



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

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

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009

फोन/Phone : 079 - 27544557 ई-मेल/E-Mail : ofad|hq-cgstamdnorth@gov.in फैक्स/Fax : 079-27544463

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. GST/15-22/OA/2023

DIN- 20240464WT0000056E19

आदेश की तारीख/Date of Order: - 29.04.2024

जारी करने की तारीख/Date of Issue :- 29.04.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 11/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।

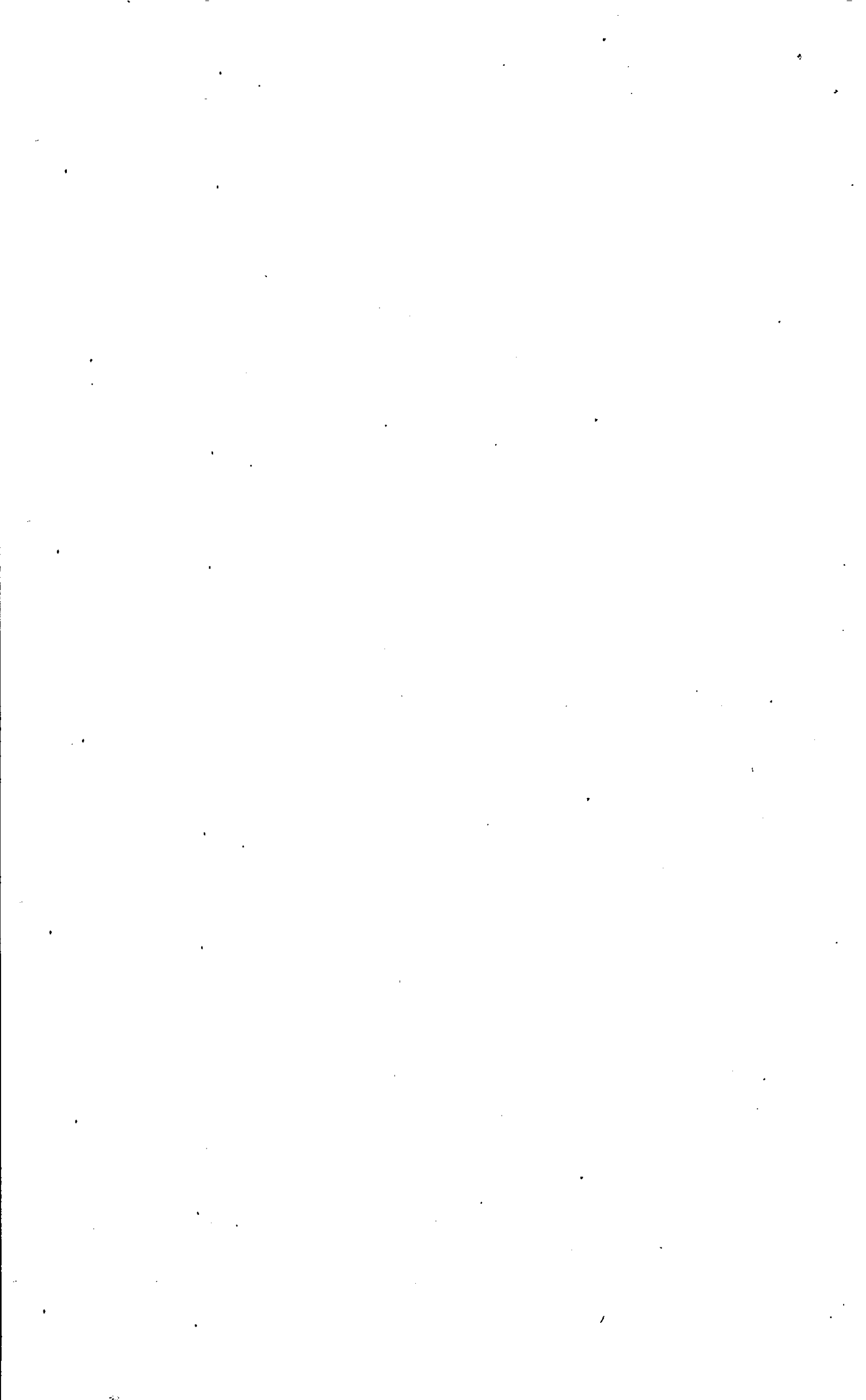
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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. GEXCOM/AE/FU/1262/2021-AE-I/Gr-I dated 30.03.2023 issued to M/s. A J Sales Corporation (GSTIN : 24BUDPP9543D1ZL), 25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Gandhinagar, Ahmedabad, Gujarat - 382416





Brief facts of the case:-

M/s A J Sales Corporation(hereinafter referred to as "the taxpayer" for the sake of brevity), having their declared principal place of business situated at 25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416 were holding GSTIN:24BUDPP9543D1ZL w.e.f. 21/01/2020 engaged in activity of wholesale/ retail business of "Sulphates; Alums; Peroxosulphates (Persulphates) - Other Sulphates : - Other : Other (HSN-28332990)" under the jurisdiction of Range-I, Division-III, Ahmedabad-North Commissionerate, Gujarat. The said taxpayer was registered as a Proprietorship concern and Mr. Ashish Paragbhai Patelits Proprietor. The said GST registration has been cancelled Suo-moto(effective from 01/09/2021) by the Tax Authority.

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

WHEREAS intelligence information CIU/VZ/81/2021 received vide letter F. No. IV/16-02/V-DAC/19-20 dated 04.03.2021 issued by the Principal Chief Commissioner, CGST & CX, Vadodara Zone under which it was communicated that they had imitated the investigation against various firms for passing on ineligible ITC and issuing fake invoices without supplying goods or services. To track the web of counterfeit ITC, taxpayers linked to fake firms on the criteria such as registered email ids, phone numbers and PAN were shortlisted and supplied to various Commissionerate's for further verification and necessary action.

3. ACTION TAKEN ON THE INTELLIGENCE INPUT:

3.1 Acting on the above intelligence input, visit to the registered principal place of business of M/s A J Sales Corporation, situated at 25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416 under proper Authorisation in FORM INS-01 were made on 22.07.2021 under the provisions of Section 67(1) of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act, 2017" read with similar provisions under the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as "the GSGST Act, 2017"). During the course of inspection proceedings, the registered principal place of business of the taxpayer was not found in existence nor the proprietor of the firm namely Mr. Ashish Paragbhai Patel was found known.

4. PERIOD COVERED BY THE PRESENT INVESTIGATION:

As stated *supra*, M/s A J Sales Corporation had obtained GST Registration on 21/01/2020 and the said GSTIN (24BUDPP9543D1ZL) was cancelled by the Tax Authority *suo-moto* effective from 01/09/2021. Before cancellation, M/s A J Sales Corporation had furnished details of purported outward supplies in FORM GSTR-1M for the period February-2020 to Nov-2020 under section 37 of the Act read with rule 59 of the Rules and furnished returns in FORM GSTR-3B under section 39 of the Act read with rule 61 of the Rules for the period from February-2020 to Nov-2020. Further, Scrutiny of the data available on the E-way Bill Portal (<https://mis.ewaybillgst.gov.in/>) in respect of outward supplies effected by M/s A J Sales Corporation for the



aforesaid period has revealed that the taxpayer had generated 109 e-way bills during July-2020 to December-2020 having assessable value amounting to Rs. 5,92,00,709/- involving IGST of Rs. 89,13,038/-, CGST of Rs. 8,27,722/- and SGST of Rs. 8,27,722/- .Thus, in view of the above, the period of the present investigation against **M/s A J Sales Corporation** has been taken as from February-2020 to December-2020.

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

5.1 Mr. Ashish Paragbhai Patel had obtained registration in the name of M/s A J Sales Corporation at 25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416. Further, during inspection proceedings to the declared place of business "25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416, M/s A J Sales Corporation was found to be non-existent. The taxpayer had submitted a copy of electricity bill issued by UGVCL in the name of Jayantibhai Kalubhai Kopara and a copy consent letter on a plain paper, purportedly issued by one Mr. from Jayantibhai Kalubhai Kopara. Claiming to be rightful owner of "25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416" and permitting the use of the said property for business use purpose by Mr. Ashish Paragbhai Patel, Proprietor of M/s A J Sales Corporation. Copy of electricity bill submitted by the taxpayer was unreadable as well as incomprehensible and appeared to be fake.

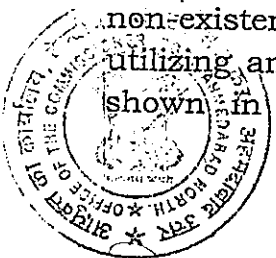
5.2 Bank details were also not found under registration details of the taxpayer at GSTN portal:

The screenshot shows the GSTN portal interface. At the top, it displays the user's name as 'SURESH KUMHAR, Designation: Inspector, SSC (IT-200555)', the location as 'COMMISSIONERATE, AHMEDABAD, NORTH', and the registration type as 'Application for New Registration'. The registration status is clearly marked as 'CANCELLED'. Below this, there are tabs for 'Registration Details', 'Existing Registrations', 'Principal Place of Business', 'Bank Accounts', 'Goods & Services', 'Additional Place of Business', 'Partners Details', 'Signatory', and 'Others'. The 'Bank Accounts' tab is selected, showing a section titled '17. Details of Bank Account(s)'. Under this section, it states 'Total number of Bank Accounts maintained by the applicant for conducting business' with a value of '0'. This confirms that no bank details were submitted for this registration.

Therefore, it appeared that the taxpayer had obtained GST registration without submitting any documents with the culpable mindset on their part to defraud the Govt. Exchequer and that the firm was opened for the sole and limited purpose of passing fake and fraudulent ITC to secure monetary gains.

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

6.1 As discussed hereinabove, M/s A J Sales Corporation was found non-existent during the visit at the said premise under proper Authorisation in FORM INS-01, which clearly indicated that M/s A J Sales Corporation was a non-existent firm created for generating fake supply invoices for availing / utilizing and passing on input tax credit fraudulently. Thus, the transaction shown in the name of M/s A J Sales Corporation were merely paper.



transactions driven by *malafide* intention. However, during investigation, it was deemed appropriate to scrutinize such transactions in order to corroborate the findings as above.

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

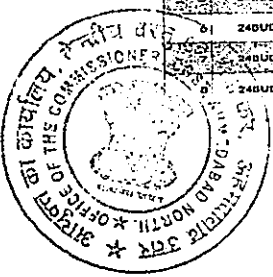
6.3 GSTR-2A:

6.3.1 GSTR-2A in respect of M/s A J Sales Corporation (GSTIN: 24BUDPP9543D1ZL) is not available on the GSTN Portal.

Sl. No.	Supplier GSTIN	Return Period	Section	Time Stamp	Status
21	24BUDPP9543D1ZL	Jul - 2020	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs
22	24BUDPP9543D1ZL	Jun - 2020	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs
23	24BUDPP9543D1ZL	May - 2020	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs
24	24BUDPP9543D1ZL	Apr - 2020	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs
25	24BUDPP9543D1ZL	Mar - 2020	020	1-02-2023 14:09:03	Failed - No document found for the provided inputs
26	24BUDPP9543D1ZL	Feb - 2020	020	1-02-2023 14:09:03	Failed - No document found for the provided inputs
27	24BUDPP9543D1ZL	Jan - 2020	020	1-02-2023 14:09:03	Failed - No document found for the provided inputs
28	24BUDPP9543D1ZL	Dec - 2019	020	1-02-2023 14:09:03	Failed - No document found for the provided inputs

Sl. No.	Supplier GSTIN	Return Period	Section	Time Stamp	Status
11	24BUDPP9543D1ZL	May - 2021	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs
12	24BUDPP9543D1ZL	Apr - 2021	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs
13	24BUDPP9543D1ZL	Mar - 2021	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs
14	24BUDPP9543D1ZL	Feb - 2021	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs
15	24BUDPP9543D1ZL	Jan - 2021	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs
16	24BUDPP9543D1ZL	Dec - 2020	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs
17	24BUDPP9543D1ZL	Nov - 2020	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs
18	24BUDPP9543D1ZL	Oct - 2020	020	1-02-2023 14:09:42	Failed - No document found for the provided inputs

Sl. No.	Supplier GSTIN	Return Period	Section	Time Stamp	Status
1	24BUDPP9543D1ZL	Mar - 2022	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs
2	24BUDPP9543D1ZL	Feb - 2022	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs
3	24BUDPP9543D1ZL	Jan - 2022	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs
4	24BUDPP9543D1ZL	Dec - 2021	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs
5	24BUDPP9543D1ZL	Nov - 2021	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs
6	24BUDPP9543D1ZL	Oct - 2021	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs
7	24BUDPP9543D1ZL	Sep - 2021	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs
8	24BUDPP9543D1ZL	Aug - 2021	020	1-02-2023 14:10:18	Failed - No document found for the provided inputs



From the above, it is evident that M/s A J Sales Corporation have no inward supply which clearly indicates that the said registration was obtained solely for pass on fake and fraudulent ITC to various vendors.

6.4 GSTR-1M RETURNS:

6.4.1 M/s A J Sales Corporation (GSTIN: 24BUDPP9543D1ZL) had obtained GST registration on 21/01/2020 and had furnished the details of purported outward supplies in FORM GSTR-1 for the period from February-2020 to Nov-2020 under section 37 of the Act read with rule 59 of the Rules before the registration was cancelled by the Tax Authority *suo-moto* effective from 01/09/2021. M/s A J Sales Corporation for the month of Feb-2020 to May-2020&Aug-2021, had furnished the details of outward supplies as "0". Details of purported outward supplies in FORM GSTR-1 furnished by M/s A J Sales Corporation for the aforesaid period is shown in **Table-1** below:

Table-1

Table showing details of purported outward supplies made as per GSTR-1M filed by M/s A J Sales Corporation for the aforesaid period is shown in Table-1 below:

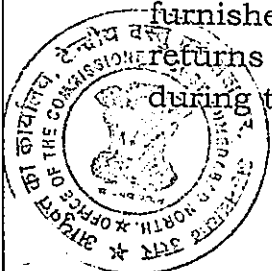
(All values in INR)

Month	Taxable Value	Liability			Total GST
		IGST	CGST	SGST	
Feb-20	0		0	0	0
Mar-20	0	0	0	0	0
Apr-20	0	0	0	0	0
May-20	0	0	0	0	0
Jun-20	8,788,569	1,581,943	0	0	1,581,943
Jul-20	4,526,200	753,300	30,708	30,708	814,716
Aug-20	0	0	0	0	0
Sep-20	44,028,989	7,208,631	358,294	358,294	7,925,219
Oct-20	8,378,170	583,412	462,329	462,329	1,508,070
Nov-20	16,634,925	0	2,318,366	2,318,366	4,636,732
Total	8,23,56,853	1,01,27,286	3,169,697	3,169,697	1,64,66,680

6.4.2 WHEREAS from **Table-1** above, it appeared that during the said period, M/s A J Sales Corporation had shown **B2B outward supplies** of taxable value amounting to **Rs.8,23,56,856/-**involving IGST of **Rs. 1,01,27,286/-**CGST of **Rs.31,69,697/-**and SGST of **Rs.31,69,697/-**. Further, no ITC is available with M/s A J Sales Corporation in GSTR-2A returns and as discussed *supra*, M/s A J Sales Corporation was found non-existent at its premise during the visit at the said premise under proper Authorisation in FORM INS-01, **it appeared that the purported outward supply amounting to Rs.8,23,56,856/-made during the above period was only on paper and that by way of furnishing details of outward supplies in FORM GSTR-1, M/s A J Sales Corporation had passed on the ineligible/fake ITC amounting to Rs.1,64,66,680/- to its recipients.**

6.5 GSTR-3B RETURNS:

6.5.1 M/s A J Sales Corporation had furnished returns in FORM GSTR-3B for the period February-2020 to November-2020, declaring therein outward supplies, tax liabilities and its discharge. Scrutiny of the GSTR-3B Returns furnished by M/s A J Sales Corporation revealed that they had filed such returns declaring therein the outward supplies, tax liabilities and its discharge during the period of February-2020 and November-2020. Summary of the said



GSTR-3B Returns furnished by M/s A J Sales Corporation is shown in **Table-2** below:

Table-2
Table showing outward supplies effected and GST liability discharged as per GSTR-3B Returns filed by M/s A J Sales Corporation
All values in INR

Month	Taxable Value	Liability				Payment				
		IGST	CGST	SGST	Total GST	IGST	CGST	SGST	Cash	
Feb-20	0		0	0	0	0	0	0	0	0
Mar-20	0	0	0	0	0	0	0	0	0	0
Apr-20	0	0	0	0	0	0	0	0	0	0
May-20	0	0	0	0	0	0	0	0	0	0
Jun-20	8,788,569	1,581,943	0	0	1,581,943	1,581,943	0	0	0	1,581,943
Jul-20	4,526,200	753,300	30,708	30,708	814,716	753,300	30,708	30,708	0	814,716
Aug-20	0	0	0	0	0	0	0	0	0	0
Sep-20	44,028,989	7,208,631	358,294	358,294	7,925,219	7,208,631	358,294	358,294	0	7,925,219
Oct-20	8,378,170	583,412	462,329	462,329	1,508,070	0	890,190	617,880	0	1,508,070
Nov-20	16,634,925	0	2,318,366	2,318,366	4,636,732	0	2,318,366	2,318,366	0	4,636,732
Total	8,23,56,853	1,01,27,286	31,69,697	31,69,697	1,64,66,680	95,43,874	35,97,558	33,25,248	0	1,64,66,680

ITC Availed in GSTR-3B				
Month	IGST	CGST	SGST	Total ITC
Feb-20	0	0	0	0
Mar-20	0	0	0	0
Apr-20	0	0	0	0
May-20	0	0	0	0
Jun-20	1,581,943	0	0	1,581,943
Jul-20	753,300	30,708	30,708	814,716
Aug-20	0	0	0	0
Sep-20	7,208,631	358,294	358,294	7,925,219
Oct-20	0	890,190	890,190	1,780,380
Nov-20	0	2,318,370	2,318,370	4,636,740
Total	95,43,874	35,97,562	35,97,562	1,67,38,998

6.5.2 Thus, from **Table-1&2** above, it appeared that during the period from February-2020 to Nov-2020, total value of purported outward supplies made by **M/s A J Sales Corporation** as per GSTR-1 were **amounting to Rs.8,23,56,853/-** involving **IGST of Rs. 1,01,27,286/-**, **CGST of Rs.31,69,697/-** and **SGST of Rs. 31,69,697/-**, whereas, the same has been declared in GSTR-3B as declared in GSTR-1 returns. Further, the whole GST liability was discharged by **M/s A J Sales Corporation** by utilization of ITC as shown in **Table-3** below:

Table-3
Table showing manner of payment of GST liability by M/s A J Sales Corporation as per the GSTR-3B Return filed
Period: February-2020 to Nov-2020



Name /GSTIN of supplier	All values in INR				
	ITC available as per GSTR-2A	ITC availed as per GSTR-3B	Excess ITC availed	ITC utilised as per GSTR-3B	GST Payment in cash as per GSTR-3B
	(a)	(b)	(c) = (b) - (a)	(d)	(e)
M/s A J Sales Corporation(24BUDPP9543D1ZL)	0	1,67,38,998	1,67,38,998	1,64,66,680	0

From **Table-3** above as well as aforesaid discussion, it appeared that despite non-availability of ITC in GSTR-2A returns, **M/s A J Sales Corporation** have availed ITC amounting to Rs.1,67,38,998/- **fraudulently** and further utilized the ITC amounting to Rs.1,64,66,680/- for payment of GST liability in the GSTR-3B Returns filed by them. As mentioned *supra*, the premise was not found in existence during the visit at the said premise under proper Authorisation in FORM INS-01. Therefore, it appeared that ITC availed in GSTR-3B returns of **M/s A J Sales Corporation** (GSTIN: 24BUDPP9543D1ZL) is ineligible and fake.

6.5.3 In view of the above, it appeared that the modus operandi adopted by M/s A J Sales Corporation(24BUDPP9543D1ZL) was to avail ineligible ITC in their GSTR-3B Returns which was subsequently passed to their purported buyers. **Therefore, the payment made exclusively through utilization of ITC is indicative of the fact that the sole purpose for creation of the fake entity namely M/s A J Sales Corporation (24BUDPP9543D1ZL) was to corner the benefit of availment of ITC without there being any actual physical receipt or onward supply of goods and to pass on such fraudulent ITC to the buyers.**

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

6.6.1 INWARD SUPPLIES:

Scrutiny of the data available on the E-way Bill Portal (<https://mis.ewaybillgst.gov.in/>) has revealed that there existed no e-way bills evidencing inward supply of goods in respect of **M/s A J Sales Corporation (24BUDPP9543D1ZL)**.

6.6.2 OUTWARD SUPPLIES:

Scrutiny of the data available on the E-way Bill Portal (<https://mis.ewaybillgst.gov.in/>) in respect of outward supplies effected by M/s A J Sales Corporation for the aforesaid period has revealed that the taxpayer has generated 109 e-way bills during July-2020 to December-2020 having assessable value amounting to Rs. 5,92,00,709/- involving IGST of Rs. 89,13,038/-, CGST of Rs. 8,27,722/- and SGST of Rs. 8,27,722/-.



Comprehensive Analytics on E-Way Bill, Goods & Services Tax (GST) | Search | Click Gateway | GST

Check GSTIN/URL | Login | Comprehensive

GSTIN: 24BUDPP9543D1ZL | GO CLEAR

A J SALES CORPORATION

Period: 2020-2021

Outward Supplies
(Outward sale supply category supply report & SKD/CKD/LOTs are considered here)

Month & Year	Category	Quantity	Value	IGST	CGST	SGST
March & Year (December-2020)	INTER	3	3782340.00	0.00	0.00	0.00
December-2020	INTER	3	3782340.00	0.00	0.00	0.00
Sub Total						
March & Year (November-2020)	INTER	3	1501222.00	0.00	0.00	0.00
November-2020	INTER	3	1501222.00	145018.00	145018.00	145018.00
Sub Total						
March & Year (October-2020)	INTER	1	427182.00	0.00	0.00	0.00
October-2020	INTER	1	427182.00	22413.00	22413.00	22413.00
Sub Total						
March & Year (September-2020)	INTER	29	2002793.00	0.00	0.00	0.00
September-2020	INTER	29	2002793.00	394299.00	394299.00	394299.00
Sub Total						

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

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

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

(ii) Scrutiny of the GSTR-2A revealed that **M/s A J Sales Corporation** had no inward supply of goods; whereas they had made purported outward supplies of goods valued amounting to **Rs.8,23,56,853/- involving IGST of Rs. 1,01,27,286/-, CGST of Rs.31,69,697/- and SGST of Rs. 31,69,697/-** in form GSTR-1 during the period from February-2020 to November-2020, therefore it appeared that the invoices issued by them in respect of supply of goods or services as reported in the GSTR-1M filed for the aforesaid period appeared to be fake. By way of issuance of such fake invoices without making any physical/actual supply of goods or services or both, **M/s A J Sales Corporation** had acted as availer and issuer of fake ITC, also the GSTIN of **M/s A J Sales Corporation** was cancelled *suo-moto* by the Tax Authority effective from 01/09/2021.

Therefore, it appeared that **M/s A J Sales Corporation (24BUDPP9543D1ZL)** was created purposefully and with the sole intention to avail illegitimate/fraudulent/in-admissible ITC to set off their GST liability in their GSTR-3B Returns and to pass on the same illegitimate/fraudulent/in-admissible ITC to other entities by issuing fake invoices without actual supply of corresponding goods or services.



7. QUANTIFICATION OF FAKE ITC AVAILED AND PASSED ON BY THE TAXPAYER :

7.1.1 Quantification of fake ITC passed on by **M/s A J Sales Corporation** has been arrived at by placing reliance on the data available on the GSTN Portal and the e-way bill portal. **M/s A J Sales Corporation** had filed the GSTR-1M for the period from February-2020 to November-2020 wherein they had declared their outward supplies and issued invoices total amounting to taxable value of **Rs.8,23,56,853/-** involving **IGST of Rs. 1,01,27,286/-**, **CGST of Rs.31,69,697/-** and **SGST of Rs. 31,69,697/-**. Since **M/s A J Sales Corporation** was found to be fake and non-existent entity, it appeared that fake and fraudulent ITC involving IGST of Rs. 1,01,27,286/-, CGST of Rs.31,69,697/- and SGST of Rs. 31,69,697/- were passed on by them to their recipients..

7.1.2 Thus, the total GST liability of **M/s A J Sales Corporation** has been quantified as shown in Table-4 below:

Table-4

(All values in INR)

Table showing details of GST liability of M/s A J Sales Corporation					
Period	Taxable Value/(Assessable Value)	Tax involved			
		Integrated Tax	Central Tax	State Tax	Total Tax
February-2020 to Nov-2020 as per GSTR-3B – ineligible ITC availed		95,43,874	35,97,562	35,97,562	1,67,38,998
February-2020 to Nov-2020 as per GSTR-1 – ineligible ITC passed on	8,23,56,853	1,01,27,286	31,69,697	31,69,697	1,64,66,680
Outward supply through E-way bill in the month of Dec-2020	37,82,340	6,36,703	0	0	6,36,703
Total		2,03,07,863	67,67,259	67,67,259	3,38,42,381

7.1.3 Total fake ITC passed on by **M/s A J Sales Corporation** has been quantified as **Rs.1,71,03,383/-** which was further passed on to its recipients and fake ITC availed by **M/s A J Sales Corporation** in **GSTR-3B** returns has been quantified as **Rs.1,67,38,998/-**.

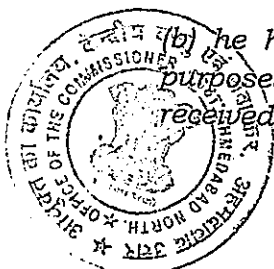
8. EXAMINATION OF THE ITC AVAILED AND PASSED ON BY THE TAX PAYER:

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

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

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

(b) he has received the goods or services or both. [Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services— (i) where the goods are



delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise; (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

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

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

....."

HAS THE TAX CHARGED BEEN PAID TO THE GOVERNMENT?

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

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

(i) should have possession of a tax invoice issued by a registered taxpayer under this Act,

(ii) should have received goods or services or both along with respective tax invoices, and

(iii) the tax charged in respect of such supply should have been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply made along with respective invoices.

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

Therefore, ITC of Rs.1,67,38,998/- availed and Rs.1,71,03,383/- passed on by M/s **A J Sales Corporation** is irregular and fraudulent and in contravention of the provisions under Section 16(2)(a) and 16(2)(c) of the CGST Act, 2017 as the conditions prescribed therein have not been fulfilled. Thus, the amount of tax shown as paid on the invoices issued by M/s **A J Sales Corporation** has never been paid to the Government.

HAVE THEY RECEIVED THE GOODS OR SERVICES OR BOTH?

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

- The taxpayer has been found non-existent and non-operational at their declared principal place of business.
- The inward supplier was found to be fake.

Therefore, Section 16(2)(a), 16(2)(b) and 16(2)(c) of the CGST Act, 2017 were contravened by M/s **A J Sales Corporation** and its proprietor Mr.



Ashish Paragbhai Patel by availing irregular/inadmissible ITC of Rs. 1,67,38,998/- and passing on the said irregular/inadmissible ITC of Rs.1,71,03,383/-and therefore, appears to be liable for penalty under the provisions of section 122 of CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of IGST Act, 2017.

9. LEGAL PROVISIONS APPLICABLE TO PRESENT CASE:

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

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

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

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

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

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

Thus, in the instant case of M/s A J Sales Corporation and its proprietor Mr. Ashish Paragbhai Patel, by virtue of the above-mentioned Section 6 of the Gujarat State GST Act, the Central Tax Officers are authorized to be Proper Officers under the said Act.

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

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

(i) scope of supply;

(ii) composite supply and mixed supply;

(iii) time and value of supply;

(iv) input tax credit;

(v) registration;

(vi) tax invoice, credit and debit notes;

(vii) accounts and records;

(viii) returns, other than late fee;

(ix) payment of tax



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

“Section 25. Procedure for registration. -

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

M/s A J Sales Corporation was registered as Proprietorship firm by Mr. Ashish Paragbhai Patel and had obtained the GST Registration on 21/01/2020 at 25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416 and M/s A J Sales Corporation was found non-existent at the time of visit to the said premise under proper Authorization in FORM INS-01. Thus, it was clear that the GST registration of M/s A J Sales Corporation had been taken solely for the purpose of availing and passing on of fraudulent /illegitimate /irregular ITC. The GST registration of M/s A J Sales Corporation was cancelled *suo-moto* effective from 01/09/2021.

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

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

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

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

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

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

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

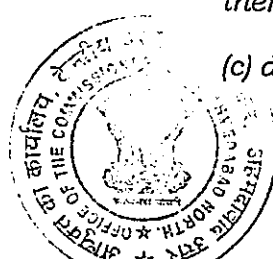
9.6.1 **Rule 46 of the CGST Rules, 2017** stipulates the particulars, such as name & GSTIN of the supplier and buyer, value of supply, quantity of supply etc., of the transaction that should be mentioned in an invoice.

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

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

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

(c) date of its issue;



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

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

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

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

(h) description of goods or services;

(i) quantity in case of goods and unit or Unique Quantity Code thereof;

(j) total value of supply of goods or services or both;

(k) taxable value of the supply of goods or services or both taking into account discount or abatement, if any;

(l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;

(o) address of delivery where the same is different from the place of supply;

(p) whether the tax is payable on reverse charge basis; and

(q) signature or digital signature of the supplier or his authorised representative:

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

(i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention, for such period as may be specified in the said notification; and

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

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

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

Section 35: Maintaining Accounts and Other Records

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



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

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

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

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

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

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

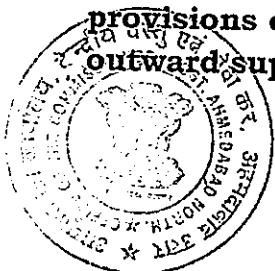
It appeared that the taxpayer appeared to have contravened the provisions of Section 35 of the CGST Act, 2017 read with Rule 56 of the CGST Rules, 2017 and the similar provisions of the SGST Act and Rules read with Section 20 of IGST Act, 2017, for not having kept and maintained a true and correct account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

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

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

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

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



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

Section 45. Final return. -

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

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

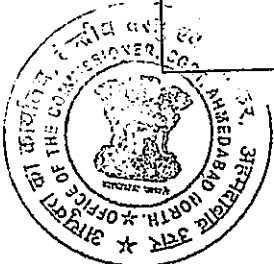
“Rule 81. Final Return -

Every registered person required to furnish a final return under section 45, shall furnish such return electronically in FORM GSTR-10 through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”

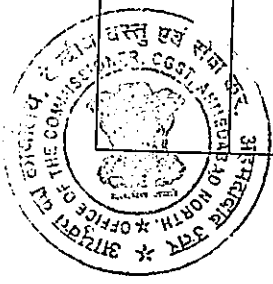
Thus, in view of the above provisions it appeared that the taxpayer have contravened the provisions of section 45 of the CGST Act, 2017 read with Rule 81 of the CGST Rules, 2017 in as much as they have failed to file their Final Return in FORM GSTR-10.

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

Sl. No	Issues	Clarification
1	In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both, whether such transaction will be covered as “supply” under section 7 of CGST Act and whether any demand and recovery can be made from ‘A’ in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act. Also,	Since there is only been an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of “supply”, as defined under section 7 of the CGST Act. As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the



	<p>whether any penal action can be taken against registered person 'A' in such cases.</p>	<p>said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction. The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>
<p>2</p>	<p>A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122.</p>
<p>3</p>	<p>A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the</p>



		<p>said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>
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2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

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

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

(1) Where a taxable person who-

- (i)
- (ii) **issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;**
- (iii)
- (iv)
- (v)
- (vi)
- (vii) **takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;**



- (viii)
- (ix)
- (x)
- (xi)
- (xii) **furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;**
- (xiii)
- (xiv)
- (xv)
- (xvi) **fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;**
- (xvii) **fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;**
- (xviii)
- (xix)
- (xx)

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

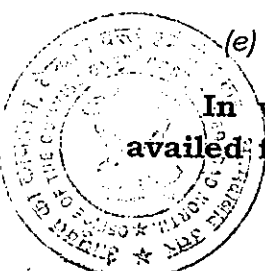
(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized, — (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher; (b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

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

.....
 (e)"

In view of the above discussions, M/s A J Sales Corporation had **availed fake ITC in GSTR-3B returns without having inward supplies and**



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

10. OBSERVATIONS AND CONCLUSION OF INVESTIGATION:

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

- i. M/s A J SALES CORPORATION, was a Proprietorship firm was registered at 25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416 under the provisions of CGST Act, 2017. Mr. Ashish Paragbhai Patel was its Proprietor and no additional place of business was declared by them.
- ii. No inspection of documents could be carried out during the visit under proper Authorisation in FORM INS-01 at the principal place of business declared by M/s A J SALES CORPORATION, as the said firm was found non operational/existent at its declared place of business as recorded in the Panchnama dated 22/07/2021.
- iii. As per GSTR-2A, GSTR-1 and GSTR-3B returns for the aforesaid period of M/s A J Sales Corporation, it appeared that they had availed fraudulent ITC of Rs.1,67,38,998/- and had passed on the fraudulent ITC of Rs.1,71,03,383/- for the said period. Consequently, the Input Tax Credit of Rs. ,71,03,383/- availed by the next level entity is irregular and is recoverable from that entity under the provisions of Section 74 of the CGST Act, 2017.
- iv. As no goods or services or both were purchased by M/s A J Sales Corporation, it appeared to have not made any supply of taxable goods or services or both but have just issued tax invoices without supply of the corresponding goods or services or both and have thereby fraudulently passed on irregular ITC to its recipients.

In view of the above facts, it appeared that the M/s A J Sales Corporation have availed fraudulent ITC of Rs.1,67,38,998/- without actual supply of underlying goods or services or both with sole motive of passing on of the said fraudulent ITC and therefore, M/s A J Sales Corporation appears to be liable for penal action for availing the fraudulent ITC of Rs.1,67,38,998/- under the provisions contained under section 122(1)(vii) of the Act. It also appeared that M/s A J Sales Corporation had passed on the said fraudulent ITC of Rs.1,71,03,383/- by issuing fake invoices without supply of corresponding goods or services or



- (viii) Section 122(1)(xvi) of the CGST Act, 2017 and the similar provisions of the Gujarat GST Act, 2017, in as much as they have failed to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

12.1 M/s A J Sales Corporation appeared to have availed ITC of Rs.1,67,38,998/- without having purchased any goods or services or both whatsoever, as evident from the facts that the ITC availed in GSTR-3B returns; and passed on irregular ITC of Rs.1,71,03,383/- through fake invoices without actual supply of underlying goods or services or both. Consequently, it appeared that the irregular ITC of Rs.1,67,38,998/- availed and Rs.1,71,03,383/- passed on by M/s A J Sales Corporation is in contravention of the various provisions of the CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with IGST Act, 2017, as discussed, *supra*. All the above acts, of omission and commission, constitute an offence of the nature as described under the provisions of section 122(1)(ii), section 122(i)(vii), section 122(1)(xii), section 122(1)(xvi) and section 122(1)(xvii) of the CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017, rendering themselves liable to penalty under section 122 of the CGST Act, 2017 and the similar provisions of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017.

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

14. Therefore, a Show Cause Notice No.- GEXCOM/AE/FU/1262/2021-A.E.-I/Gr. I dated 30.03.2023 was issued to M/s A J Sales Corporation(GSTIN-24BUDPP9543D1ZL), (Proprietor Mr. Ashish Paragbhai Patel), having Principal Place of Business at 25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416 as to why: -

- (i) Penalty should not be imposed upon them for committing offences of taking/utilising Input Tax Credit (ITC) of Rs.1,67,38,998/- (Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- + State Tax of Rs.35,97,562/-) without actual receipt of underlying goods or services or both, contained under Section 122(1)(vii) of the Central Goods and Services Tax Act, 2017 and similar provisions of the Gujarat State GST Act, 2017 read with section 20 of the IGST Act, 2017;
- (ii) Penalty should not be imposed upon them for committing offences of passing on of the irregular ITC of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of Rs.31,69,697/-) by issuing invoices without actual supply of underlying goods or services or both, contained under section 122(1)(ii) of the Central Goods and Services Tax Act, 2017 and similar provisions of the Gujarat State GST Act, 2017 read with section 20 of the IGST Act, 2017; and



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

15. Written Defence Submission:

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

16. Record of Personal Hearing:

16.1. To expedite the adjudication proceedings and to follow principles of natural justice, opportunity of personal hearing was granted to the taxpayer on 03.08.2023, 15.03.2024 and 02.04.2024. However, letters for personal hearing were returned undelivered from the postal authority with remarks "Refused". Further, letters of personal hearing were also sent to the taxpayer on registered email. However, the taxpayer has neither attended the said personal hearing nor submitted any defence reply by the taxpayer or his representative.

In view of above, it was noticed that in spite of above level of care shown by department to ensure fair opportunity for natural justice to reduce litigation, no one appeared for personal hearing on different dates.

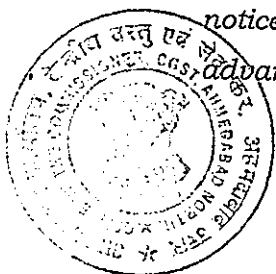
DISCUSSIONS AND FINDINGS

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

18.1 Before, proceeding further, reliance is placed on the following decisions in pursuance to ex-parte proceedings;

- (i) In the case of **M/s. Patel Widecom India Ltd. Versus Commissioner**, as reported at **2015 (321) E.L.T. A153 (All.)**, Hon'ble High Court of Allahabad had held that;

"...It was further held that as the appellant had not filed reply to the show cause notice in spite of ample opportunity afforded to them, they could not take advantage of their own and seek quashing of impugned order on the ground that



the proper opportunity of hearing was not granted and as such the principle of natural justice had been violated."

(ii) In the case of **M/s. Saketh India Limited Versus Union of India**, as reported at **2002 (143) E.L.T. 274 (Del.)**, Hon'ble High Court of Delhi had held that;

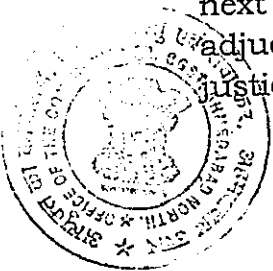
"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. - Admittedly, the appellant herein did not respond to the show cause notice. Thereafter, the appellant was called for personal hearing on six subsequent dates. According to the Additional DGFT nobody appeared on behalf of the appellant in spite of various dates fixed for personal appearance of the appellant and in these circumstances, the Additional DGFT proceeded with the matter ex parte and passed the impugned order. The appellant had the knowledge of the proceedings but neither any reply to the show cause notice was given nor it chose to appear before the Additional DGFT to make oral submissions. Thus it is a clear case where proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

18.2 Further, apart from the above justification, it would be pertinent to mention and discuss the verdict of Hon'ble High Court of Patna in the case of **M/s. National Enterprises Versus Union of India**, as reported at **2021(55) G.S.T.L. 294 (Pat.)**, wherein, though the plea of the Petitioner was upheld, Hon'ble Court had categorically discussed the basic ingredients of Ex- Parte Order and defines that such Ex Parte Order would be bad in law for two reasons;

(a) **violation of principles of natural justice, i.e. fair opportunity of hearing; no sufficient time afforded to petitioner to represent his case and ;**

(b) **order passed ex parte in nature, does not assign any sufficient reasons which may even be decipherable from record, as to how officer could determine amount due and payable by assessee.**

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



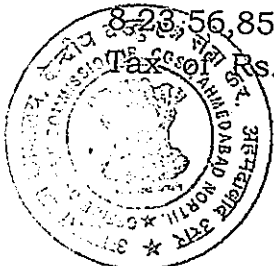
19. In the instant case, on going through the contents/facts narrated in the Show Cause Notice (SCN), it is found that investigation was conducted w.r.t. the taxable persons involved in the case viz. M/s A J Sales Corporation having their declared principal place of business situated at 25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416 were holding GSTIN:24BUDPP9543D1ZL w.e.f. 21/01/2020 engaged in activity of wholesale/ retail business of "Sulphates; Alums; Peroxosulphates (Persulphates) - Other Sulphates : - Other : Other (HSN-28332990)" under the jurisdiction of Range-I, Division-III, Ahmedabad-North Commissionerate, Gujarat.

20. I find that intelligence information CIU/VZ/81/2021 received vide letter F. No. IV/16-02/V-DAC/19-20 dated 04.03.2021 issued by the Principal Chief Commissioner, CGST & CX, Vadodara Zone under which it was communicated that they had imitated the investigation against various firms for passing on ineligible ITC and issuing fake invoices without supplying goods or services. To track the web of counterfeit ITC, taxpayers linked to fake firms on the criteria such as registered email ids, phone numbers and PAN were shortlisted and supplied to various Commissionerate's for further verification and necessary action. Acting on the above intelligence input, visit to the registered principal place of business of M/s A J Sales Corporation, situated at 25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416 under proper Authorisation in FORM INS-01 were made on 22.07.2021 under the provisions of Section 67(1) of Central Goods and Services Tax Act, 2017 read with similar provisions under the Gujarat Goods and Services Tax Act, 2017. During the course of inspection proceedings, the registered principal place of business of the taxpayer was not found in existence nor the proprietor of the firm namely Mr. Ashish Paragbhai Patel was found known. Further, during inspection proceedings to the declared place of business "25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416, M/s A J Sales Corporation was found to be non-existent. The taxpayer had submitted a copy of electricity bill issued by UGVCL in the name of Jayantibhai Kalubhai Kopara and a copy consent letter on a plain paper, purportedly issued by one Mr. from Jayantibhai Kalubhai Kopara. Claiming to be rightful owner of "25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416" and permitting the use of the said property for business use purpose by Mr. Ashish Paragbhai Patel, Proprietor of M/s A J Sales Corporation. Copy of electricity bill submitted by the taxpayer was unreadable as well as incomprehensible and appeared to be fake.

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

(i) M/s A J Sales Corporation is non-existent/non-operational at their Principal Place of Business and a fake firm and was registered solely for the purpose of issuance of fake/bogus invoices that leads to avails and pass on irregular/fraudulent input tax credit to their recipients;

(ii) As per GSTR 1 of tax period February 2020 to November 2020, the taxpayer has issued fake/bogus invoices involving taxable value of Rs. 8,23,56,853/- and passed on input tax credit of Rs.1,71,03,383/- (Integrated Tax Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of



Rs.31,69,697/-) to their various recipients, without actual supply of goods or services or both;

(iii) As per GSTR 3B for tax period February 2020 to November 2020, the noticee has availed and utilized irregular/illegitimate input tax credit of Rs.1,67,38,998/- (Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- + State Tax of Rs.35,97,562/-) without actual receipt of goods or service or both;

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

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

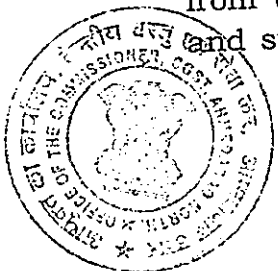
(vi) Allegations have also been made in the SCN that the taxpayer has failed to maintain the financial books of account and other relevant documents as required under the provisions of the Act as well as has failed to produce before the investigating agency.

(vii) Therefore, in the SCN Initiation of penal action under the provisions of Section 122, of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017 has been proposed for availment & utilization of irregular/illegitimate ITC; for issuance of fake/bogus invoices without actual supply of goods or services or both leads to pass on irregular/illegitimate input tax credit to their recipients; for non maintaining the financial records as required under the provisions of the Act .

22. In view of foregoing paras, it is to be decided that whether the allegations framed in para 21 supra is correct and legally tenable or otherwise. Therefore, the issue involved in the instant matter has been taken up one by one.

23.1 In the SCN, it has been alleged that M/s A J Sales Corporation is non-existent/non-operational firm and has obtained GST registration on the basis of fake/forged documents by violating the provisions of Section 25 of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017 and relevant rules framed thereunder. In this regard, the noticee has not confronted the said allegations in as much as they have neither submitted any written submission in their defence nor have attended the personal hearing granted to them following the principle of natural justice. Therefore, the matter has been observed through the available records pertaining to the instant case.

23.2 As per contents/facts narrated in the SCN, the declared Principal place of business of M/s A J Sales Corporation situated at First Floor, 4922/B, Near Old SBI, Devlali Bazar, Kuber Nagar, Ahmedabad-382340 was searched under regular panchnama on 22.07.2021 by Preventive Section, Ahmedabad North and during the course of search/investigation, it was noticed that the registered principal place of business of the taxpayer was not found in existence nor the proprietor of the firm namely Mr. Ashish Paragbhai Patel was found known. Further, on being asked from the local persons, they replied that the property was closed for long time and no commercial activity taken place from there. Therefore, it was revealed that no business activity on the name and style of M/s A J Sales Corporation was in existence at the said declared



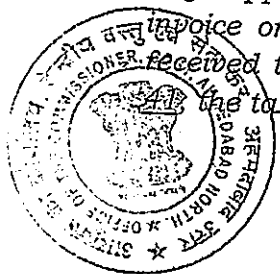
principal place of business. In the instant case, during adjudication proceedings letters of personal hearing were issued to the taxpayer but neither the proprietor of the firm nor their any representative appeared/represented the case before the adjudicating authority. Therefore, relying on the facts narrated in the SCN, observation made during the adjudication proceedings, non confrontation of the allegations and non attendance of the adjudication proceedings by the taxpayer, it is found that M/s A J Sales Corporation is non-existent/non-operational firms and has got GST registration on strength of false documents by violating the provisions of Section 25 of the CGST Act, 2017 read with the corresponding provisions of SGST Act, 2017 and relevant rules framed thereunder. It is also found that it is well settled law that the silence in respect of the allegations made is considered as acceptance of the allegations.

23.3 Further, it is found that the taxpayer submitted electricity bill issued by UGVCL in the name of JayantibhaiKalubhai Kopara and a copy consent letter on a plain paper, purportedly issued by one Mr. from JayantibhaiKalubhai Kopara. Claiming to be rightful owner of "25/1, Alakhanda Asso., Dental College Road, Vill Manipur Tal, Sanand, Ahmedabad, Gujarat, 382416" and permitting the use of the said property for business use purpose by Mr. Ashish Paragbhai Patel, Proprietor of M/s A J Sales Corporation. Copy of electricity bill submitted by the taxpayer was unreadable as well as incomprehensible and found fake. Therefore, it is crystal cleared that said Electricity bill was forged by the taxpayer, in order to submit fake proof of address, while obtaining the GST registration.

24. In the impugned SCN, allegations have been made that the taxpayer has availed irregular/illegitimate Input Tax Credit of Rs.1,67,38,998/- (Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- + State Tax of Rs.35,97,562/-) during the period from February 2020 to December 2020 without actual receipt of goods or services or both as well as without receipt of valid tax invoices, by violating the provisions of Section 16 of the CGST Act, 2017 read with the corresponding SGST Act, 2017. In this regard, the taxpayer has not confronted the said allegations in as much as they have neither submitted any written submission in their defence nor have attended the personal hearing granted to them following the principle of natural justice. Therefore, the matter has been observed through the available records pertaining to the instant case.

24.1 As per contents/analysis of the investigation narrated in the SCN, M/s A J Sales Corporation has availed Input Tax Credit of Rs.1,67,38,998/- (Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- + State Tax of Rs.35,97,562/-), without actual receipt of the goods or services or both as well as without possession of valid tax invoice, and the said facts came in notice of the investigating authority on analysis of GSTR 3B and e-way bill portal of the taxpayer for the tax period February 2020 to December 2020.

24.2 The provisions of sub section 2 of Section 16 of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017 is reiterated wherein interalia it is mentioned as *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless-* (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act..... (b) he has received the goods or services or both----- (c) subject to the provisions of section the tax charged in respect of such supply has been actually paid to the Government,



either in cash or through utilisation of input tax credit admissible in respect of the said supply---. From the discussion held supra, it is found that the noticee has availed input tax credit without actual receipt of the goods and has violated in the provisions of Section 16 of the CGST Act'2017 read with the provisions of SGST Act, 2017 in as much as (i) M/s A J Sales Corporation has not in possession of tax invoice or debit note issued by suppliers as well as they have not submitted such tax invoices neither during the investigation proceedings nor during the adjudication proceedings, (ii) Input tax credit has been availed without actual receipt of the goods or services or both; (iii) No evidence of payment of tax charged in respect of supply made by suppliers have been submitted by the taxpayer.

24.3 Therefore, in view of discussion held in foregoing paras, it is found that the taxpayer has availed irregular/illegitimate input tax credit without actual receipt of the goods or services both. Hence, the allegations made in the SCN that M/s A J Sales Corporation has availed irregular/illegitimate Input Tax Credit of Rs.1,67,38,998/- (Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- + State Tax of Rs.35,97,562/-), without actual receipt of the goods or services or both by contravening the provisions of Section 16 of the CGST Act, 2017 with the corresponding SGST Act, 2017 is correct and legally tenable.

24.4 As per contents narrated in the SCN, M/s A J Sales Corporation has shown outward taxable supply of taxable value of Rs. 8,23,56,853/- consisting GST of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of Rs.31,69,697/-) in their statement/information regarding the outward supply in the form GSTR 1 of tax period February 2020 to December 2020 and the said liability of GST has been discharged through GSTR 3B by utilizing input tax credit. As far as concern regarding the admissibility of input tax credit, it has been concluded earlier at foregoing para that the noticee had availed irregular/illegitimate input tax credit of Rs.1,67,38,998/- without actual receipt of the goods or services or both.

24.5 In view of discussion held in para 24.1 to 24.4 supra, it is found that M/s A J Sales Corporation has availed and utilized irregular input tax credit of Rs.1,67,38,998/- by debiting through Electronic Credit Ledger (ECL). Therefore, the allegations made in the SCN that M/s A J Sales Corporation has availed and utilized irregular input tax credit of Rs.1,67,38,998/- is found correct and legally tenable.

25. In the impugned SCN allegations have been made that the taxpayer has issued fake/bogus invoices leads to pass on input tax credit of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of Rs.31,69,697/-) to their recipients without actual supply of goods or services or both and has contravened the provisions of the CGST Act,2017 read with the provisions of corresponding SGST Act,2017. In this regard, the taxpayer has not confronted the said allegations in as much as they have neither submitted any written submission in their defence nor have attended the personal hearing granted to them following the principle of natural justice. Therefore, the matter has been observed through the available records pertaining to the instant case.

25.1 As per contents narrated in the SCN, M/s A J Sales Corporation has shown outward taxable supply of taxable value of Rs. 8,23,56,853 consisting GST of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of



Rs.31,69,697/- + State Tax of Rs.31,69,697/-) only on paper and in their statement/information regarding the outward supply in the form GSTR 1 to their various recipients. Moreover, it has also been revealed in the investigation report as narrated in the SCN that none of the documents have been produced/submitted by the taxpayer evidencing any physical movement of the goods. It is also revealed that sales invoices issued by the taxpayer were bogus and involved invalid/fraudulent ITC without actual movement of the goods. It is also found that it is well settled law that the silence in respect of the allegations made is considered as acceptance of the allegations.

25.2 In view of discussion held hereinabove supra, it is found that the allegations made in the SCN that M/s A J Sales Corporation has issued fake/bogus invoices leads to pass on input tax credit of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of Rs.31,69,697/-) to their recipients without actual supply of goods or services or both and has contravened the provisions of the CGST Act,2017 read with the provisions of corresponding SGST Act,2017 is correct and legally tenable.

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

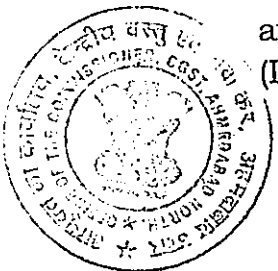
(i) the provisions of section 122 (1)(ii) of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017 is reiterated wherein interalia it is mentioned as *Where a taxable person who issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder— he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant case it has been observed and found hereinabove at para 25 supra that the noticee has issued fake/bogus invoices without actual supply of the goods or services or both leads to pass on irregular/illegitimate input tax credit of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of Rs.31,69,697/-) to their recipients, by violating the provisions of the Act. Therefore, in accordance to the provisions of section 122 (1)(ii) of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017, M/s A J Sales Corporation has not confronted the said proposal in as much as they have neither is liable for penal action. Moreover, as per contents narrated in the SCN the instant matter covers under the clarification provided at Sr. No.3 of the Board's Circular No.171/03/2022- GST dated 06.07.2022 wherein interalia it is mentioned as *"..... However, in such cases, B shall be liable for penal action both under section 122 (1)(ii) and section 122 (1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/utilizaing input tax credit without actual receipt of goods and/or services."* In the instant matter it is found that activity carried out by the taxpayer do not constitute as



"Supply" in accordance to the provisions of Section 7 of the Act, however they have only-issued fake/bogus invoices without actual supply of goods or services or both leads to pass on input tax credit to their non-existent/non-operational firms, therefore in accordance to the said circular as well, M/s A J Sales Corporation is liable for penal action under the provisions of section 122 (1)(ii) of the CGST Act,2017 read with the provisions of the corresponding SGST Act, 2017.

(ii) the provisions of section 122 (1)(vii) of the CGST Act, 2017 read with the provisions of corresponding SGST Act, 2017 is reiterated wherein interalia it is mentioned as *Where a taxable person who-----takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder-----he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the ----- input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant matter, it is observed and found at discussion held hereinabove at para 24 supra that the noticee has availed irregular/illegitimate Input Tax Credit of Rs.1,67,38,998/- (Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- + State Tax of Rs.35,97,562/-), without actual receipt of the goods or services or both by contravening the provisions of Section 16 of the CGST Act, 2017 with the corresponding SGST Act, 2017. Therefore, in accordance to the provisions of section 122 (1)(vii) of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017, M/s A J Sales Corporation is liable for penal action. Moreover, as per contents narrated in the SCN the instant matter covers under the clarification provided at Sr. No.3 of the Board's Circular No.171/03/2022- GST dated 06.07.2022 wherein interalia it is mentioned as "*..... However, in such cases, B shall be liable for penal action both under section 122 (1)(ii) and section 122 (1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/utilizaing input tax credit without actual receipt of goods and/or services.*" In the instant matter it is found that the noticee have availed and utilized fraudulently/illegitimate input tax credit of Rs.1,67,38,998/- without actual receipt of goods or services or both, therefore in accordance to the said circular as well, M/s A J Sales Corporation is liable for penal action under the provisions of section 122 (1)(vii) of the CGST Act,2017 read with the provisions of the corresponding SGST Act, 2017.

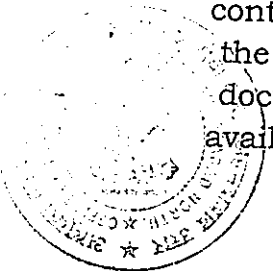
(iii) the provisions of section 122 (1)(xii) of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017 wherein interalia it is mentioned as *Where a taxable person who-----furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently -----he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the ----- input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant matter it is observed and found at discussion held hereinabove, that the noticee has got GST Registration on the strength of fake documents by contravening the provisions of the Section 25 of the Act with intent to avail/utilize irregular/illegitimate Input Tax Credit of Rs.1,67,38,998/- (Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- +



State Tax of Rs.35,97,562/-) and passing on fake and fraudulent input tax credit of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of Rs.31,69,697/-) without actual supply of goods or services or both. Therefore, in accordance to the provisions of section 122 (1)(xii) of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017, M/s A J Sales Corporation is liable for penal action.

(iv) the provisions of section 122 (1)(xvi) of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017 wherein interalia it is mentioned as *Where a taxable person who-----fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder -----he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the -----input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant matter it is observed and found at discussion held hereinabove that during the course of panchnama drawn at the declared principal place of business of the noticee it was found that noticee was non-existent/non-operational at the said declared and no books of account and other documents were found at the said premises. Further, investigation report as narrated in the SCN also revealed that during the course of investigation the noticee has failed to produce books of account and other documents. Moreover, it is also found that the noticee has never submitted books of account and other documents either during the course of investigation or during the course of adjudication proceedings. Therefore, it is found that non-submission of books of account and other documents either at the time of investigation or at the time of adjudication proceedings shows that they have failed to maintain books of account and other documents pertains to the business carried out by them with intent to avail/utilize irregular/illegitimate Input Tax Credit of Rs.1,67,38,998/- (Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- + State Tax of Rs.35,97,562/-) and passing on fake and fraudulent input tax credit of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of Rs.31,69,697/-). Therefore, in accordance to the provisions of section 122 (1)(xvi) of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017, M/s A J Sales Corporation is liable for penal action.

(v) the provisions of section 122 (1)(xvii) of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017 wherein interalia it is mentioned as *Where a taxable person who-----fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act-----he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the -----input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.* In the instant matter it is observed and found from the contents of the investigation report narrated in the SCN that during the course of investigation the taxpayer has failed to produce any documents or information before the investigating officers with intent to avail/utilize irregular/illegitimate Input Tax Credit of Rs.1,67,38,998/-



(Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- + State Tax of Rs.35,97,562/-) and passing on fake and fraudulent input tax credit of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of Rs.31,69,697/-).Therefore, in accordance to the provisions of section 122 (1)(xvii) of the CGST Act, 2017 read with the provisions of the corresponding SGST Act, 2017, M/s A J Sales Corporation is liable for penal action.

27. In view of discussion held herein above, it is found that the proposal of initiation of penal action against M/s A J Sales Corporation under the provisions of section 122 (1)(ii), 122(1)(vii), 122 (1)(xii), 122(1)(xvi) and 122 (1)(xvii) of the CGST Act, 2017 read with the provisions of corresponding SGST Act, 2017 is correct and legally tenable.

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

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

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

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

Order

- (i) I impose penalty of Rs.1,67,38,998/- (Integrated Tax of Rs. 95,43,874/- + Central Tax of Rs.35,97,562/- + State Tax of Rs.35,97,562/-) on M/s A J Sales Corporation having GSTIN 24BUDPP9543D1ZL for committing offences of taking/utilising Input Tax Credit without actual receipt of underlying goods or services or both in contravention of provisions contained under Section 122(1)(vii)

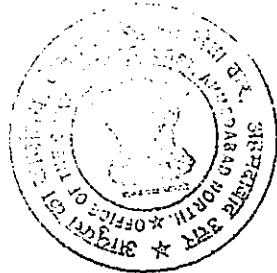


of the CGST Act, 2017 read with provisions of corresponding SGST Act, 2017 and Section 20 of the IGST Act, 2017 and order to recover the same under the relevant provisions of the CGST Act, 2017 read with the provisions of corresponding SGST Act, 2017;

(ii) I impose penalty of Rs.1,71,03,383/- (Integrated Tax of Rs. 1,07,63,989/- + Central Tax of Rs.31,69,697/- + State Tax of Rs.31,69,697/-) on M/s A J Sales Corporation having GSTIN 24BUDPP9543D1ZL for committing offences of passing on of the irregular/fake ITC by issuing invoices without actual supply of underlying goods or services or both in contravention of provisions contained under Section 122(1)(ii) of the CGST Act, 2017 read with provisions of corresponding SGST Act, 2017 and Section 20 of the IGST Act, and order to recover the same under the relevant provisions of the CGST Act, 2017 read with the provisions of corresponding SGST Act, 2017.

(iii) I impose penalty equivalent to Input Tax Credit wrongly availed of and wrongly passed on by M/s A J Sales Corporation having GSTIN 24BUDPP9543D1ZL under the provisions of Section 122 (1)(xii), Section 122(1)(xvi), Section 122(1)(xvii) of the CGST Act, 2017 read with provisions of corresponding SGST Act, 2017 & Section 20 of the IGST Act, 2017, for failure to furnish information correctly at the time of GST registration; failed to keep, maintain or retain books of accounts and other documents in accordance of the provisions of the CGST Act, 2017 and failed to furnishes information or documents during investigation proceedings under the CGST Act, 2017, and corresponding SGST Act, 2017 respectively and order to recover the same under the relevant provisions of the CGST Act, 2017 read with the provisions of corresponding SGST Act, 2017.

31. In view of foregoing paras the instant show cause notice No . GEXCOM/AE/FU/1262/2021-A.E-I/Gr-I dated 30.03.2023 is disposed off in terms of order mentioned above.



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

Dated 29.04.2024

F.NO.GST/15-22/OA/2023
By RPAD

To,

1. **M/s A J Sales Corporation,**
(GSTIN: 24BUDPP9543D1ZL)
25/1, Alakhanda Asso.,
Dental College Road, Vill Manipur Tal,
Sanand, Ahmedabad, Gujarat, 382416
Registered Email ID:-nileshdabhi2903@gmail.com,
patel85696@gmail.com
Registered Mobile No.8908307307,
9099241942

2. Ashish Paragbhai Patel,

B-2, Akansha Flat, Nr Raspan Party Plot,
Naroda Road, Ahmedabad, Gujarat, 382415

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-I, 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 Superintendent (System), Central GST & Central Excise, Ahmedabad North for uploading the order on website.
5. Guard File.

