



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

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2033/2023 -APPEAL

1626-82

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC-28/2023-24

दि-गॉक Date : 26-09-2023 जारी करने की तारीख Date of Issue : 27-09-2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. 1/Supd't/Range-IV/Mehsana/2023-24 DT. 22.05.2023 issued by The Superintendent, CGST & C.Ex., Range-IV, Divison-Mehsana, Gandhinagar Commissionerate

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

M/s. Pragati Steel Corporation,
No. 368, G.No. 26, Karmukt kshetra,
Opp. Gund Bazar, Visnagar,
Mehsana, Gujarat

(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 पर जाकर 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**BRIEF FACTS OF THE CASE:**

M/s. Pragati Steel Corporation, No. 368, G. No. 26, Karmukt Kshetra, Opp. Ganj bazar, Visnagar, Mehsana (hereinafter referred to as the "appellant") has filed the appeal on 15.06.2023 against Order-in-Original No. 1/ Supd't/Range-IV/Mehsana/2023-24 dated 22.05.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-IV, Division-Mehsana, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority") for Short payment of Tax amounting to Rs. 5,66,178/- alongwith interest and penalty.

2(i). Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAFFP4075PJZS, are engaged in the trading / supply of Iron and Non-Alloy Steel in Ingots or other primary forms falling under HSN 7214. During the course of audit of the account books of the Taxpayer, it was observed that the appellant has short paid, GST during the FY 2017-18 amounting to Rs.5,66,178/-. The appellant had recorded an income of Rs.6,13,54,289/- in their books of accounts for the financial year 2017-18 whereas they had shown the taxable value in their GSTR-3B return for the same financial year as Rs.5,83,08,856/- and accordingly had paid the Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST) and Integrated Goods and Services Tax (IGST) (collectively Tax) on the taxable value shown as per their GST Returns. It is found that they had shown lesser taxable value in their GST Returns as compared to the income shown in their books of accounts and thereby, it appeared that they had short paid of Tax contravened the provisions of sub-section (1) to Section 39 of the CGST Act, 2017.

3. The appellant stated that they were not agreed with the above observations. The appellant was further issued show Cause Notice dated 28.07.2022. Further, the adjudicating authority vide impugned order dated 22.05.2023 confirm the demand of Short payment of tax amounting to Rs. 5,66,178/- [(IGST : Rs.1,76,120/-) + (CGST: Rs.1,95,029/-) + (SGST: Rs.1,95,029/-)] under the provisions of sub Section (1) of Section 74 of the CGST Act, 2017 read with Section 20 of 1GST Act, 2017, Interest@ 18% under the provisions of Section 50(1) of the CGST/SGST Act, 2017 read with provisions of Section 20 of the IGST Act and Penalty under the provisions of Section 74 (1) of the CGST/SGST Act, 2017 read with the provisions of Section 122(2)(b) of the Act and Section 20 of the Integrated Goods and Services Tax Act, 2017for the following reasons:

- * *As per their books of accosts the income of Rs.6,13,54,289/- while as per GSTR-3B returns, the amount is Rs.5,83,08,856/-. Therefore, there is a difference of Rs.30,45,433/- in taxable value. Thus, the taxpayer has shown lesser taxable value in their GSTR-3B returns in comparison to their actual taxable value as per their own books of accounts;*
- * *they have not provided evidence to the effect that only the value shown by them in their GSTR-3B returns was taxable. I found that the supplier has suppressed the taxable value in their GSTR-3B returns.*
- * *the taxpayer has contravened the provisions of Section 39(7) of the Act read with the provisions of Rule 85(3) of the Central/State Goods and Service Rules, 2017 and Section 20 of the Integrated Goods and Services Act, 2017 as they have failed to pay tax to the Government account with the prescribed due dates.*
- * *The taxpayer has not shown the correct taxable value in their GSTR 3B returns filed by them.*

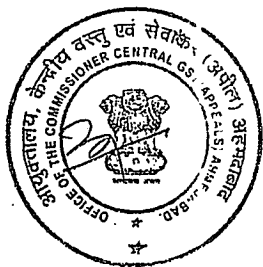
4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 06.06.2023 for the following reasons:

- * *the reasons for which a short payment of GST arise, that we have uploaded GSTR-3B in the month of July-2017 but on account of certain technical discrepancies at GST portal, the uploaded return has shown NIL transactions.*

they tried for rectification but there was no provision for such rectification of details for return GSTR-3B nor there was a provision for uploading revised return. In such circumstances, we were not able to rectify and upload return GSTR-3B. Actually, at that time no such provision of rectifying things in force officially

- * *there was a provision for providing date in GSTR-1. In doing this, ITC was shown automatically on GST portal. Thus on filling GSTR details of outward and input tax were known to the dealer automatically and the difference of tax to be paid. They are of the opinion that the procedure prescribed under GST rule cannot be applied strictly to deny legitimate right of the dealer.*

* *if they intentionally wants to suppress payment of tax then we could have filed GSTR-1 as NIL, but we have disclosed outward supply in GSTR-1 and, but due to some technical glitch on portal GSTR-3B filed as NIL Hence there is no intentionally suppression off acts with intent to evade the payment of tax.*



PERSONAL HEARING :

5. Personal hearing in the present appeal was held on 17.08.2023. Shri Janardan V. Modi, Authorized Representative appeared in person on behalf of the appellant in the present appeal. During P.H. he has submitted that "due to technical glitch in the July 2017, the first month of GST implementation GSTR-3B was set to "0" Zero for value of supply, ITC and tax liability. When it came to our notice during filing of GSTR-9C, the tax liability was declared, but since ITC and tax payment was set to Zero, audit officers taken objection and based on audit objection demand was confirmed, since credit was set to zero therefore no liability exist and the Order in Original may be set aside. As regards the penalty, since no demand exists, no penalty can be imposed. Further reiterated the written submission and requested to allow appeal being whole issue was due to technical glitch."

DISCUSSION AND FINDINGS:

6. 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 whether the appellant had made short payment of Tax amounting to Rs. 5,66,178/- as per reconciliation of books of accounts and GSTR-3B/GSTR-9 or not.

7. I find that the appellant shown the outward tax value as per books of accounts is Rs. 6,13,54,289/- and as per GSTR-3B/GSTR-9 is Rs. 5,66,178/-. Accordingly, the difference in tax liability comes to Rs. 5,66,178/-. I find that in the statement appellant contended that they had uploaded GSTR-3B figure in the month of July-2017 but on account of certain technical discrepancies at GST portal, the uploaded return has shown NIL transactions.

8. In view of above facts, I refer to provisions of CGST Act, 2017 relating to subject case which is as under :

Section 37. 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 1[subject to such conditions and restrictions and] 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 2[shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies]:

(2)

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period 3[***], shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after 6[the thirtieth day of November] following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

[Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019].

Section 39. Furnishing of returns.-

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

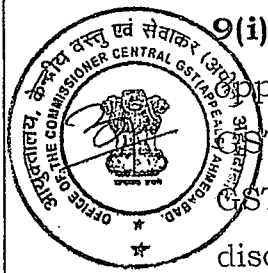
(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish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

Section 76 – Tax collected but not paid to Government

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

9(i). I find that as per the above provisions, the appellant had an opportunity to rectify the mistakes made in GSTR-1 while filing GSTR-3B and GSTR-9. In the appeal memorandum, appellant contended that they had uploaded GSTR-3B figure in the month of July-2017 but on account of certain technical discrepancies at GST portal, the uploaded return has shown NIL transactions. However, the appellant has no evidence put forth on record that it was due to technical glitch. I find that in the month of July 2017 appellant had collected the tax on outward supply but the same had not shown in GSTR-3 and GSTR-9. Accordingly, the tax had not paid to the government.

9(ii). Further, department has issued various circulars, like Circular No. 7/7/2017 dated 01.09.2021, Circular No. 26/26/2017-GST dated 29.12.2017 further amended to rectify mistakes during initial phase of GST implementation. Apart from above, the appellant had an opportunity to rectify the mistakes made in GSTR-1 and GSTR-3B, while filing GSTR-9/9C, however they had not declared the said value of taxable supply while filing GSTR-9/9C. I find that the appellant has no evidence put forth on record that it was due to technical glitch, even if it is presumed that it was due to technical glitch, the appellant had given ample opportunities through provision of annual return

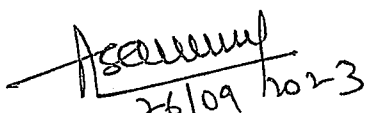


and said circulars to correct the same but they failed to report correct outward value of supply in annual return under GSTR-9 and thereby evaded the due tax and violated the various provisions of the CGST Act. The appellant was well aware that they had collected the tax from various suppliers, in the month of July 2017 but had not paid the tax after July 2017 and reported in GSTR-3B returns or through GSTR-9 return or at any other point of time, till the same is pointed out by the officers during audit conducted by the department. Therefore, I find that the appellant has contravened the provision of Section 37 of the CGST Act, 2017, Section 76 of the Act as they have collected tax but failed to pay to the Government, Clause (b) to Section 49(8) of the Act as they have wrongly evaluated the tax payable by them in their annual return GSTR-9 for the Financial Year 2017-18.

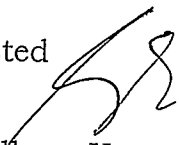
10. In view of the above discussions, I do not find any infirmity in the impugned order passed by the adjudicating authority or any merit in the contention of the appellant so as to intervene in the impugned order passed by the adjudicating authority. Accordingly, I uphold the impugned order passed by the adjudicating authority being legal and proper and reject the present appeal filed by the appellant.

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

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


26/09/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 26.09.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To

M/s. Pragati Steel Corporation,
No. 368, G. No. 26, Karmukt Kshetra,
Opp. Ganj bazar, Visnagar, Mehsana.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Gandhinagar Commissionerate
4. The Dy. / Assistant Commissioner, CGST & C.Ex, Division-Mehsana, Gandhinagar Commissionerate.
5. The Superintendent, CGST & C.Ex, Range-IV, Division-Mehsana, Gandhinagar Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad for publication of the OIA on website.
7. Guard File
8. P.A. File.

