



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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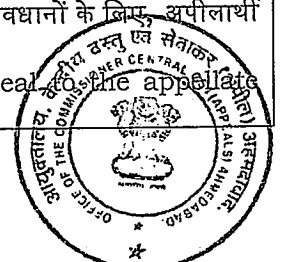


By Regd. Post

DIN NO. : 20221164SW0000333EDD

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/584/2022 / 17740-16
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-003-APP-ADC-59/2022-23, dtd 14.11.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, संयुक्त आयुक्त अपील Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	15.11.2022
(ङ)	Arising out of Assessment Order reference No. WUO20509193A0156 dated 24.02.2020 issued by Superintendent of CGST, Central GST, Range-V, Division- Gandhinagar, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Haribhadrasingh Lalsinh Dabhai (GSTIN - 24AKLPD1719L2Z6) Address : 1, Lalsinh Kushki, Arvalli, Gujarat - 383 250

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



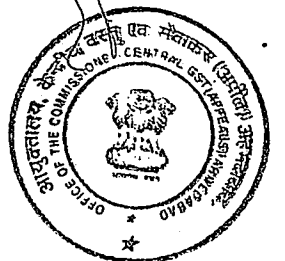
ORDER-IN-APPEAL

M/s. Haribhadrashsingh Lalsinh Dabhai, 1, Lalsinh, Kushki, Arvalli, Gujarat, 383250 [GSTIN – 24AKLPD1719L2Z6] (hereinafter referred to as the ‘appellant’) has filed present appeal against Assessment Order bearing reference No. WU020509193A0156 dated 24.02.2020 (hereinafter referred to as ‘impugned order’), issued by Superintendent, Range-V, Division-Gandhinagar, Gandhinagar Commissionerate- (hereinafter referred to as ‘Assessing authority’).

2. Brief facts of the case are that the “Assessing authority” has issued Assessment Order reference No. WU020509193A0156 dated 24.02.2020 under section 62 to the appellant with the reason that *“The appellant has not filed GSTR-3B returns and have not paid GST on supplies for the period from April -2019 to September-2019; GSTR-3A Notice dated 27.11.2019 was issued but did not file GSTR-3B returns and have not paid taxes on the supplies; the appellant was served a show cause notice dated 27-11-2019 for non filling of GSTR-3B returns but they did not filed the due returns i.e GSTR-3B returns nor paid the taxes on supplies therefore the assessment order dated 24.02.2020 under Rule 100(1) of the CGST Rules, 2017 was issued and assessed the tax amount of Rs. 1,01,005/- ; it was also informed to appellant that if the return furnished within 30-days from the date of service of the order, the order shall be deemed to have been withdrawn; otherwise, proceeding shall be initiated against the appellant after the aforesaid period, to recover the outstanding dues.”*

3. Being aggrieved with the ‘Assessment Order’ dated 24.02.2020; the “appellant” has filed the present appeal on 11.03.2022 i.e. after the delay of normal period prescribed under Section 107(1) of CGST Act, 2017 as per the rule of GST Act which mandate 10% liability of total Amount of Rs. 101005 which comes to Rs. 10100/- before appeal filing. The “appellant” has submitted the following grounds of appeal; contending that

- (i) the appellant is a law abiding citizen and followed the directions and would pay the GST Liability on or before 20th Feb 2020, sincerity is evident from this and there was no malafide intention;
- (ii) due to COVID-19, they could not able to pay the GST Liability on time and hence an unprecedented situation was there in front of the appellant and few days passed to attend this problem and now they have paid GST liability along with Interest;



- (iii) with payment of interest, all the requirement under law and directions have been complied with warrants a review /drop the order for payment of GST Liability along with Interest;

3.1 The appellant has further submitted that they have already filed their pending returns for the period from April 2019 to September 2019 and discharged their GST Liability of Rs. 57953.30 is in excess of 10% amount of Rs. 10,100/- and requested to consider said payment of GST liability in lieu of pre deposit condition of 10%; the appellant has submitted that they have paid GST liability along with interest and filed all returns from April -2019 to September 2019, hence drop the Show Cause Notice on the basis of actual fact. Further, the appellant has submitted copy of DRC-03 dated 25.08.2022 for payment of Rs. 4,800/- by debiting their cash ledger in response to this office letter dated 30.6.2022 sought for payment of pre-deposit amount i.e 10% of the remaining amount of tax in dispute.

Personal Hearing :-

4. The Personal Hearing in the case was held 07.09.2022. Shri Haribhadrasinh Lalsinh Dabhai, Proprietor / Owner of the firm has attended the meeting and submitted that he has nothing more to add to the submissions till date.

Discussion and Findings :-

5. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is (i) whether the appeal has been filed within the prescribed time-limit and (ii) whether the demand of Rs. 1,01,005/- [Tax Rs. 91,800/- + Interest Rs. 9205/-] arising out of Assessment is correct or not.

6. First of all, I would like to take up the issue of filing the appeal and before deciding the issue on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be



prescribed within three months from the date on which the said decision or order is communicated to such person.

(2)

(3)

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a **further period of one month.**

7.1 I observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.

7.2 Further, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022, in MA 665/2021 IN SMW(C) No. 3 of 2020. The relevant para No. 5 (III) of said order is reproduced as under:

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following direction:
ances Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions:-

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022, is greater than 90 days, that longer period shall apply.

In the present appeal the "impugned order" issued on 24.02.2020, so the normal appeal period of three months was available to the appellant upto 23.05.2020 only. Further, looking to the Covid-19 pandemic situation the present appeal is condonable for one month as per Section 107(4) of the CGST Act, 2017. Accordingly, the appeal was required to be filed on or before 23.06.2020. Now, as per the Para 5(III) of the aforesaid order of



Hon'ble Supreme Court the *appellant* became eligible to file appeal within 90 days from 01.03.2022 (i.e excluding the period from 15.3.2020 to 28.02.2022). It is pertinent to mention here that the *appellant* has filed the present appeal on 11.03.2022 which is filed within 90 days starting from 01.03.2022.

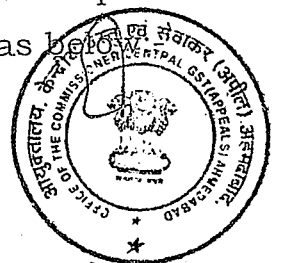
7.3 I also find that the CBIC, New Delhi has issued Circular No. 157/13/121-GST dated 20th July, 2021 and clarified as under:-

4(c):- Appeals by taxpayers/ tax authorities against any quasi-judicial order:-Wherever any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.

7.4 In view of above and also looking into the Covid-19 pandemic situation, in the instant matter, I am inclined to condone the delay of filing of appeal. Therefore, I find that the present appeal is filed within stipulated time limit. Accordingly, I am proceeded to decide the case.

8. Now I take up the issue regard to non filing of GSTR-3B returns by the appellant for the tax period of April -2019 to September-2019 in stipulated time; the Range Superintendent issued GSTR-3A Notice dated 27.11.2019 but they did not file GSTR-3B returns and nor paid taxes on their supplies; further the assessment authority has issued Show Cause Notice dated 27.11.2019 for non filling of GSTR-3B nor paid the duty on supplies; finally the assessment authority issued assessment Order under rule 100(1) of the CGST Rules, 2017 and duty of Rs. 91,800/- & interest on duty Rs. 9205/- has been assessed. Relevant portion of Section 46, 62 and Rule 100 (1) of the Act, is reproduced as below



Section 46 of the CGST Act, 2017 :

“Section 46 – Notice to return defaulters

Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.”

Section 62 of the CGST Act, 2017 :

“62. Assessment of non-filers of returns

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.”

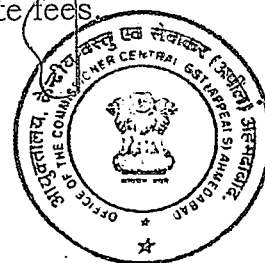
CGST Rule 100: Assessment in Certain Cases (Chapter-XI: Assessment and Audit)

“100. Assessment in certain cases

(1) The order of assessment made under sub-section (1) of section 62, shall be issued in FORM GST ASMT 13 and a summary thereof shall be uploaded electronically in FORM GST DRC 07.

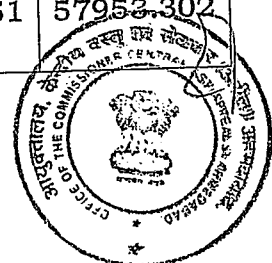
8.1 On perusal of the provisions contained in Section 46, 62 of CGST Act, 2017 and Rule 100 (1) of CGST Rules, 2017, it is observed that

- (i) the appellant was issued GSTR-3A dated 24.11.2019 under Section 46 of CGST Act, 2017 for not filing of GSTR-3B for the period April 2019 to September 2019; on receiving of GSTR-3A Notice, the appellant was required to file GSTR-3B returns within 15 days from the date of notice along with penalty and late fees.



- (ii) I find that the appellant did not file returns within 15 days from the date of receipt of GSTR-3A. The Assessing Authority had issued assessment order in form of GST ASMT-13 under Rule 100(1) of CGST Rules 2017. In the assessment order it was also given option to the appellant that if the appellant furnish the returns within 30 days from the receipt of this order, the order shall be deemed to have been withdrawn; otherwise, proceedings shall be initiated against the appellant.
- (iii) I find that the Assessing Authority has assessed the duty as per provisions of Section 62 of CGST ACT, 2017 on the basis of information available with the department; the Assessing Authority had assessed the tax liability Rs. 91,800/- @ 18% on turnover of Rs. 5,10,000/- under Section 62 of the CGST Act, 2017;
- (iv) I find that the assessing authority has assessed the tax @ 18% GST on total out ward supply;
- (v) The appellant has submitted the quarterly GSTR-1 for the quarter ending June 2019-20(Q) and September 2019 (Q) and consolidated 3B offset summary. As per the GSTR-1 total liability for the period of June -2019 and September- 2019 is tabulated as below:-

Period	Taxable value	Rate of duty	IGST	CGST	SGST	Total
June 2019	85600.00	0.00	0.00	0.00	0.0	0.00
	117486.0	5%	0.00	2937.15	2937.15	5874.30
Total	203086.00		0.00	2937.15	2937.15	5874.30
September 2019	208220.00	5%	0.00	5205.50	5205.50	10411.00
	231488.90	18%	0.00	20834.00	20834.00	41668.00
Total	439708.90		0.00	26039.50	26039.50	52079.00
Total exempted & taxable value	85600	0	0	0	0	-
	3,25,706.00	5%	0	8142.65	8142.65	-
	2,31,488.90	18%	0	20834.001	20834.001	-
Grant Total	6,42,794.90		0	28976.651	28976.651	57953.302

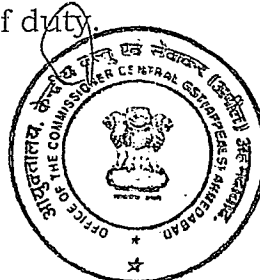


8.2 In this regard, as per submissions by the appellant on 12.9.2022 of the sales invoices during the tax period, I find that the appellant have supplied their goods and mainly provides services to M/s. Uttar Gujarat Vij Company Ltd. The service provided by the appellant comprises Hiring of Vehicle, Erection work for Electrical Line and Transportation of Failed TC. Further, I find that in case of transportation failed TC, the appellant has discharged GST at the rate of 5%, Erection work for electrical line at the rate of 18% and hiring vehicles at the rate of 0% (as recipient is mainly M/s. Uttar Gujarat Vij Company Ltd., which is a corporate body and tax is required to pay by them under reverse charge mechanism). Thus, the appellant have supplied goods / services under three different categories of GST rate i.e 0%, 5% and 18% and according to these sales invoices their GST liability works out to Rs.57,953/- for the period from April 2019 to September 2019. The details are as under:

GST Rate	Period	Taxable value (in Rs.)	Duty / Tax (in Rs.)	Total Value (in Rs.)
0%	Apr-Sept.2019	85600/-	0.00	85600
5%	Apr-Sept.2019	325708/-	16285	341993/-
18%	Apr-Sept.2019	231488/-	41668	273156/-
Total		642796/-	57953/-	700749/-

8.3 I find that the assessing authority has calculated the tax to the tune of Rs. 91,800/- on the basis of information available with the department, on the value of turnover Rs.5,10,000/- taking into account GST rate @18% and interest thereof.

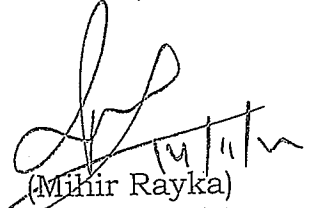
8.4 Further, as per letter F. No. F.NO. V/15-01/ASMT-HMT-V/2020 dated 10-10-2022 issued by the Superintendent, CGST, Range-V, Himmatnagar, it has been confirmed that "as per invoices and returns [late filed] submitted by the taxpayer, it appears that the data is found tallied." Further, the Superintendent, CGST, Range-V, Himmatnagar submitted that the taxpayer, has not paid outstanding interest for the F Y 2019-20 for late payment of duty, in reply to this office letter dated 8.9.2022. I further find that the appellant have filed their GSTR-3B returns for the period from April 2019 to July 2019 on 31.08.2020 and for the period from August 2019 to September 2019 on 22.12.2020 and discharged their GST liability as per their outward sales and interest on late fee. However, I find that the appellant has not paid outstanding interest for the tax period Apr-2019 to Sept.2019 for late payment of duty.



9. In view of the above, I find that the impugned order has been passed under Rule 100(1) of CGST Rules, 2017 and Section 62 of the CGST Act, 2017 by the Assessing Authority / Proper Officer on the basis of best judgement method considering information available with the department and accordingly worked out the GST liability for the period April 2019 to September 2019. Further, from ongoing paras, I find that the appellant has discharged their tax liability as shown in their GSTR-3B returns as per outward supplies made by them during the period from April 2019 to September 2019 under the provisions of CGST Act, 2017 which is found appropriate. Therefore, I find that the impugned order is required to be set aside to the extent of excess amount of GST liability so worked out. Accordingly, I allow the present appeal of the appellant with a condition to pay outstanding interest for the F.Y 2019-2020 for late payment of duty as prescribed under the provisions of CGST Act, 2017 and rules made thereunder and quashed the impugned order to the above extent.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

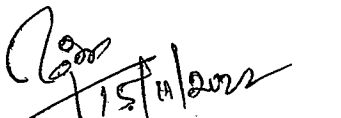
10. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 14.11.2022

Attested


(Tejas J Mistry)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,

M/s. Haribhadrasinh Lalsinh Dabhai [GSTIN : 24AKLPD1719L2Z6]
(Proprietor : Shri Haribhadrasinh Lalsinh Dabhai),
1 Lalsinh, Kushki, Aravalli, Gujarat - 383250

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Gandhinagar .
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division- Gandhinagar .
5. The Additional Commissioner, Central Tax (System), Gandhinagar
6. The Superintendent, CGST, Range-II, Div. Gandhinagar.
7. Guard File.
8. P.A. File

