



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/108/2024- APPEAL-AHMEDABAD / 1787-94
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-003-APP-JC-67/2023-24 and 09.02.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	13.02.2024
(ङ)	Arising out of Order-In-Original No. PLN-SUPDT-GST-03/2023-24 dated 09.08.2023 passed by The Superintendent, CGST AR-I, Div-Palanpur, Gandhinagar.	
	Name of the Appellant	Name of the Respondent
(च)	M/s Leak-Proof Engineering (India) Private Limited, B1,C1. EDR Industrial Estate, Near Chhapi, Pirojpur, Banaskantha, Gujarat, 385210	The Superintendent, CGST AR-I, Div- Palanpur, Gandhinagar

(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 <u>twenty five per cent</u> 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, 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**BRIEF FACTS OF THE CASE:**

M/s Leak_Proof Engineering (India) Pvt. Ltd., B1, C1, EDR Industrial Estate, Near Chhapi, Pirojpura, Banaskantha, Gujarat-385210 (hereinafter referred to as the "appellant") has filed the appeal on 08.11.2023 against Order-in-Original No. PLN-SUPDT-GST-03/2023-24 dated 09.08.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, Central GST & C.Ex., Range-I, Division- Palanpur, Gandhinagar Commissionerate (hereinafter referred to as the "adjudicating authority") for Excess availment of Input Tax Credit (ITC) amounting to Rs. 1,24,054/- under Section 74(1) of the CGST Act 2017 read with Section 20 of the IGST Act alongwith interest under Section 50(1) of the CGST Act, 2017 and imposition of penalty amounting to Rs. 1,72,981/- under Section 74(1) of the CGST Act, 2017 for short payment of Tax amounting to Rs. 1,72,981/- .

2(i). Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AAACL3875B1ZU, is engaged in the business of dealing in goods and services of HSN 8484, 6815, 7204 i.e. Gaskets and similar joints of metal sheeting, Articles of Stone or of other mineral, articles of carbon fibers and ferrous waste and scrap etc. The scrutiny of the returns of the supplier was conducted for the period from July 2017 to March 2018 some discrepancies have been noticed and accordingly ASTM-10 issued on dated 31.08.2022. It appears that appellant had availed ITC in GSTR 3B in excess to what was available to them under GSTR 2A returns amounting to Rs. 4,43,860/-. Further after going through the records i.e GSTR-2A & GSTR-3B the adjudicating authority had reduced the demand which comes to Rs. 1,24,054/-, that is required to be recovered alongwith interest and penalty.

2(ii). Further in the second issue there was difference in tax liability as compared to GSTR-1M and GSTR-3B returns filed by the appellant during the period from July 2017 to March 2018. During this period the appellant has not discharged the declared tax liability correctly as there was a short payment of Rs. 1,72,981/-which is required to be recovered from the appellant under Section 74(1) of the CGST Act 2017 alongwith interest and penalty. Further the appellant had paid the tax and interest and accordingly the adjudicating authority has appropriated the amount of tax and interest. However the appellant not agreed to pay the penalty amounting to Rs. 1,72,981/-.

3. The appellant stated that they were not agreed with the above observations. The appellant was further issued show Cause Notice on 27.10.2022. Further, the adjudicating authority passed the impugned order dated 09.08.2023 and confirm the demand of Rs. 1,24,054/- alongwith interest and penalty in respect of excess availment of ITC in GSTR 3B to what was available to them under GSTR 2A returns



and also confirm the demand of penalty of Rs. 1,72,981/- for short payment of tax of Rs. 1,72,981/- as there was difference in tax liability as compared to GSTR-1M and GSTR-3B returns on the following grounds:-

- that the supplier has contravened the provisions of Section 16(1) and 16(2)(a) of the Act read with the provisions of Section 20 of the IGST Act as they have wrongly availed the ITC in excess to what was available to them;
- that the supplier has contravened the provisions of Section 39(7) of the Act read with the provisions of Rule 85(3) of the Central Goods and Service Rules, 2017 and Rule 85(3) of the GSGST Rules 2017 as they have failed to reverse the ITC wrongly availed by them within the prescribed due dates;
- that they had availed the ITC in excess without having proper tax paying documents;
- that the tax payer has contravened the provisions of Section 39(1) of the act as they have reduced tax liability in the GSTR-3B and has short discharged the CGST liability;

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 08.11.2023 for the following reasons:

- that all accusation fabricated against them in totality. The contentions made in the order are fallacious and incorrect and are based entirely on assumptions and presumptions and without appraising the facts and circumstances in the legal perspectives. The appellant denied to have contravened any rule/provisions of the CGST Act 2017/SGST 2017/CGST Rules 2017.
- that the proceedings as initiated vide the impugned order are only arbitrary and against the legislative laws;
- In the present case, there is sufficient reasonable cause for non-imposition of penalty under section 74(1) read with Section 122(2)(b) since revenue could not prove the allegation of 'ITC availed Not shown in GSTR-2A' and 'non-reporting of outward supplies in GSTR-1'. Therefore, there has been no suppression with intent to evade tax at part of the appellant and penalty is not imposable on grounds of absence of suppression with intent to evade tax and payment of tax payable already stand paid. Therefore, penalty under section 74 is also not imposable;

The appellant prayed that appeal may please be allowed and set aside the 'order' appealed against for demand of penalty Total amounting to Rs. 2,96,983/-.

Virtual Hearing :

5. Virtual hearing in the present appeal was held on 24.01.2024. Shri Jugal Umesh Damniya, C.A., Authorized Representative appeared on behalf of the appellant in the present appeal. During P.H. he has submitted that they have



already paid the dues with interest. It is further submitted that this is a case of short payment of dues and which has been paid before issue of order. Further the ITC has also been paid within 30 days of O-I-O. There is no evidence to evade any kind of tax. Therefore no penalty is imposable under Section 74. In view of above requested to allow appeal.

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 is liable to pay penalty amounting to Rs. 2,97,035/- for excess availment of ITC in GSTR 3B in excess to what was available to them under GSTR 2A and for short payment of Tax as per reconciliation of GSTR-1 and GSTR-3B.

7(i). In respect of excess availment of ITC in GSTR 3B in excess to what was available to them under GSTR 2A the adjudicating authority has contended that the appellant had availed excess without being in possession of the documents viz tax invoices or debit Notes or any tax paying documents issued by a supplier evidencing payment of tax as required under Section 16(1) and 16(2)(a) amounting to Rs. 4,43,860/-. Further after going through the records i.e GSTR-2A & GSTR-3B the adjudicating authority had reduced the demand which comes to Rs. 1,24,054/- that is required to be recovered alongwith interest and penalty. In this connection the appellant paid the tax and interest vide DRC-03 dated 20.09.2023. However they have not paid penalty.

7(ii). In respect of non-payment of penalty the appellant stated that the difference of ITC in GSTR 2A and GSTR-3B was due to manual error while filing of GSTR-9 for the period 2017-18. While filing GSTR-9 they had shown in table No. 6 (B) all other ITC amounting to Rs. 2,30,06,336/- (IGST Rs. 1,27,84,650 + CGST Rs. 51,10,843 + SGST Rs. 50,32,321). He further submitted that the correct figures of the ITC available to them in GSTR 2A and ITC available in GSTR-3B is as under:

Description	IGST	CGST	SGST	Total
ITC as per GSTR-2A	12623482	4970244	4970345	22564071
ITC as per sum total of 6(b)	12056123	5032321	5032321	22120766
Difference	567359	-62077	-61976	443305

The appellant further submitted that the actual difference was of Rs. 1,24,054/- (CGST Rs. Rs. 62077 + SGST Rs. 61976). The appellant stated that the difference of ITC in GSTR 2A and GSTR-3B was due to manual error while filing of GSTR-9 for the period 2017-18 and accordingly accepted their mistake and paid the tax and interest vide DRC-03 dated 20.09.2023.



8. Further there was difference in tax liability as compared to GSTR-1M and GSTR-3B returns filed by the appellant during the period from July 2017 to March 2018. The appellant has not discharged the declared tax liability correctly as there was a short payment of Rs. 1,72,981/-which is required to be recovered from the appellant under Section 74(1) of the CGST Act 2017 alongwith interest and penalty. However the appellant had paid the tax and interest and accordingly the adjudicating authority has appropriated the amount of tax and interest. However the appellant not agreed to pay the penalty amounting to Rs. 1,72,981/-. In respect of non-payment of penalty the appellant stated that there has been no suppression with intent to evade tax as they have reported their outward supplier in GSTR-1.

9(i). In the instant case, neither the demand notice nor the impugned order has brought out any non declaration or any additional information on record to allege suppression of facts. During the scrutiny of GSTR-1 and GSTR-3B returns filed by the appellant for the period FY 2017-18 it is observed that the appellant had declared the correct figures of outward supplies in the GSTR-1. Thereafter on reconciliation of data by the appellant, they had paid the tax liability in alongwith interest on short payment tax vide DRC-03 dated 13.06.2023. Therefore, it is observe that there is no evidence exist to invoke the provisions of fraud or willful misstatement or suppression of fact. As to allege suppression, there should be non-declaration of facts or information in the return. The term 'suppression' in the explanation is defined as under:

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

It is observed that the appellant has declared their tax liability in GSTR-1 and also discharged the tax liability alongwith interest. In view of the above it is observed that in the instant case, no evidence exist about any wilful-misstatement or suppression of facts to evade tax as per Section 74 of CGST Act, 2017.

9(ii). In respect of non-payment of penalty for excess availment of ITC it is observed that the difference of ITC in GSTR 2A and GSTR-3B was due to manual error while filing of GSTR-9 for the period 2017-18. Further the appellant paid the tax and interest vide DRC-03 dated 20.09.2023. In the instant case nothing additional evidence has brought out on records to allege suppression of facts. Further it is observed that the appellant has also discharged the tax liability alongwith interest. Therefore, it is observe that there is no evidence exist to invoke the provisions of fraud or willful misstatement or suppression of fact. As to allege suppression, there should be non-declaration of facts or information in the return.



10. Considering the above facts, the question of invoking provisions of Section 74 of the GST Acts, 2017 and imposition of penalty under Section 74 of the GST Acts, 2017 in this case does not arise as the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the appellant. However, the appellant has contravened the provisions of Section 39(1) of the act as they have reduced tax liability in the GSTR-3B and has short discharged the CGST liability due to manual error while filing of GSTR-9 for the period 2017-18 and accordingly they are liable to pay penalty under Section 122(2)(a) of the CGST Act 2017.

11. In view of the above discussion I drop the penalty imposed under provisions of Section 74(1) of the CGST Act 2017 and imposed penalty of Rs. 29,704/- @10% under Section 122(2)(a) of the CGST Act 2017. Accordingly, I allow the appeal of the "Appellant" to that extent only.

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.

Adesh Kumar Jain
09/02/2024
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 09.02.2024

Attested

Sandheer Kumar
09/02/24
(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To

M/s Leak_Proof Engineering (India) Pvt. Ltd.,
B1, C1, EDR Industrial Estate, Near Chhapi,
Pirojpur, Banaskantha, Gujarat-385210.

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(RRA), CGST & C.Ex, Division-Palanpur, Gandhinagar Commissionerate.
5. The Dy. / Assistant Commissioner, CGST & C.Ex, Division- Palanpur, Gandhinagar Commissionerate.
6. The Superintendent, CGST & C.Ex, Range-I, Division- Palanpur, Gandhinagar Commissionerate.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File
9. P.A. File.

