hundred and Sixty Five only), as per Revenue Para 8, should not be demanded and recovered from them under the provisions of Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017;

ii. ITC amounting to Rs.3,67,11,734/- (Rs.3,59,88,285/- (IGST) + Rs.3,61,724/- (CGST) + Rs.3,61,724/- (SGST) (Rupees Three Crore Sixty Seven Lakh Eleven Thousand Seven Hundred and Thirty Four only), as per Revenue Para 9, should not be disallowed and recovered from them,



(ii) Further, the taxpayer has submitted that Audit officer has merely examined the ITC -04 and has not considered the other evidences which reveals that the goods which have been sent to Job work have been received back. They have prepared a list enclosed at Annexure -3 which contains details of goods sent to job work and received back from job worker. If the said list is seen, then, department will get satisfied that the inputs sent to a job worker has been received back within a period of one year. In the said annexure, the assessee has put the serial number as in the data stated in the Show Cause Notice, the corresponding delivery Challan Number issued by the assessee, the document number and the date on which the goods have been sent to the job worker and the document number and date on which the goods have been received back in the factory of the assessee from the job worker. They also enclosing evidence on a sample basis w.r.t goods received back by the assessee.

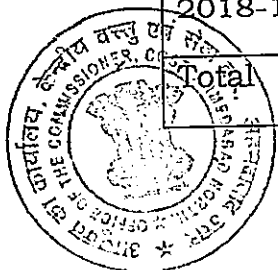
(iii) Without prejudice, if we see the Sr. No 70 of Annexure -3, then, in the same, the value of goods sent to M/s HariomInstru Labs, vide Challan Number 550043 dated 13.02.2019, the value of goods sent to Job worker is Rs 31644768. In fact, the said value is incorrect. On that, tax has been derived by the department amounting to Rs 2648029 under CGST and Rs 2648029 under SGST. The correct value is Rs 208176. Without prejudice, the said goods have been sent vide Document Number 550043 dated 13.02.2019, have been received back within a period of one year through inward document number (Invoice Number 933) issued by HARIOM INSTRU-LABS (GSTN # 24AAHFH5144D1ZR) for the calibration charged dated 28.02.2019 and the ITC of the same is also reflected in GSTR 2A for the month of March 2019 and that the evidence in this regard is contained in Annexure -3 referred above.

(iv) There are some inputs which have been received after processing in as is condition except processing is being done thereon i.e., without losing its essential character and there are some inputs which have been sent to a jobworker and they have been received back after changing the essential character. The goods that are received back after losing its essential character are enclosed at Sr No 67, 71, 72, 73, 74, 76, 77, 78, 83, 81, 86, 84, 87, 93, 96, 79, 80, 82, 85, 88, 92, 89, 90, 91, 94, 95, 97, 103, 102, 106, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119 and 120 of Annexure -3 which forms part of the submission.

(v) The assessee has made the payment of tax of Rs 1048 under CGST, Rs 1048 under SGST and Rs. 16,202 under IGST along with interest and its DRC 03 is enclosed. The same are stated at Sr No 1, 2, 66, , 99, 100, 101 of Annexure -3 referred above. Further, copy of DRC 03 is enclosed at Annexure -4.

(vi) total ITC demanded under this Show Cause Notice is as under:

Year	CGST	SGST	IGST	Total
2017-18	16603	16603	7285714	7318920
2018-19	345121	345121	28702571	29392813
Total	361724	361724	35988285	36711734

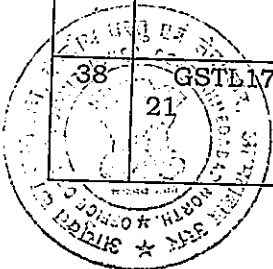


They have made the comparison of the transactions that are reflected in RUD and they have compared the same with the transactions that are reflected in GSTR 2A for F.Y. 2017-18. Of the same, under mentioned is the summary

Year	CGST	SGST	IGST	Total
Found in GSTR 2A	8771	8771	7210680	7228222
Not found in GSTR 2A	7832	7832	75034	90698
Total for the year 2017-18	16603	16603	7285714	7318920

The list of ITC which is not reflected in GSTR 2A is as under:

Sr. No.	Invoice Number	GSTIN	Gross Amount	IGST	CGST	SGST	vendor name IN SAP
1	3417029150	27AAGCA7184G1ZH	34611.20 Cr	7571	0	0	Araymond Fasteners Indi
2	3417030118	27AAGCA7184G1ZH	5149.44 Cr	1126	0	0	Araymond Fasteners Indi
4	MAACCPL/7468	33AAACC0136E1ZI	220419.4 6 Cr	342 03	0	0	Continental Carriers Pvt. Ltd
7	A16	24ACAPT1939K2ZE	72404.60 Cr	0	3914	39 14	Industrial Services Group
9	61	24ABUPJ9416G1ZC	32391.00 Cr	0	2471	24 71	Kanisha Product Technology
13	2017/69	24BWHPK9190F1ZB	12868.00 Cr	0	990	99 0	Raj Enterprise
14	111	24BWHPK9190F1ZB	5939.00 Cr	0	457	45 7	Raj Enterprise
30	2912A	33AAGCS0525D1ZX	5151.00 Cr	687	0	0	Sanjay Forwarders Pvt Ltd
35	GSTL17000871	06AABCS3392M1Z1	27888.00 Dr	7809	0	0	Stork Rubber Products Pvt Ltd
36	GSTL17000916	06AABCS3392M1Z1	35338.08 Dr	9895	0	0	Stork Rubber Products Pvt Ltd
37	GSTL17000993	06AABCS3392M1Z1	24089.92 Dr	6745	0	0	Stork Rubber Products Pvt Ltd
38	GSTL17001021	06AABCS3392M1Z1	24992.96 Dr	6998	0	0	Stork Rubber Products Pvt Ltd



For the above, They submitting Declaration as per Circular No. 183/15/2022-GST dated 27-12-2022 issued by Central Board of Indirect Taxes and Customs, New Delhi that they have paid tax on the supplies made to us at the time of personal hearing. Thus, considering above, for the year 2017-18, there is no amount required to be reversed.

1. (vii) For F.Y. 2018-19, the said taxpayer has submitted that Data duplication happened in the Show Cause Notice, attention is invited to Annexure - 1 (Also refer to Annexure -C of the RUD) enclosed with this submission wherein ITC denied by Audit marked at Sr Nos 7, 12, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 110, 111, 112, 114, 115, 118, 119, 122, 124, 126, 128, 130, 132, 134, 136, 137, 141, 143, 146, 183, 185, 188, 189, 191, 193, 192, 194, 195, 196, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273 are duplicated i.e., the demand has been raised in the show cause notice more than once for the same ITC. In the Annexure -1, in the above serial numbers, we have also mentioned as to in which Serial numbers, the ITC serial number which have already occurred. If refer the Annexure -5.2, then the ITC involved in the above Serial Numbers turns to Rs

Year	CGST	SGST	IGST	Total
2018-19	216140	216140	14476224	14908504

Thus, they requested that the demand that has been raised pursuant to the duplication in the data made by the department should be eliminated.

(viii) ITC that is not reflected in GSTR 2A turns as under:

Particulars for the year 2018-19

	CGST	SGST	IGST	Total
Total ITC as per SCN	345121	345121	28702571	29392813
ITC on account of Duplication	216140	216140	14476224	14908504
Balance ITC	128981	128981	14226347	14484309
ITC not availed by assessee	22913	22913	4024	49850
ITC reflected in GSTR 2A	96266	96266	14147994	14340526
ITC not reflected in GSTR 2A	9802	9802	74329	93933

Further, the transactions stated at Sr No 148, 149 and 150 are the import of goods made by them and the evidences are enclosed. Further, below mentioned are transactions wherein no ITC has been claimed by the assessee, however, in the RUD, the assessee has been asked to reverse the said ITC.



S.NO.	Invoice No.	GSTIN	Gross	IGST	CGST	SGST	VENDOR NAME
142	43/ 30-8-2018	24BFEPM8721E1ZM	49500.00		4455	4455	Kasam Transport Service
197	60418 / 10-1-2019		17573.00 Cr		1581.57	1581.57	GIDC - Water Not taken ITC
139	TC0000253 / 20-9-2018	24AFZPP3889E1ZO	58869.00 Cr		5298.21	5298.21	DIPESH Travels
172	AEFWD/18-19/D/5 / 10-7-20	33AAGCS0525D1ZX	22358.00 Cr	4024.44			SANJAY FORWARDERS PVT LTD
180	62400540 / 9-7-2018	24AAACT6649K1Z1	24923.12 Cr		2243.08	2243.08	TNT INDIA PVT LTD - GJ
181	62400539 / 9-7-2018	24AAACT6649K1Z1	51502.52 Cr		4635.23	4635.23	TNT INDIA PVT LTD - GJ
182	62400561 / 12-9-2018	24AAACT6649K1Z1	52232.91 Cr		4700.96	4700.96	TNT INDIA PVT LTD - GJ
Total ----->					4024.44	22913.63	22913.63

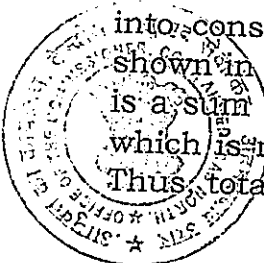
Further, the details of ITC not reflected in GSTR 2A is as under:

NO.	Invoice No.	GSTIN	Gross	IGST	CGST	SGST	VENDOR NAME
140	457/2017-18 / 22-9-2018	24ANDPS3697P1Z5	14500.00 Cr		1105.93	1105.93	TURQUOISE DIGITAL
108	TNSI000049092 / 31-7-201	24AABCD3611Q1ZO	25786.88 Cr		2000.74	2000.74	DHL EXPRESS (INDIA) PRIVATE LIMITED
138	057 / 28-8-2018	24ABUPJ9416G1ZC	39766.00 Cr		3033.00	3033.00	KANISHA PRODUCT TECHNOLOGY
144	2018-09 / 30-4-2018	24BWHPK9190F1ZB	18883.00 Cr		1452.56	1452.56	RAJ ENTERPRISE
145	0004 / 28-8-2018	24CLYPB8895D1ZI	28725.00 Cr		2210.00	2210.00	ADESH MANPOWER SERVICES
148	BOM294376 / 20-6-2018	27AABCD3611Q1ZI	49076.33 Cr	29353.63			DHL EXPRESS (INDIA) PRIVATE LIMITED
149	BOM387897 / 18-10-2018	27AABCD3611Q1ZI	41280.17 Cr	23074.00			DHL EXPRESS (INDIA) PRIVATE LIMITED
150	BOM397009 / 29-10-2018	27AABCD3611Q1ZI	35820.15 Cr	21901.65			DHL EXPRESS (INDIA) PRIVATE LIMITED
Total ----->				74329	9802	9802	

For the above, they will be submitting the Declaration as per Circular No. 183/15/2022-GST dated 27-12-2022 issued by Central Board of Indirect Taxes and Customs, New Delhi that they have paid tax on the supplies made to us at the time of personal hearing. Thus, considering above, for the year 2018-19, there is no amount required to be reversed.

(ix) Further, they submitted that the provisions w.r.t ITC availment as per GSTR 2A / 2B is contained under Rule 36(4) of the CGST Rules, 2017 and SGST Rules, 2017 respectively. The said rule has come into effect w.e.f 09.10.2019 only and not prior to that.

(x) For demand of excess availment of ITC amounting to Rs. 8,11,296/- in GSTR 3B, the taxpayer has submitted that in the month of September 2017, the assessee has made an import of goods and has shown the same as 'All other ITC' in GSTR 3B return. However, on realizing the said mistake, the same has been rectified by availing the ITC as ITC of 'Import' and reversing the same in GSTR 3B in the month of GSTR 3B. Duty demanded under IGST is of Rs 811296 as per Table 8 of GSTR 9 of the FY 2017-18. Table 8 of GSTR 9 takes into consideration only the ITC availed and not ITC reversed which is also shown in GSTR 9. For instance, if they see table 8B of the FY 2017-18, then, it is a sum of 6B and 6H of GSTR 9. It is not taking into consideration the ITC which is reversed as reflected in Table 7H1 which amounts to Rs 938372.00. Thus, total ITC under IGST is demanded to the tune of Rs 811296 whereas the



ITC reversed is more than that, i.e., Rs 938372.00. Thus, when the ITC that is demanded by the department is already reversed, no more demand for reversal of ITC should sustain.

(xi) As regard, wrong availment of ITC on blocked credit, the said taxpayer has submitted that the ITC on furniture is not covered under the blocked credit under section 16 of the CGST Act, 2017. They further submitted that what is restricted is the ITC of food and beverages as per section 17(5)(b)(i) of the CGST Act, 2017. Since furniture is not considered as food and beverages and it has a separate HSN which is different from the HSN of the food and beverages. Moreover, if the furniture in the canteen facility is essentially for the purpose of the business of the company and is covered under section 16(1) and is not covered under section 17(5), hence, it is requested to drop demand on the ITC availed on the furniture used in the canteen.

(xii) They also requested to drop interest under Section 50 of CGST ACT 2017. Further, they submitted that there is no element of invoking the provisions of section 74 exist in the present case. They also relied upon some judgment in this regard.

PERSONNEL HEARING

32. In the instant case, Personal Hearing was granted to the assessee on 09.02.2024. Shri Rohan Thakkar, CA and authorised signatory appeared on behalf of the assessee. They reiterated their written submissions dated 01.09.2023. He further, requested time till 19.02.2024 for submission of additional written submission. He further requested to decide the SCN on merits.

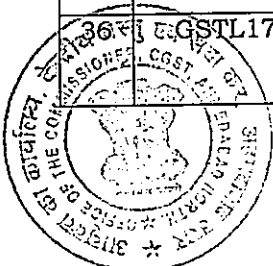
ADDITIONAL SUBMISSION

33. M/s. Noble Automotive India Pvt. Ltd vide their letter dated 19.02.2024 submitted their additional reply to the SCN wherein they stated that:-

(i) During the course of PH on 09.02.2024, with respect to their submission as made for Para 9, they are hereby submitting the declaration from the suppliers in terms of Circular No 183/15/2022-GST dated 27.12.2022 issued by Central Board of Indirect Tax and Customs, New Delhi for the under mentioned suppliers:

Year: 2017-18

Sr. No.	Invoice Number	GSTIN	Gross Amount	IGST	CGST	SGST	vendor name IN SAP
1	3417029150	27AAGCA7184G1ZH	34611.20 Cr	7571	0	0	Araymond Fasteners Indi
2	3417030118f	27AAGCA7184G1ZH	5149.44 Cr	1126	0	0	Araymond Fasteners Indi
4	MAACCPL/7468	33AAACC0136E1ZI	220419.46 Cr	34203	0	0	Continental Carriers Pvt. Ltd
35	GSTL17000871	06AABCS3392M1Z1	27888.00 Dr	7809	0	0	Stork Rubber Products Pvt Ltd
	GSTL17000916	06AABCS3392M1Z1	35338.08 Dr	9895	0	0	Stork Rubber Products



							Pvt Ltd
37	GSTL17000993	06AABCS3392M1Z1	24089.92 Dr	6745	0	0	Stork Rubber Products Pvt Ltd
38	GSTL17001021	06AABCS3392M1Z1	24992.96 Dr	6998	0	0	Stork Rubber Products Pvt Ltd

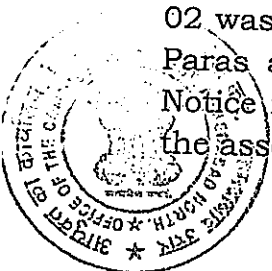
Year: 2018-19

NO.	Invoice No.	GSTIN	Gross	IGST	CGST	SGST	VENDOR NAME
08	TNSI000049092 / 31-7-201	24AABCD3611Q1ZO	25786.88 Cr		2000.74	2000.74	DHL EXPRESS (INDIA) PRIVATE LIMITED
45	0004 / 28-8-2018	24CLYPB8895D1ZI	28725.00 Cr		2210.00	2210.00	ADESH MANPOWER SERVICES
48	BOM294376 / 20-6-2018	27AABCD3611Q1ZI	49076.33 Cr	29353.63			DHL EXPRESS (INDIA) PRIVATE LIMITED - IGST as per Bill of Entry is also there for 28824 and for Balance, declaration is enclosed.
49	BOM387897 / 18-10-2018	27AABCD3611Q1ZI	41280.17 Cr	23074.00			DHL EXPRESS (INDIA) PRIVATE LIMITED - IGST as per Bill of Entry is also there for Rs 22833 and for balance, declaration is enclosed.
50	BOM397009 / 29-10-2018	27AABCD3611Q1ZI	35820.15 Cr	21901.65			DHL EXPRESS (INDIA) PRIVATE LIMITED - IGST as per Bill of Entry is also there for Rs 21532 and for balance, declaration is enclosed.

(ii) In terms of proviso to section 17(5)(b) of the Act, the input tax credit is available, if it is obligatory for an employer to provide the same to its employees under any law for the time being in force. They are registered under the Factories Act, 1948 bearing registration number 8880/29301/2018 dated 01.03.2018 and as per Section 76 of the Factories Act 1948, it is obligatory for the assessee to provide canteen facility and even on this ground, it is humbly submitted that the ITC of furniture installed in the canteen is allowable.

DISCUSSION AND FINDINGS

34. In the instant case, I have carefully gone through the Show Cause Notice, reply to SCN, facts of the case on record and other submissions made by the noticee. On recapitulating, I find that audit of the financial records of the said taxpayer was conducted for the period from July, 2017 to March, 2019 and subsequently Final Audit Report No. :- GST/211 in the Form GST-02 was issued to the said taxpayer. In the said Final Audit Report, 4 Revenue Paras are un-settled and on the basis of said paras, present Show Cause Notice is issued. Now, I am going to discuss issues one by one and examine the assessee's response to reach a conclusion in the matter.



(A) Revenue Para 8 : Non-payment of GST on goods sent for jobwork:-

34.1. I find that during the course of GST audit for the period July-2017 to March-2019, it was observed that the said taxpayer had not brought back the inputs sent for job work within the period of 1 year, as envisaged under the provisions of Section 143(1)(a) of the GST Act 2017. Therefore, the said taxpayer is liable for pay tax on the inputs sent to the job worker. The calculation for the same is as under:

(Rupees in actuals)

Description	Central Goods and Services Tax ('CGST')	State Goods and Services Tax ('SGST')	IGST	Total
Tax	3075707	3075707	726851	68,78,265/-

However, M/s. Noble Automotive India Pvt. Ltd has submitted Annexure -3 showing that the inputs sent to a job worker has been received back within a period of one year. Further, they submitted that they had made the payment of tax of Rs 1,048/- under CGST, Rs 1,048/- under SGST and Rs. 16,202/- under IGST along with interest (DRC 03 enclosed) for those inputs which are received after one year.

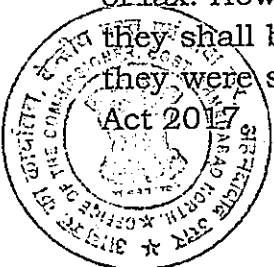
34.2. I find that Section 2(68) of the CGST Act, 2017 defines 'Job-work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'job-worker'. The ownership of the goods does not transfer to the jobworker but it rests with the principal. The job-worker is required to carry out the process specified by the principal, on the goods. Further, I find that Section 143 of GST Act 2017 read with Rule 45 explain to follow the procedure for the purpose of job work transaction. For sake of brevity, Section 143 of GST Act 2017 is reproduced below:-

"143 - Job work procedure - (1) A registered person (hereafter in this section referred to as the principal) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker, and likewise, and shall,-

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

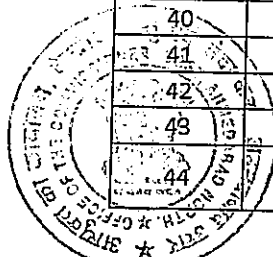
(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out"

As per Section 143(1)(a) of CGST Act 2017, the supply of the inputs to the job work shall be returned to the Principal within a year without payment of tax. However, If inputs are not received back by 'principal' within one years, they shall be deemed to have been supplied to the job worker on the day when they were sent out and GST shall be payable as define under 143(3) of CGST



34.3 In present case, I find that as per Annexure-B of RUD of said SCN, said taxpayer is liable to pay tax of Rs. 68,78,265/- on the inputs sent to the job worker in violation of Section 143 of CGST Act 2017. In this regard, said taxpayer has submitted annexure-3 and copy of invoices/challans showing that inputs were received within 1 year. On verification of these documents, I find that only following inputs are not brought back within the period of one year as envisaged under the provision of Section 143(1)(a) of CGST 2017.

S.N.	GSTIN	Challan No	Challan	Taxable Value	CGST	SGST	IGST
1	24AAACI3672B1Z2	60002.	12/15/2017	4,700	423	423	-
2	27AAACO8083G1Z9	60003	12/21/2017	89,956	-	-	16,192
3	27AABCI5382H1ZG	550012	8/25/2018	31,803	-	-	5,725
4	27AABCI5382H1ZG	550012	8/25/2018	4,650	-	-	837
5	27AABCI5382H1ZG	550035	7/1/2019	900	-	-	360
6	27AABCI5382H1ZG	550035	7/1/2019	1,200	-	-	216
7	27AABCI5382H1ZG	550035	7/1/2019	400	-	-	72
8	27AABCI5382H1ZG	550035	7/1/2019	200	-	-	36
9	06AAACR0206N1ZM	550036	10/1/2019	1,500	-	-	270
10	33AAFFD3371G1ZR	550038	1/25/2019	24,154	-	-	4,348
11	33AAACC4731H1Z3	550042	9/2/2019	750,000	-	-	135,000
12	33AAACC4731H1Z3	550052	2/22/2019	25	-	-	4
13	33AAACC4731H1Z3	550052	2/22/2019	19	-	-	3
14	33AAACC4731H1Z3	550052	2/22/2019	14	-	-	252
15	27AABCI5382H1ZG	550055	2/28/2019	83,000	-	-	14,940
16	27AABCI5382H1ZG	550055	2/28/2019	748	-	-	135
17	24AADFE9711D1ZT	550056	3/5/2019	14,970	1,347	1,347	-
18	27AABCI5382H1ZG	750007	4/24/2018	19,972	-	-	3,595
19	24AAACR2101G2Z4	750063	11/4/2019	223,800	20,142	20,142	-
20	27AABCI5382H1ZG	550045	2/18/2019	48,000	-	-	32,562
21	27AABCI5382H1ZG	550047	2/21/2019	1,200	-	-	720
22	27AABCI5382H1ZG	550047	2/21/2019	3,150	-	-	567
23	27AABCI5382H1ZG	550047	2/21/2019	2,250	-	-	405
24	27AABCI5382H1ZG	550047	2/21/2019	600	-	-	108
25	27AABCI5382H1ZG	550047	2/21/2019	300	-	-	54
26	27AABCI5382H1ZG	550048	2/21/2019	1,220	-	-	220
27	27AABCI5382H1ZG	550048	2/21/2019	600	-	-	108
28	27AABCI5382H1ZG	550048	2/21/2019	38,000	-	-	54
29	27AABCI5382H1ZG	550048	2/21/2019	50	-	-	9
30	27AABCI5382H1ZG	550048	2/21/2019	30	-	-	5
31	27AABCI5382H1ZG	550049	2/21/2019	40,650	-	-	270
32	27AABCI5382H1ZG	550049	2/21/2019	1,277	-	-	230
33	27AABCI5382H1ZG	550049	2/21/2019	5,000	-	-	190
34	27AABCI5382H1ZG	550049	2/21/2019	480	-	-	86
35	27AABCI5382H1ZG	550049	2/21/2019	276	-	-	50
36	27AABCI5382H1ZG	550049	2/21/2019	108	-	-	19
37	27AABCI5382H1ZG	550050	2/21/2019	57,500	-	-	38
38	27AABCI5382H1ZG	550050	2/21/2019	900	-	-	32
39	27AABCI5382H1ZG	550050	2/21/2019	47,500	-	-	23
40	27AABCI5382H1ZG	550050	2/21/2019	46	-	-	8
41	27AABCI5382H1ZG	550050	2/21/2019	900	-	-	7
42	27AABCI5382H1ZG	550050	2/21/2019	18	-	-	3
43	27AABCI5382H1ZG	550053	2/25/2019	300	-	-	54
44	27AABCI5382H1ZG	550054	2/25/2019	7,350	-	-	1,323



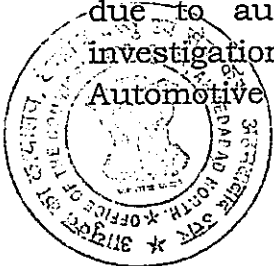
45	27AABCI5382H1ZG	550057	3/5/2019	135,000	-	-	24,300
46	27AABCI5382H1ZG	550059	3/7/2019	82,250	-	-	14,805
47	27AABCI5382H1ZG	550060	3/8/2019	22,500	-	-	4,050
48	27AABCI5382H1ZG	550061	3/11/2019	7,500	-	-	1,350
49	27AABCI5382H1ZG	550062	3/14/2019	118,800	-	-	21,384
50	27AABCI5382H1ZG	550062	3/14/2019	71,060	-	-	12,791
51	27AABCI5382H1ZG	550062	3/14/2019	2,100	-	-	378
52	27AABCI5382H1ZG	550063	3/18/2019	228,800	-	-	41,184
53	27AABCI5382H1ZG	550063	3/18/2019	82,200	-	-	14,796
54	27AABCI5382H1ZG	550063	3/18/2019	78,000	-	-	14,040
55	27AABCI5382H1ZG	550063	3/18/2019	57,650	-	-	10,377
56	27AABCI5382H1ZG	550063	3/18/2019	44,750	-	-	8,055
57	27AABCI5382H1ZG	550064	3/19/2019	72,000	-	-	12,960
58	27AABCI5382H1ZG	750017	6/3/2019	48,000	-	-	8,640
59	27AABCI5382H1ZG	750017	6/3/2019	738,400	-	-	132,912
60	27AABCI5382H1ZG	750020	6/7/2019	84,814	-	-	15,266
61	27AABCI5382H1ZG	750020	6/7/2019	32,638	-	-	5,875
62	27AABCI5382H1ZG	750022	6/10/2019	56,352	-	-	10,143
63	27AABCI5382H1ZG	750022	6/10/2019	35,712	-	-	6,428
64	27AABCI5382H1ZG	750023	6/21/2019	38,000	-	-	6,840
65	27AABCI5382H1ZG	750024	6/21/2019	44,000	-	-	7,920
66	27AABCI5382H1ZG	750025	6/21/2019	83,000	-	-	14,940
67	27AABCI5382H1ZG	750026	6/22/2019	57,500	-	-	10,350
68	27AABCI5382H1ZG	750036	7/24/2019	47,500	-	-	8,550
Total					21912	21912	627464

In view of the above table, I find that the said taxpayer is failed to brought back the inputs (mentioned in above table) sent for job work within the period of 1 year and accordingly they had not paid the tax amounting to Rs. 6,71,288/- (CGST of Rs. 21,912/-, SGST of Rs. 21,912/- and IGST of Rs. 6,27,464/-) considering them as sent to the job worker in terms of Section 143(3) of GST Act 2017. Therefore, I find that the taxpayer has contravened the following provisions:

- Section 143(1)(a) of the Act as they have failed to bring back the inputs sent for job work within a period of 1 year from the day they were sent out; and
- Sections 39(7) of the Act read with the provisions of Rules 85(3) of the Rules as they have failed to pay tax to the Government account within the prescribed due dates.

In view of the above discussion I find that out of total demand of Rs. 68,78,265/-, the said taxpayer is liable to pay Rs. 6,71,288/- (CGST of Rs. 21,912/-, SGST of Rs. 21,912/- and IGST of Rs. 6,27,464/-).

34.4 Further, I find that said facts emerged during the course of audit only and M/s. Noble Automotive India Pvt. Ltd has suppressed their actual tax liability on goods sent for job work with an intent to evade the payment of tax. The facts regarding evasion of GST on goods sent for job work came into light due to audit conduct by CGST, Audit, Ahmedabad. Had the present investigation not been initiated by CGST Audit, Ahmedabad against M/s. Noble Automotive India Pvt. Ltd, they would have continued with their modus of non



payment of GST on job work under Section 143 of CGST ACT 2017 on a regular basis. This clearly done intentionally in order to suppress their actual tax liability and thereby evading GST. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore the intent to evade payment of tax cannot be established by peering into the minds of the tax payer but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s. Noble Automotive India Pvt. Ltd, it shows their intent to evade payment of GST by an act of omission in as much as M/s. Noble Automotive India Pvt. Ltd though being well aware of the provisions of the CGST 2017 and Rules made there under failed to disclose to the department at any point of time their tax liability for evading GST on certain taxable supplies made by them.

34.5 The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the payer. Further, Explanation 2 to Section 74 of the CGST 2017 has defined suppression as under:

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

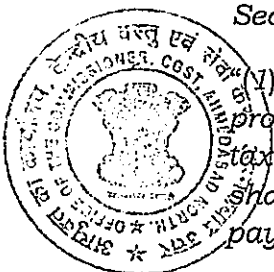
34.6 In view of the material evidences available on records and as discussed above, I find that said taxpayer has contravened following provisions of CGST ACT 2017 and SGST ACT 2017.

- (i) Section 143(1)(a) of the Act as they have failed to bring back the inputs sent for job work within a period of 1 year from the day they were sent out; and
- (ii) Sections 39(7) of the Act read with the provisions of Rules 85(3) of the Rules as they have failed to pay tax to the Government account within the prescribed due dates.

34.7 In view of the above, I find that Rs. 6,71,288/- (CGST of Rs. 21,912/-, SGST of Rs. 21,912/- and IGST of Rs. 6,27,464/-) is required to recovered from the said taxpayer by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat State GST Act, 2017. Now, I would like to discuss the applicability of interest. I find that said taxpayer has not paid tax of Rs. 6,71,288/- as discussed above, therefore said assessee is liable to pay interest under provisions of Section 50(1) of the CGST Act, 2017:-

Section 50. Interest on delayed payment of tax.-

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



as may be notified by the Government on the recommendations of the Council:

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

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

34.8 Now, Coming to next limb regarding imposition of penalty under the provisions of Section 74(1) of CGST Act 2017 read with Section 20 of the IGST Act, 2017. I find from facts of case elaborated in the notice that the demand of tax not paid of Rs. 6,71,288/- (CGST of Rs. 21,912/-, SGST of Rs. 21,912/- and IGST of Rs. 6,27,464/-) has been proposed by invoking the provisions of Section 74(1) of the CGST Act, 2017. Further, it is also evident that quantum of penalty equal to ten thousand or the tax due from such person, whichever is higher, for reason of fraud or any wilful misstatement or suppression of facts to evade tax. Looking to the facts of the case and discussion as above, the non payment of has been soundly established in the instant case under Section 74 of the Act. Accordingly, M/s. Noble Automotive India Pvt. Ltd has made themselves liable for penalty under the provisions of Section 74(1) of CGST Act 2017 read with Section 20 of the IGST Act, 2017.

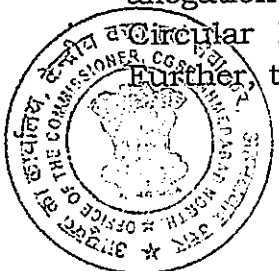
34.9 Further, I find that said taxpayer has made the payment of tax of Rs 1,048/- under CGST, Rs 1,048/- under SGST and Rs. 16,202/- under IGST along with interest (interest-CGST of Rs. 933/-, SGST of Rs. 933/- and IGST of Rs.16,322/-) vide DRC 03 No. AD240723019570C dated 25.07.2023, therefore, the same needs to appropriate against said demand.

(B) Revenue Para 9 : Wrong availment of ITC as per difference between GSTR 2A and purchase register for FY 2017-18 and 2018-19:-

35.1 I find that during the course of audit, it was observed that invoices listed in Annexure-C(F.Y. 2017-18 and 2018-19) attached to this Show Cause Notice, were not reflected in their GSTR-2A, however ITC of same had been availed and utilized by the said tax payer. Further, they had not provided copy of said invoices to audit team. Therefore, it appeared that the said taxpayer was not eligible for ITC for same. The calculation of the same is as under:

Year	CGST	SGST	IGST	Total
2017-18	16603	16603	7285714	7318920
2018-19	345121	345121	28702571	29392813
Total	361724	361724	35988285	36711734

However, M/s. Noble Automotive India Pvt. Ltd has denied said allegation and submitted copy of invoices, annexure, declaration as per Circular No. 183/15/2022-GST dated 27-12-2022 and other documents. Further, they submitted that ITC availment as per GSTR 2A / 2B is contained



under Rule 36(4) of the CGST Rules, 2017 and SGST Rules, 2017 respectively and the said rule has come into effect w.e.f 09.10.2019 only and not prior to that. Rule 36(4) do not have a retrospective application and therefore, the ITC reversal as demanded by the department as stated in the show cause notice by comparing the same with GSTR 2A is without the sanction of the law.

35.2 I find that Section 16 of the CGST Act 2017 defines eligibility, conditions and restriction for claiming Input Tax credit on goods and services in GST. Registered person have to fulfill of the following conditions of Section 16 of CGST Act in respect of availment of input tax credit:

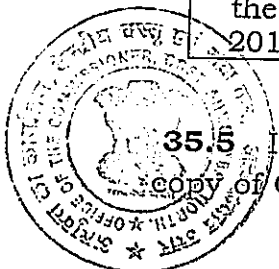
- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii) that he has received the goods or services or both;
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

35.3 Now, I take up the submission of said taxpayer that Rule 36(4) do not have a retrospective application and therefore, the ITC reversal as demanded by the department as stated in the show cause notice by comparing the same with GSTR 2A is without the sanction of the law. On this issue, i.e. difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19, CBIC New Delhi has already issued detailed Circular No. 183/15/2022-GST dated 27-12-2022 wherein it has been clarified that restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. **However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself.** Therefore, I find no merit in the said taxpayer submission that said show cause notice by comparing the same with GSTR 2A is without the sanction of the law. It is incumbent upon to me to mention here that the ITC available in GSTR 2A is based on taxpaying details fill up by the suppliers where GSTR 3B refers to availment of ITC by the recipient of inward supplies of input or input services and if there is any mismatch between both of these, then the taxpayer is required to justify the same with documentary evidences.

35.4 Further, I find that in said SCN, it has been alleged that said taxpayer is not eligible for ITC of Rs. 73,18,920/- (CGST of Rs.16,603/- + SGST of Rs.16,603/- + IGST of Rs. 72,85,714/-) during **F.Y. 2017-18** in terms of Section 16 of CGST Act 2017. However, said taxpayer has denied said allegation and they have bifurcated disputed ITC in two parts as under:-

Year	CGST	SGST	IGST	Total
Found in GSTR 2A	8771	8771	7210680	7228222
Not found in GSTR 2A	7832	7832	75034	90698
Total for the year 2017-18	16603	16603	7285714	7318920

35.5 I find that for ITC of Rs. 72,28,222/-, said taxpayer has submitted copy of GSTR 2A for F.Y. 2017-18 and for ITC of Rs. 90,698/-, Declaration as



per Circular No. 183/15/2022-GST dated 27-12-2022 issued by Central Board of Indirect Taxes and Customs, New Delhi. In this regard, I have gone through copy of GSTR 2A for F.Y. 2017-18 available on AIO system and found that invoices mentioned at Sr.N. 15, 17, 18, 20,21,22,23,24,25,26,27 28,29,31,32,33,34 and 39 of Annexure C for F.Y. 2017-18 having ITC of Rs. 72,06,246/- is not available in GSTR 2A. Therefore, I find that ITC of Rs. 72,06,246/- for F.Y. 2017-18 is not admissible to the said taxpayer in terms of Section 16 of CGST Act 2017. Further, I have gone through Declaration submitted by the said taxpayer as per Circular No. 183/15/2022-GST dated 27-12-2022 issued by Central Board of Indirect Taxes and Customs, New Delhi regarding "Clarification to deal with difference in Input Tax Credit (ITC) availed in Form GSTR 3B as compared to that detailed in Form GSTR 2A for FY 2017-18 and 2018-19 and find that said taxpayer has submitted declaration for amount of Rs. 74,347/- and for rest amount of Rs. 16,351/- said taxpayer has failed to produced Declaration under Circular No. 183/15/2022-GST dated 27-12-2022. Thus, I find that ITC of Rs. 16,351/- is not admissible to the said taxpayer in terms of Section 16 of CGST Act 2017.

35.6. In view of the above discussion, details of admissible and inadmissible ITC for **F.Y. 2017-18** is as under:-

F.Y. 2017-18	CGST	SGST	IGST	Total
Admissible ITC	0	0	74347	74347
	8143	8143	5690	21976
Total admissible ITC	8143	8143	80037	96,323/-
Inadmissible ITC	7832	7832	687	16351
	628	628	7204990	7206246
Total inadmissible ITC	8460	8460	7205677	72,22,597/-

35.7 Further, I find that in said SCN, it has been alleged that said taxpayer is not eligible for ITC of Rs. 2,93,92,813/- (CGST of Rs.3,45,121/- + SGST of Rs.3,45,121/- + IGST of Rs. 2,87,02,571/-) during **F.Y. 2018-19** in terms of Section 16 of CGST Act 2017. However, said taxpayer has denied said allegation and they have divided disputed ITC in following parts as under:-

S.N.		CGST	SGST	IGST	Total
1	Total ITC as per SCN	345121	345121	28702571	29392813
2	ITC on account of Duplication	216140	216140	14476224	14908504
3	Balance ITC	128981	128981	14226347	14484309
4	ITC not availed by assessee	22913	22913	4024	49850
5	ITC reflected in GSTR 2A	96266	96266	14147994	14340526
6	ITC not reflected in GSTR 2A	9802	9802	74329	93933

35.8 In support of their claim, M/s. Noble Automotive India Pvt. Ltd has submitted copy of invoices, annexure, declaration as per Circular No. 183/15/2022-GST dated 27-12-2022 and other documents. I have gone



through Annexure C for F.Y. 2018-19 and find that invoices mentioned at S.No. 7, 12, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 110, 111, 112, 114, 115, 118, 119, 122, 124, 126, 128, 130, 132, 134, 136, 137, 141, 143, 146, 183, 185, 188, 189, 191, 193, 192, 194, 195, 196, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273 are duplicated i.e., the demand has been raised in the show cause notice more than once for the same ITC. Therefore, ITC of Rs. 1,49,08,504/- (CGST-Rs 2,16,140/-+ SGST Rs 2,16,140/- + IGST-Rs. 1,44,76,224/-) is on account of duplication and correct disputed ITC comes to Rs. 1,44,84,309/- (CGST-Rs 1,28,981/-+ SGST Rs 1,28,981/- + IGST-Rs. 1,42,26,347/-).

35.9 I find that for ITC of Rs. 1,43,40,526/-, said taxpayer has submitted copy of GSTR 2A for F.Y. 2018-19. In this regard, I have gone through copy of GSTR 2A for F.Y. 2018-19 available on AIO system and found that invoices mentioned at Sr.N.10,11,13,14,15,16, 17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41, 42,43,44,45,46,47,48,49,50,51,52,138,142,144,174,184,186,187,190,105,108, 109,197,198,140,230,170,171,172,173,180,181,182,184,175,176,177 and 178 of Annexure C for F.Y. 2018-19 having ITC of Rs. 1,27,81,153/- is not available in GSTR 2A. Therefore, I find that ITC of Rs. 1,27,81,153/- is not admissible to the said taxpayer in terms of Section 16 of CGST Act 2017.

35.10 Further, for ITC of Rs. 93,933/- (mentioned at S.N. 6 of above table) said taxpayer has submitted that they have produced declaration as per Circular No. 183/15/2022-GST dated 27-12-2022 issued by Central Board of Indirect Taxes and Customs, New Delhi. I have gone through Declaration submitted by the said taxpayer as per Circular No. 183/15/2022-GST dated 27-12-2022 issued by Central Board of Indirect Taxes and Customs, New Delhi regarding "Clarification to deal with difference in Input Tax Credit (ITC) availed in Form GSTR 3B as compared to that detailed in Form GSTR 2A for FY 2017-18 and 2018-19 and find that said taxpayer has submitted declaration for amount of Rs. 78,749/- only and for rest amount of Rs. 16,351/- said taxpayer has failed to produced Declaration under Circular No. 183/15/2022-GST dated 27-12-2022. Thus, I find that ITC of Rs. 15,182/- is not admissible to the said taxpayer in terms of Section 16 of CGST Act 2017. Further for ITC of Rs. 49,850/- (mentioned at S.N. 4 of above table), the said taxpayer has submitted that no ITC has been claimed by the assessee. In this regard, I have gone through all documents available on records and find that the said taxpayer has not submitted any documents in their support. Therefore, in absence of documentary evidence, I find that ITC of Rs. 49,850/- is also not admissible to the said taxpayer in terms of Section 16 of CGST Act 2017.

35.11 In view of the above discussion, details of admissible and inadmissible ITC for F.Y. 2018-19 is as under:-

F.Y. 2018-19	CGST	SGST	IGST	Total	Remarks
Admissible	216140	216140	14476224	14908504	Duplicate data
Inadmissible ITC	2210	2210	74329	78749	

	36809	36809	1485755	1559373	
Total admissible ITC	255159	255159	16036308	16546626	
Inadmissible ITC	22913	22913	4024	49850	
	7591	7591	0	15182	
	59457	59457	12662239	12781153	
Total Inadmissible ITC	89961	89961	12666263	12846185	

35.12 In view of discussion at Para 35.6 & 35.11, details of admissible and inadmissible ITC for F.Y. 2017-18 and F.Y. 2018-19 comes as under:-

	CGST	SGST	IGST	Total
Admissible ITC of F.Y. 2017-18	8143	8143	80037	96323
Admissible ITC of F.Y. 2018-19	255159	255159	16036308	16546626
Total admissible ITC	263302	263302	16116345	16642949
Inadmissible ITC for F.Y. 2017-18	8460	8460	7205677	7222597
Inadmissible ITC for F.Y. 2018-19	89961	89961	12666263	12846185
Total inadmissible ITC	98421	98421	19871940	20068782

35.13 In view of the above, I find that the said taxpayer had availed & utilised the ITC of Rs. 2,00,68,782/- (Rs. 98,421/- (CGST) + Rs. 98,421/- (SGST) + Rs. 1,98,71,940/- (IGST)) without having proper taxpaying documents, as required under the provisions of Section 16(2)(a) and Section 16(2)(c) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act and accordingly contravened the provision of Section 16(2)(a) and Section 16(2)(c) of the CGST Act, 2017 and Section 29(7) read with Rule 85(3) of CGST Rules 2017.

35.14 Further, I find that said facts emerged during the course of audit only and M/s. Noble Automotive India Pvt. Ltd has wrongly availed and utilized irregular ITC with an intent to evade the payment of tax. The facts regarding wrongly availed and utilized irregular ITC came into light due to audit conduct by CGST, Audit, Ahmedabad. Had the present investigation not been initiated by CGST Audit, Ahmedabad against M/s. Noble Automotive India Pvt. Ltd, they would have continued with their modus on a regular basis. This clearly done intentionally in order to suppress their actual tax liability and thereby evading GST/wrongly availed & utilize ITC. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore the intent to evade payment of tax cannot be established by peering into the minds of the tax payer but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s. Noble Automotive India Pvt. Ltd, it shows their intent to wrongly availed and utilized irregular ITC by an act of omission in as much as M/s. Noble Automotive India Pvt. Ltd though being well aware of



the provisions of the CGST 2017 and Rules made there under failed to disclose to the department at any point of time their tax liability for evading GST on certain taxable supplies made by them.

35.15 The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the payer. Further, Explanation 2 to Section 74 of the CGST 2017 has defined suppression as under:

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

35.16 In view of the above, I find that ITC of Rs. 2,00,68,782/- (Rs. 98,421/- (CGST) + Rs. 98,421/- (SGST) + Rs. 1,98,71,940/- (IGST)) is required to be recovered from the said taxpayer by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat State GST Act, 2017. Now, I would like to discuss the applicability of interest. I find that said taxpayer has wrongly availed and utilized ITC of Rs. 2,00,68,782/- as discussed above, therefore said assessee is liable to pay interest under provisions of Section 50(3) of the CGST Act, 2017:-

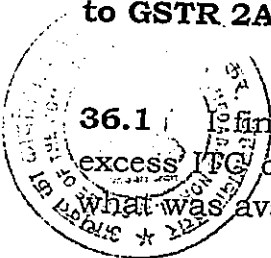
Section 50. Interest on delayed payment of tax.-

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

35.17 Now, Coming to next limb regarding imposition of penalty under the provisions of Section 74(1) of CGST Act 2017 read with Section 20 of the IGST Act, 2017. I find from facts of case elaborated in the notice that the demand of wrongly availed and utilized ITC of Rs. 2,00,68,782/- (Rs. 98,421/- (CGST) + Rs. 98,421/- (SGST) + Rs. 1,98,71,940/- (IGST)) has been proposed by invoking the provisions of Section 74(1) of the CGST Act, 2017. Further, it is also evident that quantum of penalty equal to ten thousand or the tax due from such person, whichever is higher, for reason of fraud or any wilful misstatement or suppression of facts to evade tax. Looking to the facts of the case and discussion as above, the wrongly availed and utilized ITC has been soundly established in the instant case under Section 74 of the Act. Accordingly, M/s. Noble Automotive India Pvt. Ltd has made themselves liable for penalty under the provisions of Section 74(1) of CGST Act 2017 read with Section 20 of the IGST Act, 2017.

(C) Revenue Para 10: Excess availment of ITC in GSTR 3B in comparison to GSTR 2A:-

36.1 I find that in SCN, it was alleged that the said taxpayer had availed excess ITC during the year 2017-18 in their GSTR 3B return as compared to what was available in their GSTR2A return, in terms of Table 8 of their GSTR 9



return for the said financial year and accordingly violated provision of Section 16(2) (c),(d) of CGST Act 2017. The calculation of the same is as follows:

Table-04

(Amount in Rupees)

Particulars	IGST
ITC as per GSTR2A	19511181
ITC as per Table 6 of GSTR9	20322478
Difference	811296

36.2 However, said taxpayer has denied said allegation and submitted that in the month of September 2017, they have made an import of goods and has shown the same as 'All other ITC' in GSTR 3B return. However, on realizing the said mistake, the same has been rectified by availing the ITC as ITC of 'Import' and reversing the same in GSTR 3B. Further, they submitted that total ITC under IGST is demanded to the tune of Rs 811296 whereas the ITC reversed is more than that, i.e., Rs 938372.00.

36.3 In this regard, I have gone through party's submission and copy of GSTR 2A for F.Y. 2017-18 submitted by the said taxpayer and found that in the month of September 2017, the said taxpayer had made import of goods having IGST amount of Rs. 18,05,397/-. Details of import as per GSTR 2A during September 2017 are as under:-

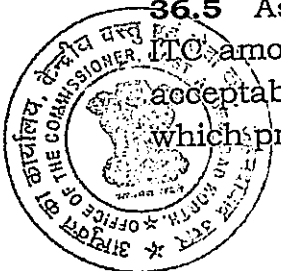
Bill of Entry No.	INVOICE DT	TAX. VALUE	IGST
3115422	05.09.2017	1654879.80	297878.00
3198590	12.09.2017	1677484.60	301947.00
3229638	14.09.2017	5122404.00	922033.00
3326864	21.09.2017	1012640.60	283539.00
Total		94,67,409/-	18,05,397/-

36.4 Further, I have gone through GSTR 3B for the month of September 2017 and found that during the month of September 2017, the said taxpayer has availed Input Tax Credit (ITC) on same amount i.e.Rs. 18,05,397/- on account of import of goods in Table 4A(1) of GSTR 3B. As per GSTR 2A and GSTR 3B, it is crystal clear that during September 2017, said taxpayer has imported goods having IGST of Rs. 18,05,397/- and same amount was shown in "import of goods" in Table 4A(1) of GSTR 3B. Therefore, submission of said taxpayer that IGST of Rs. 8,11,296/- pertains to imported goods and wrongly shown in 'All other ITC' in GSTR 3B is not sustainable. Further, said taxpayer has not submitted any supporting documents to proof admissibility of ITC amounting Rs. 8,11,296/-. Furthermore, as per the provision of Section 155 of the CGST Act, 2017, it is the responsibility of the availer of ITC, to prove that he was eligible to avail ITC on a supply. The said provisions stipulate:

"Section 155: Burden of proof:

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person."

36.5 As the said taxpayer failed to discharge burden to proof admissibility of ITC amounting Rs. 8,11,296/-, the claim of said taxpayer for this ITC is not acceptable. For sake brevity, I reproduced below Section 16 of CGST 2017 which provide eligibility and condition for taking ITC:-



16. Eligibility and conditions for taking input tax credit.

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

36.6 On combined reading of above provisions, I find that if the ITC taken by the taxpayer as per GSTR-3B is more than the amount of credit auto populated in his GSTR2A returns and the tax has not been paid to the government, the return has not been filed, then the said taxpayer shall be denied the differential ITC availed by him in his GSTR 3B Returns vis-à-vis corresponding GSTR-2A returns as per the above provisions of Section 16(2)(c),(d) of CGST Act, 2017 read with sub-rule 4 of Rule 36 of CGST Rules, 2017. Further, I find that as per Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, taxpayer should have filed correct GSTR-3B returns, however they have knowingly failed to file correct GSTR-3B returns. They should have declared wrongly availed credit in the appropriate column of GSTR3B viz. Ineligible ITC and should not have availed the ineligible credit in their GSTR 3B returns.

36.7 In view of the above, I find that the excess availed ITC of Rs. 8,11,296/- (IGST) should be disallowed under the provisions of Section 16(2)(c), Section 16(2)(d) and Section 39 of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act. Further, I find that said facts emerged during the course of audit only and M/s. Noble Automotive India Pvt. Ltd has excess availed ITC with an intent to evade the payment of tax. The facts regarding excess availment of ITC came into light due to audit conduct by CGST, Audit, Ahmedabad. Had the present investigation not been initiated by CGST Audit, Ahmedabad against M/s. Noble Automotive India Pvt. Ltd, they would have continued with their modus on a regular basis. This clearly done intentionally in order to suppress their actual tax liability and thereby evading GST/excess ITC. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore the intent to evade

payment of tax cannot be established by peering into the minds of the tax payer but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of, evaluation of tax behaviour of M/s. Noble Automotive India Pvt. Ltd, it shows their intent to excess availed ITC by an act of omission in as much as M/s. Noble Automotive India Pvt. Ltd though being well aware of the provisions of the CGST 2017 and Rules made there under failed to disclose to the department at any point of time their tax liability for evading GST on certain taxable supplies made by them.

36.8 The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the payer. Further, Explanation 2 to Section 74 of the CGST 2017 has defined suppression as under:

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

36.9 In view of the above, I find that ITC of Rs. 8,11,296/- (IGST) is required to recovered from the said taxpayer by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat State GST Act, 2017. Now, I would like to discuss the applicability of interest. I find that said taxpayer has excess availed ITC of Rs. 8,11,296/- (IGST) as discussed above, therefore said assessee is liable to pay interest under provisions of Section 50(3) of the CGST Act, 2017:-

Section 50. Interest on delayed payment of tax.-

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

36.10 Now, Coming to next limb regarding imposition of penalty under the provisions of Section 74(1) of CGST Act 2017 read with Section 20 of the IGST Act, 2017. I find from facts of case elaborated in the notice that the demand of excess availed ITC of Rs. 8,11,296/- (IGST) has been proposed by invoking the provisions of Section 74(1) of the CGST Act, 2017. Further, it is also evident that quantum of penalty equal to ten thousand or the tax due from such person, whichever is higher, for reason of fraud or any wilful misstatement or suppression of facts to evade tax. Looking to the facts of the case and discussion as above, the excess availment of ITC has been soundly established in the instant case under Section 74 of the Act. Accordingly, M/s. Noble Automotive India Pvt. Ltd has made themselves liable for penalty under the provisions of Section 74(1) of CGST Act 2017 read with Section 20 of the IGST



(d) Revenue Para 11 : Wrong availment of ITC on Blocked Credit (MM Construction, Kitchen):-

37.1 I find that in SCN, it was alleged that the said taxpayer had taken ITC on work related to construction and repairs of building and ITC on furniture used in the canteen which is ineligible and under blocked credit, as per the provisions of Section 17(5) of the CGST Act, 2017. The calculation of the wrongly availed ITC is as follows:

(Rupees in actuals)

Description	CGST	SGST	IGST	Total
Tax	184725	184725	0	3,69,450/-

37.2 In reply to above allegation, they submitted that they have already reversed the ITC on work related to construction and repairs of building amounting to Rs 1,72,620/- under CGST and Rs 1,72,620/- under SGST along with interest. Further, they submitted that ITC on furniture is not covered under the block credit and they are registered under the Factories Act 1948 and as per Section 46 of Factories Act 1948, it is obligatory for them to provide canteen facility. Thus in terms of proviso to Section 17(5) (b) of CGST of the CGST Act, ITC is available, if it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

37.3 In this regard, I have gone through SCN and party's submission and find that said taxpayer has reversed the ITC on work related to construction and repairs of building amounting to **Rs. 3,45,240/-** (Rs1,72,620/- under CGST and Rs 1,72,620/- under SGST) along with interest of Rs. 4,48,752/- vide DRC 03 No. AD240723019570C dated 25.07.2023 and same needs to appropriate against said demand. However, said taxpayer has not paid penalty under section 74 of CGST Act 2017, therefore same is required to recover from the said taxpayer.

37.4 For rest ITC of Rs. 24,210/- on furniture used in the canteen, it is proposed in SCN that same is ineligible and under blocked credit, as per the provisions of Section 17(5)(b)(i) (c) and (d) of the CGST Act, 2017. For sake of brevity, I reproduced below Section 17(5) of the CGST Act, 2017:-

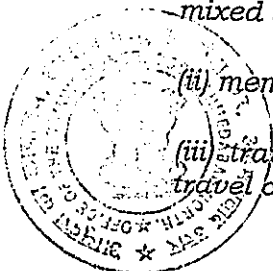
(b) the following supply of goods or services or both-

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

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

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

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



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

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

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

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

37.5 I have gone through copy of invoices of furniture and find that the said taxpayer has purchased Dining Table which is movable in nature as it can be shifted easily from one place to another. However, Section 17(5)(c) and (d) of the CGST Act, 2017 deals with immovable property. Therefore, Section 17(5)(c) and (d) of the CGST Act, 2017 is not applicable in present case. As regard applicability of Section 17(5)(b)(i), the said taxpayer has submitted that ITC is available, if it is obligatory for an employer to provide the same to its employees under any law for the time being in force. I find that the said taxpayer is registered under the Factories Act 1948 and in terms of Section 46 of the Factories Act 1948, it is mandatory for them to provide canteen facility to their employee. Therefore ITC of Rs. 24,210/- on furniture used in the canteen is admissible to the said taxpayer and demand of the same is required to be dropped.

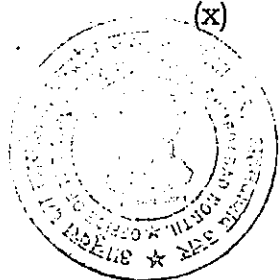
38. In view of the discussions and findings at para 34, 35, 36 & 37, I pass the following order:

ORDER

- (i) Out of total demand of Tax amounting to Rs.68,78,265/-, I confirm the demand of tax amounting to Rs. 6,71,288/- (CGST of Rs. 21,912/-, SGST of Rs. 21,912/- and IGST of Rs. 6,27,464/-) (Six Lakh Seventy One Thousand Two Hundred and Eighty Eight only) and order to recover the same from M/s Noble Automotive India Pvt Ltd under Section 74(9) of the CGST Act, 2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 as per Revenue Para 8. I drop the demand of rest amount of tax i.e. Rs. 62,06,977/- under Section 74(9) of the CGST Act, 2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017. Amount of Rs. 18,298/- (Rs 1,048/- under CGST, Rs 1,048/- under SGST and Rs. 16,202/- under IGST) already paid by them is adjusted and appropriated against the confirmed demand.
- (ii) I hold the liability of interest at applicable rates and order to recover the same from the said taxpayer under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 in respect of the demand at Sr. No. (i) above. An amount of interest of Rs.18,188/- (CGST of Rs. 933/-, SGST of Rs. 933/- and IGST of Rs.16,322/-) paid by them towards interest is adjusted and appropriated against the demand of interest.



- (iii) I impose penalty of Rs. 6,71,288/- (Six Lakh Seventy One Thousand Two Hundred and Eighty Eight only) on the said taxpayer under Section 74(9) of the CGST Act, 2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 on the basis of confirmed demand at Sr.No.(i) above.
- (iv) Out of total demand of ITC of Rs. 3,67,11,734/-, I disallow the ITC amounting To Rs. 2,00,68,782/- (Rs. 98,421/- (CGST) + Rs. 98,421/- (SGST) + Rs. 1,98,71,940/- (IGST)) (Two Crore Sixty Eight Thousand Seven Hundred Eighty Two Only) and order to recover the same from M/s Noble Automotive India Pvt Ltd under Section 74(9) of the CGST Act, 2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 as per Revenue Para 9. Further, I allow the ITC amounting to Rs. 1,66,42,949/-(Rs. 2,63,302/- (CGST) + Rs. 2,63,302/- /- (SGST) + Rs. 1,61,16,345/- (IGST)) and drop the demand accordingly to extent of eligible ITC against the Revenue Para 9.
- (v) I hold the liability of interest at applicable rates and order to recover the same from the said taxpayer under Section 50(3) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 in respect of the demand at .at Sr. No. (iv) above.
- (vi) I impose penalty of Rs. 2,00,68,782/-(Two Crore Sixty Eight Thousand Seven Hundred Eighty Two Only) on the said taxpayer under Section 74(9) of the CGST Act, 2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 on the basis of confirmed demand of ITC at Sr.No.(iv) above.
- (vii) I disallow the ITC amounting to Rs. 8,11,296/- (IGST) (Eight Lakh Eleven Thousand Two Hundred Ninety Six Only) and order to recover the same from M/s Noble Automotive India Pvt Ltd under Section 74(9) of the CGST Act, 2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 as per Revenue Para 10.
- (viii) I hold the liability of interest at applicable rates and order to recover the same from the said taxpayer under Section 50(3) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 in respect of the demand at at Sr. No. (vii) above.
- (ix) I impose penalty of Rs. 8,11,296/- (Eight Lakh Eleven Thousand Two Hundred Ninety Six Only) on the said taxpayer under Section 74(9) of the CGST Act, 2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 on the basis of confirmed demand of ITC at Sr.No.(vii) above.
- (x) Out of total demand of ITC amounting to Rs.3,69,450/-, I disallow the ITC amounting to Rs. 3,45,240/- (Rs1,72,620/- under CGST and Rs 1,72,620/- under SGST) (Three Lakh Forty Five Thousand Two Hundred and Forty only) and order to recover the same from M/s Noble Automotive India Pvt Ltd under Section 74(9) of the CGST Act,



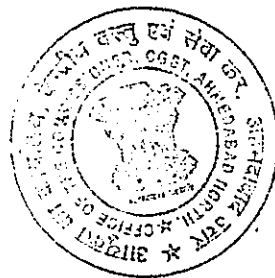
2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 as per Revenue Para 11. Further, I allow the ITC amounting to Rs. 24,210/- (Rs12,105/- under CGST and Rs 12,105/- under SGST) and drop the demand accordingly to extent of eligible ITC against the Revenue Para 11. Since the said taxpayer has paid ITC amounting to Rs. 3,45,240/- (Rs1,72,620/- under CGST and Rs 1,72,620/- under SGST) (Three Lakh Forty Five Thousand Two Hundred and Forty only), the same is adjusted and appropriated against the confirmed demand.

(xi) I hold the liability of interest at applicable rates and order to recover the same from the said taxpayer under Section 50(3) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 in respect of the demand at Sr. No. (x) above. An amount of interest of Rs. 4,48,752/- (CGST of Rs. 2,24,376/-, SGST of Rs. 2,24,376/) paid by them towards interest is adjusted and appropriated against the demand of interest.

(xii) I impose penalty of Rs. 3,45,240/- (Three Lakh Forty Five Thousand Two Hundred and Forty only) on the said taxpayer under Section 74(9) of the CGST Act, 2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017 on the basis of confirmed demand of ITC at Sr.No.(x) above.

(xiii) I further order that in terms Section 74(11) of CGST Act 2017, if the said taxpayer pays the tax amount and interest thereon under section 50 as determined at S.N. (i) to (xii) above) and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of this notice shall be deemed to be concluded.

39. Accordingly, the Show Cause Notice No.- GADT/TECH/SCN/GST/171/2022 dated 14.06.2023 is disposed off in above terms.



(Lokesh Damor)

Additional Commissioner,
Central GST & CE,
Ahmedabad North

Date 26.04.2024

F.NO.GST/15-49/OA/23-24
By RPAD/MAIL

To,
M/s. Noble Automotive India Pvt Ltd,
[GSTIN: 24AADCN7799P1ZH]
AV-5, Bol Industrial Estate,
Sanand GIDC II, Taluka: Sanand,
District: Ahmedabad 382110

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- III Ahmedabad North.
3. The Superintendent, Range-V, Division-III, Central GST & Central Excise, Ahmedabad North **for generating and uploading DRC- 07 on the portal in terms of DSR advisory No.01/2018 dated 26.10.2018 and Instruction No. 04/2023-GST dated 23.11.2023.**
- ✓ 4. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
5. Guard File.

