



सत्यमेव जयते

आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



0792630506- टेलीफैक्स 07926305136



DIN NO. : 20221164SW0000888D65

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1136/2022 / 5536-42

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-66/2022-23**
दिनांक Date : 30-11-2022 जारी करने की तारीख Date of Issue : 30-11-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **PLN-AC-CGST-05/2021-22** dated **13.01.2022** issued by the Assistant Commissioner, Central Goods and Service Tax, Division Palanpur, Gandhinagar Commissionerate

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

1. M/s Kalya Constructions Pvt Ltd [GSTIN: 24AADCK6517E1ZT]
Behind Hotel Four Way, Bharkawada Patia, Near Village Chhapi,
Palanpur-Siddhpur Highway, Vadgam Mahal,
Banaskantha, Gujarat - 385210
2. M/s Kalya Constructions Pvt Ltd [GSTIN: 24AADCK6517E1ZT]
Ajmer Road, Near Sukhadiya Circle, Bhilwara - 311001

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| (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 अपीलार्थी प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए अपीलार्थी 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. Kalya Constructions Private Limited, Behind Hotel Fourway, Bharkawada Patia, Near Village Chhapi, Palanpur-Siddhpur Highway, Tal : Vadgam Mahal, Banaskantha, Gujarat 385210 (hereinafter referred to as the 'appellant') has filed present appeal against Order-In-Original No. PLN-AC-CGST-05/2021-22 dated 13.01.2022 (hereinafter referred to as 'impugned order'), issued by the Assistant Commissioner, CGST & C.Ex, Division-Palanpur, Gandhinagar Commissionerate (hereinafter referred to as 'Adjudicating Authority').

2. Brief facts of the case are that M/s. Kalya Construction Private Limited is a Private Limited Company engaged in providing "Works Contract Services", "Construction Services in respect of Commercial and Industrial Buildings and Civil Structures", "Site Preparation and Clearance" and "Other Taxable Services - other than the ones mentioned" to various clients located in Gujarat and other states having GSTIN 24AADCK6517E1ZT, has been issued Show Cause Notice dated 22.10.2021 under case file no. DGGI/AZU/Gr.A/12(4) 455/2020-21 by the DGGI, Ahmedabad Zonal Unit, Ahmedabad for non-filing of GSTR-1 and GSTR-3B returns for the period from August 2019 to December 2019 under section 74 of the CGST Act, 2017 and subsequent issuance of the impugned order by the Assistant Commissioner, CGST & C.Ex, Division-Palanpur, Gandhinagar Commissionerate, dated 13.01.2022 *confirming the duty demand of Rs.1,04,67,089/- under section 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017; interest under section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017; penalty under Section 74(1) of the CGST Act, 2017 read with similar provision of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 for failure to comply with the CGST Act, 2017 applicable at the material time.*

3. Being aggrieved with the 'Impugned Order' dated 13.01.2022; the "appellant" has filed the present appeal on 06.04.2022 under Section 107 of CGST Act, 2017. The "appellant" has submitted the following grounds of appeal; contending that

A : Show Cause Notice dated 22.10.2021 is wrongly issued under Section 74(1) of CGST Act, 2017 upon appellant demanding tax, interest and penalty, as there is no element of suppression involved in terms of Section 74 of CGST Act, 2017;

B : Assessment of non-filers of returns is specifically covered under Section 62 of CGST Act, 2017. Invocation of Section 74 of the GST for levy and recovery of duty, interest and penalty is *unjust* and unwarranted in the present case in the eyes of law;



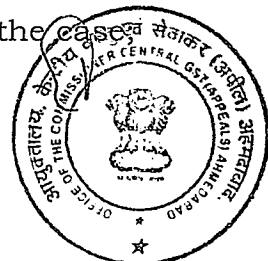
C : Even otherwise, appellant discharged GST liability of Rs. 1,04,67,089 (IGST Rs. 1,04,49,669/-, CGST Rs. 8710/-,SGST Rs.8710/-) alongwith interest before issuance of present show cause notice issued under Section 74(1) of CGST Act, 2017. In terms of Section 73(8) ibid no penalty is payable by the appellant.

D : Quantification of interest paid by appellant for delay in payment of tax is as per proviso to Section 50(1) of CGST/GGST Act readwith Section 20 of IGST Act, 2017. For this, they relied upon case of M/s. Reflex Industries Ltd. Vs. Assistant Commissioner of CGST & Central Excise reported at 2020 (2) TMI 794, in the H'ble Madras High Court and Notification No. 16/2021 CGT dated 01.06.2021 for retrospective amendment w.e.f 1.7.2017. That the benefit on interest on net tax liability is available only when the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section, except where such returns is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

E : Proceeding under section 73 and 74 is issuance of SCN and Inspection under Section 67 or Summons under Section 70 cannot be treated as proceeding under Section 73 or 74 of CGST Act, 2017.

F : Penalty is not imposable under Section 74(1) of CGST Act, 2017 in the present case. The "appellant" further contending that

- (i) Allow the appeal in full with consequential relief;
- (ii) Set aside the impugned order Order-In-Original No. PLN-AC-CGST-05/2021-22 dated 13.01.2022 passed by the Assistant Commissioner, CGST & C.Ex, Division-Palanpur, Gandhinagar Commissionerate;
- (iii) Set aside the demand confirmed, in impugned order for interest and penalty;
- (iv) Pass as such order or such other order as may be deemed fit and proper in the facts and circumstances of the case.



Personal Hearing :-

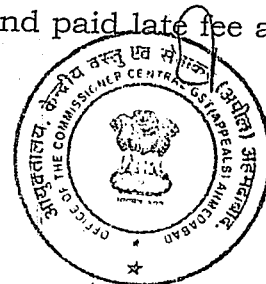
4. The Personal Hearing in the case was held on 07.09.2022. Ms Madhu Jain, Advocate Representative, on the behalf of the appellant has attended the personal hearing on virtual mode and submitted that they have been given seven working days to submit additional information and accordingly they made submission on 21st September 2022 that

(1) the present appeal arises out of Order-In-Original No. PLN-AC-CGST-05/2021-22 dated 13.01.2022 (DIN-20220164WU0000121621) wherein Ld. Assistant Commissioner order to adjust and appropriate GST of Rs. 1,04,67,089/- under Section 74(1) of CGST Act, 2017 / IGST Act / GGST Act, already paid by the appellant before issuance of show cause notice. Also ordered to adjust and appropriate interest amount of Rs. 2,42,342/- already paid by the applicant against the total interest liability. However, interest as applicable on the gross amount of Rs. 1,04,67,089/- as confirmed is ordered to be recovered from the appellant under section 50 of CGST Act, 2017 along with penalty confirmed under section 74(1) of CGST / IGST/ GGST Act, 2017;

Moreover, the appellant submits that they have furnished all the information required, as and when sought by the department. All the requisite documents such as balance sheet, sales ledger, invoices, 26AS, Trial Balance etc for the period August 2019 to December 2019 which the department have sought for during follow up inquiry. No excess GST liability other than what declared in GSTR-1 and books of accounts was noticed by the department. So, there is no dispute w.r.t quantification of GST amount by the department which already discharged by the appellant. Their case was of belated payment of tax after due date and for delay occurred they discharged interest under Section 50(1) read with proviso introduced with effect from 01.07.2017.

(2) Appellant places reliance upon all the facts and legal submission made in the appeal. Appellant is further pressing reliance upon the following facts and grounds in the appeal:

The disputed amount of Rs. 1,04,41,494/- paid by the appellant and filed pending GST returns in form of GSTR-1 and GSTR-3B for the period August 2019 to December 2019 on 18.1.2020, 21.01.2020, 24.01.2020, 24.01.2020, 27.01.2020. The amount paid by credit Rs. 49,92,624/-, the amount paid by cash Rs. 54,48,870/- (Total amount paid Rs. 1,04,41,494/-) along with interest well before the issuance of impugned Show Cause Notice, and paid late fee after commencement of inspection on 17.01.2020.



They further submitted that the figures of payment in cash and credit that in spite of credit being available, **due to financial crunch, appellant were unable to file GSTR-1 and GSTR-3B returns for the period from August 2019 to December 2019.** Hence, in order to not to pass any undue advantages of the input tax credit to its various customers, where **corresponding liability was pending to discharge, the appellant did not file GSTR-1 returns on time.** Now issue is limited to levy of penalty and net interest instead of gross interest.

(3) the penalty is confirmed in the impugned order against the appellant under Section 74(1) of CGST / IGST/ GGST Act, 2017;

"Section 74 (1)

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

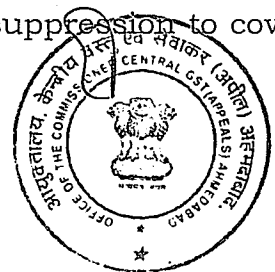
(4) as already submitted in the appeal filed by the appellant that invocation of Section 74(1) ibid in the facts of present case for non-filing of return is squarely covered by specific section i.e Section 62 of the CGST Act, 2017.

(5) Based on judicial pronouncements under the Central Excise law and service tax law, following assertions can be made:

- When department is aware of the activities undertaken, suppression or intention to evade tax is not sustainable
- When there is a confusion or dispute about taxability any activity which is later clarified by the authorities, intention to evade cannot be sustained
- Any issue involving different interpretation main because no registration was obtained
- When financial statements are in public domain, suppression of facts cannot be alleged

(6) Explanation II of Section 74 of CGST Act, 2017 defines suppression to cover the following:

- Declaration of information
- Failure non-declaration of facts
- Not to furnish any information asked for



(7) Ld. Assistant Commissioner at para 36 of the impugned order has given a finding that present matter has arisen out of scrutiny and verification conducted on the records of the assessee by the officers of DGGI. Had they not conducted there action of scrutiny and verification, evasion of tax would not have been unearthed. There is nothing on record which has been averred to or indicated by assessee to show that the material facts relating to its act of omission and commission was made known to the department till the results of scrutiny verifications were available. Therefore as per Ld. Assistant Commissioner, it appears to him that the appellant has willfully suppressed the above facts with intent to evade payment of GST and accordingly the extended period of limitation of 5 years as envisaged under Section 74 ibid read with Section 74 of GGST Act and Section 20 of IGST Act for the demand and recovery of GST applicable in the instant case.

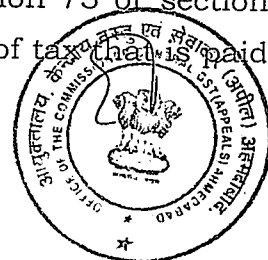
(8) With respect to issue of interest, they place reliance on submission made in appeal filed on 6.4.2022 which is produced as

On 5th Jul 2019, amendment under Section 50 (1) was proposed in clause 99 of Finance Bill, 2019, which was enacted in form of Section 100 of Finance Act 2019 on 1st August 2019. Central Government amended section 50 of the CGST Act to insert a proviso allowing payment of interest on liability paid in cash. Said proviso read as under:

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

In the case M/s. Refex Industries Ltd. Vs Assistant Commissioner of CGST & Central Excise reported at 2020 (2) TMI 294, H'ble Madras High Court held that above proviso shall have retrospective effect w.e.f from 01.07.2017, accordingly vide Notification No. 16/2021-CT dated 01.06.2021, aforesaid retrospective amendment was notified.

(9) It is submitted that the benefit on interest on net tax liability is available only when the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of tax that is paid by debiting the electronic cash ledger.



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 appellant has evaded GST tax liability by way of suppression of facts for the period from August-2019 to December-2019 by non-filing of GSTR-1 and GSTR-3B returns (iii) whether the interest and penalty on demand of Rs. 1,04,67,089/- arising out of impugned order is legal 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.

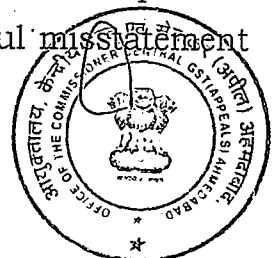
(2)

(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. In the present appeal the "impugned order" issued on 13.01.2022, I observed that in the instant case the appeal has been filed on 6.4.2022 under Section 107(1) of the CGST Act, 2017, so the normal appeal period of three months was available to the appellant upto 13.04.2022. Accordingly, the appeal was required to be filed on or before 12.04.2022. Therefore, I find that the present appeal is filed well within prescribed time limit. Accordingly, I am proceeded to decide the case.

8 (i). Now, coming to the point of the appellant has evaded GST tax liability by way of suppression of facts for the period from August-2019 to December-2019 by non-filing of GSTR-1 and GSTR-3B returns i.e confirmation of the demand under Section 74 of the CGST Act, 2017 / Gujarat GST Act, 2017 and similar provisions under Section 20 of IGST Act, 2017, which pertaining to "Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts."



I find that prima facie the case of department is that the appellant has belatedly filed the GSTR-1 and GSTR-3B returns for the period from August 2019 to December 2019 and therefore tax has been discharged after due dates. I find that the department has not collected any evidences which proves suppression of facts. No excess GST liability other than what declared in GSTR-1 was detected/noticed by the department. I however, find that the demand of tax raised by the department which was recorded in the books and accounts of the appellant. Further, I would like to refer the definition of "suppression" enumerated as per the Explanation 2 appended to the Section 74 of CGST Act, 2017, which is read as under:

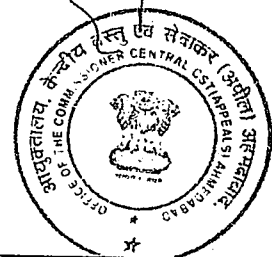
"Explanation 2 : For the purpose of this act, the "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information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

On going through the above definition, I find that the appellant had not suppressed any information which they were required to declare in the return, statement, report or any other document furnished under this Act / Rules, or failure to furnish any information on being asked / called for. Therefore, being the case of late filing of returns and payment of tax after due dates relevant Section 73 of the CGST / GGST Act should have been framed for demand and recovery of tax not the Section 74 of the CGST Act / GGST Act / similar provisions of IGST Act. I find that the appellant has already paid the taxes due for the disputed period along with interest which has been appropriated by the adjudicating authority.

I further refer to the Section 47 of the CGST Act, 2017 which re-produced as under :

"47. Levy of late fee

- (1) Any registered person who fails to furnish the details of outward supplied required under Section 37 or returns required under Section 39 or Section 45 [or Section 52] by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.
- (2) Any registered person who fails to furnish the return required under Section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory."



Further, as per the Circular No. 76/50/2018-GST dated 31st December 2018, it has been clarified by the CBIC that "... the provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of Section 73(11) of the CGST Act is not payable in such cases....."

On going through Section 47 and Circular No. 76/50/2018-GST dated 31st December 2018, I find that there is a provision for late filing of returns and levy of late fee under the CGST Act, 2017 / GGST Act, 2017. I also find that the Government itself is allowing the registered person for late filing by way of payment of late fees, thus, late filing of GSTR-3B is not restricted under the GST law and instead provides sufficient opportunity to file GSTR-3B return even at a later date after expiry of the due date on payment of late fee. In the present case, I find that the appellant have failed to file returns before the due dates, but immediately they filed GSTR-3B returns after the inquiry initiated on 17.01.2020 by DGGI Officers and paid tax alongwith applicable interest and also paid late fees.

Further, the appellant contended that invocation of section 74(1) ibid in the facts of present case for non-filing of return is squarely covered under Section 62 of the CGST Act, 2017. I find that the Section 62 specified the assessment of the best of proper officers' judgement which does not have any link or relevance with Section 74 of CGST Act, 2017 in the present case as there is no suppression of facts as per the Explanation 2 to the Section 74 of the CGST Act, 2017. Therefore, I find that the adjudicating authority has not rightly resorted to Section 74 of the CGST Act, 2017. Therefore, the Section 74 is squarely not applicable in the instant case to the appellant.

Discussion on Penalty :

8 (ii) I have carefully gone through the facts and available records, the appellant have contended that penalty is not imposable on them under Section 74(1) of CGST Act, 2017 in the present appeal. I observed that the penalty have been imposed on the appellant under Section 74(1), Section 122(1)(iii), Section 122(2)(b) of the CGST Act, 2017 read with Section 74(1) of Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 for collecting tax and depositing to the Government beyond a period of three months from the date on which such payment becomes due, for non-payment of GST amount and reason of fraud or willful misstatement or suppression of facts to evade tax respectively.

As I already discussed above that there is no suppression of facts in the instant case as per the Explanation 2 to the Section 74 of the Act and the adjudicating authority has



not rightly resorted to Section 74 of the CGST Act, 2017 and Section 74 is squarely not applicable in the instant case to the appellant. Hence, I set aside the order of adjudicating authority that penalty should be imposed under Section 74(1) of the CGST Act, 2017 read with the similar provisions of SGST Act, 2017 and Section 20 of the IGST Act, 2017 upon the appellant.

Regarding penalty under Section 122 of CGST Act, 2017 / GGST Act, 2017 & similar provisions under IGST Act 2017, I find that the appellant's case of late filing of GSTR-3B is not listed under any of the clauses (i) to (xxi) in Section 122 of CGST Act, 2017, hence no penalty is imposable under Section 122 of the said Acts.

Discussion on payment of Interest :

9. It has been contended by the appellant that they are not liable to pay interest on whole tax amount but only on net cash payment as they have made the tax and interest payment after the initiation of inquiry by the department.

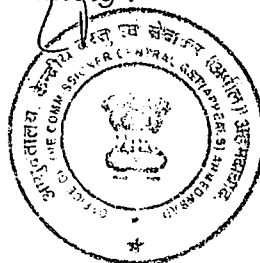
Section 50 of the CGST Act, 2017 reads as under:

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

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

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in out up tax liability under sub-section (10) of Section 43 shall pay interest on such undue or excess claim or on such undue or excess reduction as the case may be at such rate not exceeding twenty-four percent as may be notified by the Government on the recommendation of the Council."

Further, as per Section 112 of the Finance Act, 2021 (No. 13 of 2021): In section 50 of the Central Goods and Service Tax Act, in sub-section(1), for the proviso, the following provision shall be substituted and shall be deemed to have been substituted with effect from 1st day of July, 2017, namely :-

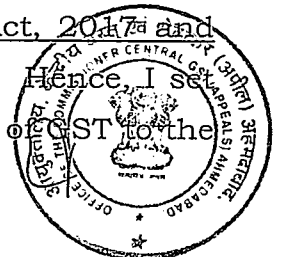


“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section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

Similarly, vide Notification No. 16/2021-Central Tax dated 01.06.2021, in exercise of the powers conferred by sub-section (2) of the section 1 of the Finance Act, 2021 (13 of 2021), the Central Government hereby appoints the 1st day of June, 2021, as the date on which the provisions of section 112 of the said Act shall come into force.

9.1 In view of the above, I am of the opinion that the provisions of Section 67 and Section 70 have been enacted for collecting evidence in issues involving tax evasion. After inquiry is completed and materials for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized, by reason of fraud or willful misstatement or suppression of facts or otherwise are found, then the same may be led to demand and recovery under Section 73 or 74, as the case may be. In this case, the inquiry was initiated by the DGGI Officers on 16.01.2020 under authorization of Inspection under section 67 and also issued summons under section 70 of CGST Act, 2017, dated 17.01.2020. The appellant had filed their GSTR-1M and GSTR-3B immediately after the initiation of the inquiry by the department i.e on 18.01.2020, 21.01.2020, 24.01.2020, 24.01.2020 and 27.01.2020. As I have discussed earlier in para 8(i) above, that there is no suppression of facts in the present case, however, I find that the appellant has paid tax along with interest applicable vide FORM DRC-03 dated 25.06.2021 Debit Entry no. DC240621209988 and also paid late fees well before the issuance of Show Cause Notice on 22.10.2021 by the DGGI. Hence, I find that the applicable interest is payable only on that portion of the tax which is paid by debiting the electronic cash ledger as per Section 50 of the CGST Act, 2017 / Gujarat GST Act, 2017, which the appellant have already paid.

9.2 From the ongoing para, I find that in the instant case the appellant have complied with the provisions of Section 50 of the CGST Act, 2017 as they have paid the interest of Rs. 2,42,352/- [Rupees Two Lakhs Forty Two Thousand Three Hundred Fifty Two only] on the cash component of the tax vide FORM DRC-03 dated 25.06.2021 Debit Entry no. DC240621209988 and should be appropriated against their total interest liability under section 50 of the CGST Act, 2017 read with similar provisions of Section 50 of SGST Act, 2017 and Section 20 of IGST Act, 2017 on the net amount of GST payable. Hence I set aside the impugned order for recovery of interest on gross amount of GST to the extent.



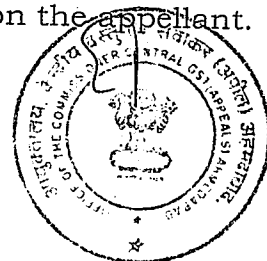
9.3 Regarding imposition of late fees under Section 47 of CGST / Gujarat GST Act, 2017 and similar provisions under IGST Act, 2017, I find that the appellant has filed the stipulated returns after due dates in violation of Section 37 / Section 39 of the CGST Act, 2017 and also paid late fees Rs. 17,300/- under Section 47 of the CGST Act, 2017 / GGST Act, 2017 which may be adjusted and appropriated. Therefore, I upheld the late fees imposed by the original adjudicating authority.

10. Further, the H'ble High Court of Karnataka in case of C.C.E & S.T., LTU, BANGALORE Vs ADECCO FEXIONE WORKFORCE SOLUTIONS LTD. [C.E.A NOs. 101-102 of 2008, decided on 8-9-2011] [2012 (26) S.T.R.3 (Kar.)] held as under :-

*"3. Unfortunately the assessing authority as well as the appellate authority seem to think. If an assessee does not pay the tax within the stipulated time and regularly pay tax after the due date with interest. It is something which is not pardonable in law. Though the law does not say so, authorities working under the law seem to think otherwise and thus they are wasting that valuable time in proceeding against persons who are paying service tax with interest promptly. They are paid salary to act in accordance with law and to initiate proceedings against defaulters who have not paid service tax and interest in spite of service of notice calling upon them to make payment and certainly not to harass and initiate proceedings against persons who are paying tax with interest for delayed payment. It is high time, the authorities will change their attitude towards these tax payers, understanding the object with which this enactment is passed and also keep in mind the express provision as contained in sub-sec (3) of Sec. 73. **The parliament has expressly stated that against persons who have paid tax with interest, no notice shall be served**"*

I find that though the decision of H'ble High Court of Karnataka is related to Service Tax but the essence of the decision is no notice shall be served to such persons who have paid tax with interest. Similar analogy can be made applicable in the present case where the appellant has paid the GST liability alongwith interest therefore notice was not required to be served.

Further, I find that, as discussed in para 8(i) above, in terms of Section 73(5) & 73(8) of CGST Act, 2017 when GST liabilities are discharged with interest before the issuance of Show Cause Notice, imposing penalty in the case would not be sustainable. Hence, I find that penalty is not imposable upon the appellant.



11. From the above discussions, facts and submissions of the appellant and on available records, I hereby order to

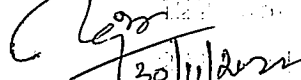
- (i) upheld the impugned order confirming the demand of CGST/Gujarat GST/IGST of Rs. 1,04,67,089/- (Rupees One Crore Four Lakhs Sixty Seven Thousand Eighty Nine only) along with interest & late fees imposed by adjudicating authority under the CGST Act, 2017 / Gujarat GST Act, 2017 and IGST Act, 2017, as amended and order to adjust and appropriate the same already paid by the appellant.
- (ii) set aside the recovery of interest on gross amount of GST and order to adjust and appropriate the interest amount of Rs. 2,42,352/- (Rupees Two Lakhs Forty Two Thousand Three Hundred Fifty Two only) already paid by the appellant by debiting the electronic cash ledger as per Section 50 of the CGST Act, 2017 / Gujarat GST Act, 2017 and IGST Act, 2017, as amended;
- (iii) set aside the imposition of penalty of Rs.1,04,67,089/- (Rupees One Crore Four Lakhs Sixty Seven Thousand Eighty Nine only) under Section 74(1) of the CGST Act, 2017 read with the similar provisions of SGST Act, 2017 and read with Section 20 of IGST Act, 2017, as amended from the appellant and upheld the order of refrain from imposing penalty under Section 122(1)(iii) and 122(2)(b) of the CGST Act, 2017 read with similar provisions of SGST Act, 2017 and Section 20 of ICGST Act, 2017, as amended.

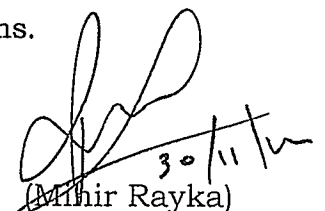
The impugned order is modified to the above extent. Hence, the appeal is partially allowed and partially rejected.

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

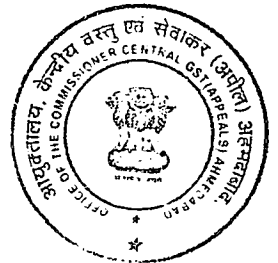
12. The appeal filed by the appellant stands disposed of in above terms.

Attested


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


(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 30.11.2022



By R.P.A.D.

To,
M/s. Kalya Constructions Pvt. Ltd [GSTIN : 24AADCK6517E1ZT]
Behind Hotel Four Way, Bharkawada Patia, Near Village Chhapi,
Palanpur- Siddhpur Highway, Vadgam Mahal, Banaskantha,
Gujarat : 385210
(Address : Ajmer Road, Near Sukhadiya Circle, Bhilwara-311 001, Rajasthan)

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-Palanpur, Gandhinagar Commissionerate.
5. The Additional Commissioner, Central Tax (System), Gandhinagar
6. The Superintendent, CGST, Range-I, Division-Palanpur.
7. Guard File.
8. P.A. File

