



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

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आज़ादी का
अमृत महोत्सव

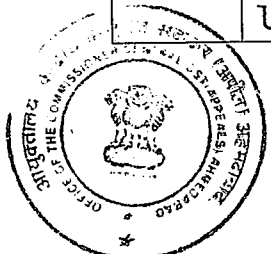
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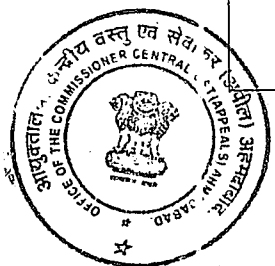
(क)	फ़ाइल संख्या / File No.	GAPPL/COM/GSTP/71/2022-APPEAL / 8128-33
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-002-APP-135/2022-23 and 31.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	08.02.2023
(ङ)	Arising out of Order-In-Original No. 51/ADC/MR/2021-22 dated 27.01.2022 issued by the Additional Commissioner, CGST & CE, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Nami Steel Pvt. Ltd. (GSTIN-24AAECN0652R1Z5), Surveyp No. 316(P), 317(P), 342(P) & 343(P), Opposite Chharodi Railway Station, Nano Ford Road, Taluka Sanand, Ahmedabad, Gujarat-382170



(A)	<p>इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।</p> <p>Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.</p>
(i)	<p>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.</p>
(ii)	<p>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</p>
(iii)	<p>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.</p>
(B)	<p>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</p>



	shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	<p>Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying –</p> <p>(i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant; and</p> <p>(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.</p>
(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)	<p>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।</p> <p>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.</p>



ORDER-IN-APPEAL

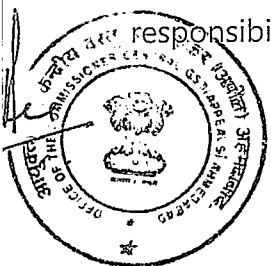
The present appeal has been filed by M/s. Nami Steel Pvt. Ltd., Survey No. 316(P), 317(P), 342(P) & 343(P), Opp. Chharodi Railway Station, Nano Ford Road, Taluka Sanand, Ahmedabad – 382170 (hereinafter referred to as “the appellant”) against Order-in-Original No.51/ADC/MR/2021-22 dated 27.01.2022 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as “the adjudicating authority”). The appellant are engaged in the manufacture of Stainless Steel Billets, Flats, Black bars, Bright Bars etc and are holding GSTIN No.24AAECNo653R1Z5.

2. Briefly stated, the facts of the case are that the information received from the Directorate General of GST Intelligence (DGGI), H.Q., New Delhi, revealed that the appellant had though collected the taxes, but were not depositing the taxes in government exchequer thereby had not discharged their GST liability. Based on the said intelligence, an inspection was conducted by the officers of DGGI, Ahmedabad Zonal Unit (AZU) at the premises of the appellant on 11.06.2018. Scrutiny of various records of the appellant revealed that they had filed GSTR-1 Return for the months from *July, 2017 to January, 2018* but had filed GSRT-3B for *July, 2017 & August, 2017 only*. Their total GST liability for the period from *July, 2017 to April, 2018* was Rs.16,42,90,751/-, out of which they had discharged the tax liability amounting to Rs.3,14,14,613/-for the month of *July, 2017 & August, 2017*. However, remaining GST liability amounting to **Rs.13,28,76,138/-** for the period from *September, 2017 to April, 2018* was not discharged by them.

2.1 During the investigation, the appellant had filed the GSTR-3B Returns on 11.06.2018 and discharged partial tax liability of Rs.3,97,61,784/- for the period from (*September, 2017 to November, 2017*) out of which Rs.3,68,17,345/- was paid through ITC and Rs.29,44,439/- was paid in cash. Thereafter, on various dates through challans and through ITC, they paid remaining outstanding tax liability amounting to Rs.9,31,89,306/- for the period from (*December, 2017 to April, 2018*). Though the appellant had collected GST, they did not pay tax to the department and also failed to file GSTR-1 for (*Feb, 2018 to April, 2018*) and GSTR-3B for (*September, 2017 to April, 2018*) in time. They were filed after initiation of investigation by the DGGI.

2.2 It was also observed that they were availing huge amount of Input Tax Credit (ITC) and most of the tax liability was discharged by utilizing the credit. Statement of Shri Parixit Patel, Managing Director of the appellant firm, was recorded on 11.06.2018, wherein he accepted the outstanding tax liability of Rs.13,28,76,138/- for the period from (*September, 2017 to April, 2018*). He also stated that they have Input GST credit of Rs.12,28,43,795/-, which they claimed was due to the inverted tax structure of VAT paid during pre-GST period, and the fact that most of their inputs are cenvatable inputs.

2.3 The investigation revealed willful evasion of tax with malafide intention. Further, it was alleged that all the accounting, taxation, billing etc of the appellant firm was done under the supervision of Shri Parixit Patel, Managing Director. Hence, he had full responsibility and supervision of the said activities. He, however, willfully committed the



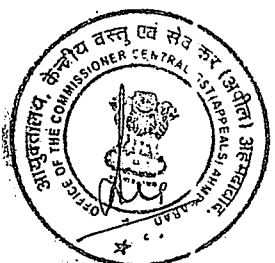
act of collecting GST but did not pay the same to government exchequer. Hence, the proceeding was also proposed against him under Section 137(2) of the CGST Act, 2017.

2.4 A Show Cause Notice (SCN) was therefore issued vide F. No. DGGI/AZU/36-32/2020-21 dated 31.08.2020, proposing demand of GST amounting to Rs.13,28,76,138/- under Section 74(1) of the CGST Act, 2017 and proposing appropriation of the GST amount of Rs.13,28,76,138/- already paid by the appellant through ITC and challans during investigation against their outstanding GST demand. Interest u/s 50 of the CGST, Act, 2017 and penalties u/s 74, u/s 122(1)(iii), (iv) & (xvi) and u/s 122(2)(b) of the Act ibid, were also proposed. Proceedings against Shri Parixit Patel, Managing Director, were also proposed to be initiated under Section 137(2) of the CGST Act, 2017.

2.5 The said SCN was adjudicated vide the impugned order wherein the demand of GST alongwith interest was confirmed and the amount paid during investigation was appropriated. Penalty of Rs.13,28,76,138/- under Section 74 and penalty of Rs.13,28,76,138/- under Section 122(1) and 122(2) was also imposed. The penalty proposed on Shri Parixit Patel, Managing Director, was, however, dropped by the adjudicating authority.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the grounds elaborated below:-

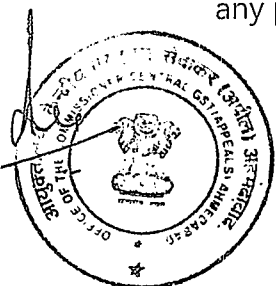
- The impugned order is a non-speaking order and is passed in gross violation of principles of natural justice. The adjudicating authority has confirmed the demand along with interest on full value and penalty without considering the submissions of the appellant and without providing any reasons for not considering the said submissions. The submissions made by them have been blatantly ignored in the impugned order. They placed reliance on following decisions:-
 - *Cyril Lasardo (Dead) v. Juliana Maria Lasarado - 2004 (7) SCC 431*
 - *Shukla & Brothers - 2010 (254) ELT 6 (SC)*
- GST, being the new law, created lot of confusion hence they failed to file the GSTR-3B for the month of September 2017 to April 2018 and GSTR- 1 for the period February 2018 to April 2018 within the stipulated time period. However, they filed the GSTR- 1 return for the period September 2017 to January 2018 but failed to file GSTR- 3B return, which was due to financial constraints. Later on, entire GST liability was discharged in full before the issuance of show cause notice that shows there was no malafide intention.
- The demand raised in the show cause notice and confirmed in the impugned order, is based on the GSTR-1 (outward supply) return, which is a public document and it is trite law that if the information is available in the public document, then the allegation of suppression cannot be sustained. Neither in the SCN nor in the impugned order any reasons were specified that the appellant have suppressed the fact. Mere non-filing of returns and non-payment of tax is



not enough to allege that the Appellant are guilty of suppression. Reliance placed on the case of

- o *M/s Swarn Cars Pvt. Ltd. - 2020 (2) TMI 222*
- o *Cosmic Dye Chemical -1995 (75) E.L.T. 721 (S.C.)*
- o *Cadila Laboratories Pvt.Ltd. -2003 (152) E.L.T. 262(S.C.)*
- o *Padmini Products v. CCE 1989 (43) ELT 195 (SC)*
- o *CCE v. Chemphar Drugs & Liniments 1989 (40) ELT 276(SC)*

- Section 74 of the CGST Act, 2017 will not be applicable in the present case as there is no suppression on the part of the appellant. Hence, the demand confirmed under Section 74 is not maintainable and liable to be set aside. In the present case, the tax was already paid by the appellant before the issuance of demand notice and further there is no suppression as they have duly filed the GSTR- 1 return for the period September 2017 to January 2018.
- The appellant had already paid the amount of tax and informed the department in writing about such payment, therefore, the impugned order confirming the demand shall be liable to be set aside. Section 73 (5) read with Section 73 (6) of the CGST Act, 2017, has clarified that the proper officer shall not serve any notice if the tax/ITC was already paid by the assessee. Since, the GST was already paid by the appellant in the present matter, therefore, the impugned order confirming the demand raised in the SCN is not maintainable and liable to be set aside.
- The GSTR- 3B is not a return as per Section 39 of the CGST Act, 2017. Rule 61 of the CGST Rules, 2017 prescribes the returns to be filed under Section 39 of the CGST Act, 2017. Rule 61 itself prescribes that FORM GSTR-3 shall be electronically generated on the basis of information furnished through FORM GSTR-1, which means that law itself is saying that Form GSTR-3B is not the substitute of Form GSTR-3. Further, it states that PART-B of the said return shall be electronically generated on the basis of the return in FORM GSTR-3B. So, it is crystal clear that Form GSTR-3B is a part of the Form GSTR- 3. Further, the Form GSTR-3B filed is just a provisional return which is subject to the finalization by filing Form GSTR- 3 by rectifying any discrepancy and paying corresponding tax etc. Sub-clause (c) of Rule 61 states that where the amount of input tax credit in FORM GSTR-3 exceeds the amount of input tax credit in terms of FORM GSTR-3B, the additional amount shall be credited to the electronic credit ledger of the registered person. If the taxpayer has claimed a lesser amount in GSTR-3B, more than the amount of ITC as per the Form GSTR-3, then the difference would be credited to the electronic credit ledger. Thus, Form GSTR-3B is not the final statement/return to claim ITC and the eligibility to claim ITC is governed by Form GSTR-3.Hence, the impugned order is baseless and liable to be set aside.
- Section 74 of the CGST Act, 2017 shall also not be applicable for levy of penalty as none of the ingredients specified under Section 122 of the CGST Act, 2017, is being fulfilled in the present case. Therefore, the appellant are not liable to pay any penalty under the CGST / GGST Act, 2017.



- Section 122 (1) (iii) states that the taxable person is liable to pay penalty if he collects any amount as tax but fails to pay the same to the government beyond a period of three months from the date on which such payment becomes due. Till date no time limit was prescribed for filing the GSTR- 3 returns, hence, the penalty imposed under Section 122 (1) (iii) is not sustainable.
- The Appellant have duly paid the amount of GST collected as per the provisions of CGST Act, 2017, hence, the penalty imposed under Section 122 (1) (iv) is liable to be dropped.
- The Appellant duly kept, maintained and retained all the books of accounts and as in the present case quantification of demand of tax is based on the books of accounts of the Appellant, hence, the penalty imposed under Section 122 (1) (xvi) is also liable to be dropped.
- Appellant had failed to furnish the GSTR - 3B which is already rectified by them by duly filing the GSTR - 3B returns and paid the tax liability by Input Tax Credit and various challans. Hence, the penalty of Rs. 13,28,76,138/- under Section 74 should not be imposed.
- Appellant had not evaded any tax therefore, the maximum penalty leviable on the appellant shall be Rs. 10,000/- in terms of Section 122 of the CGST Act.
- The levy of interest u/s 50(1) of the CGST Act, 2017 shall be payable only on the net tax liability i.e. Total tax payable minus total eligible input tax credit. The proviso to Section 50(1) clarifies that the interest can be imposed only on the "actual amount of tax withheld" by delayed filing of the return. As input tax credit has to be considered as good as the tax paid and the same has been availed and utilized in the records-maintained u/s 35(1), the actual amount of tax withheld by the appellants would only be the amount of tax payable from the cash ledger and hence interest can be demanded only on the said portion of output tax paid with delay. The input tax credit available with them shall be considered as tax already paid (by the concerned suppliers) to the Government and hence the collection of tax from the cash account would be the amount of tax which remains to be paid after considering the input tax credit.
 - *Eicher Motors Ltd.- 1999 (106) E.L. T. 3 (S.C.)*
 - *Dai Ichi Karkaria Ltd. 1999 (112) E.L. T. 353(S.C.)*
 - *Pratibha Processors – 1996 (88) E.L. T. 12 (S.C.)*

4. Personal hearing in the matter was held on 20.12.2022. Shri Priyam Shah, Chartered Accountant, appeared on behalf of the appellant. He stated that the appellant had discharged all tax liability as per returns, hence, they were not liable for payment of pre-deposit. He also submitted a written submission dated 20.12.2022 during hearing and reiterated the submissions made therein as was as in the appeal memorandum. He further stated that the appellant have applied for insolvency proceedings and IRP has been appointed.



4.1 The appellant have, in their additional written submission dated 20.12.2022, contended that due to shortage of funds they could not file GSTR-3B as online portal does not allow to file return if tax is not paid in full. However, the GST law permits, to furnish the return without payment of tax liability thus, the portal is working against the provisions of the law. This view, they claim, is supported by agenda taken up in 31st GST Council meeting held on 22.12.2018. Copy of minutes were attached for determining the interest liability on net basis, which they claimed shall be on the net tax paid through cash i.e. Rs.1,37,41,837/-. Further, they also claimed that levy of penalty u/s 74 is not justifiable as liability of supply is disclosed by filing GSTR-1, which is a public document. Department could not locate any supply which is not reflected in GSTR-1, hence, the present case does not fall under Section 74 as there is no suppression instead shall cover under Section 73. In support of their above arguments, they placed reliance on various case-laws.

- o K.G. Madhavan Pillai- 9 (1988) 4 SCC 6690
- o Navjoti Coop.Group Housing Society-1992 4 SCC 477

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum and additional written submission as well as the submissions made at the time of personal hearing. The issue to be decided in the present appeal is as to whether the demand of GST amounting to Rs.13,28,76,138/- confirmed alongwith interest and penalties in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise? The demand pertains to the period from September, 2017 to April, 2018.

6. It is observed that the entire demand has been raised on the grounds that the appellant had though collected the GST, but failed to deposit the same to the government exchequer and tried to suppress their taxable income from the department by not filing the GSTR-1 and GSTR-3B returns within the time limit prescribed under Section 37 and Section 39 of the CGST Act, 2017, for said period. It is alleged that the above evasion was detected by DGGI and the entire tax liability was discharged subsequent to the investigation, which establish their intent to evade the tax liability. The adjudicating authority held that the appellant had admitted their tax liability as well as the failure in non-payment of tax and non-filing of returns. He, therefore, confirmed the demand alongwith interest and penalties. The appellant, however, have argued that the GST being the new law, it created lot of confusion, hence they could not file GSTR-1 after January, 2018 and GSTR-3B for September 2017 to April 2018 in stipulated time. They subsequently paid the outstanding GST amount in full before the issuance of show cause notice which they claim proves that there was no malafide intention.

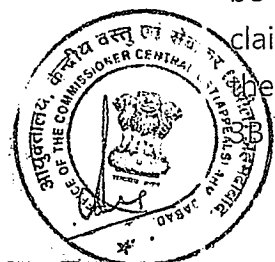
6.1 From the facts of the case, it is observed that after the implemented of GST Act w.e.f 1st July, 2017, the appellant had discharged their GST liability amounting to Rs.3,14,14,613/- for the months July, 2017 and August, 2017 on 30.10.2017 and 04.01.2018 and filed their GSTR-3B Return for the said two months and also filed GSTR-1 from July, 2017 to January, 2018. These were filed before initiation of investigation against the appellant by the DGGI. Thereafter, they stopped filing the GSTR-1 from February, 2018 to April, 2018 and also failed to file GSTR-3B from September, 2017 to April, 2018. From September, 2017 onwards, they also stopped depositing GST though



they had collected the same from their clients. It was subsequent to the investigation that they discharged their partial liability of Rs.3,97,61,784/- for September, 2017 to November, 2017 and later, on various dates through challans and through ITC, they paid the remaining outstanding liability amount of Rs.9,31,89,306/- for the period from December, 2017 to April, 2018. So, from the above facts, it is clear that the appellant was duly discharging their GST liability and filing their returns within the stipulated time but suddenly they stopped this practice, on the excuse of GST law complications. I do not find merit in such contention because *'ignorantia Juris non excusat* (ignorance of law is no excuse) means that everyone is presumed to know the law. The said presumption would apply only when the law is made known to the person to whom it would apply. The provisions of the Act and the Rules framed there under were made available on the public domain and since the appellant is already registered with the department and GST Act being applicable to them, they cannot come before the appellate authority and seek indulgence on the ground of ignorance of law.

7. Another contention of the appellant is that the impugned order is a non-speaking order and is passed in gross violation of principles of natural justice. The adjudicating authority has confirmed the demand along with interest on full value and penalty without considering the submissions of the appellant and without providing any reasons for not considering the said submissions. The submissions made by them have been blatantly ignored in the impugned order. They placed reliance on following decisions passed in the case of *Cyril Lasardo (Dead) v. Juliana Maria Lasarado - 2004 (7) SCC 431 and Shukla. & Brothers - 2010 (254) ELT 6 (SC)*. It is observed that the adjudicating authority in the findings has categorically mentioned that the appellant themselves have admitted their tax liability hence it is the responsibility of the tax payer to voluntarily disclose the information regarding their taxable income by filing GSTR Returns. By not filing GSTR-1 & GSTR-3B, they escaped the statutory provisions of CGST Act, 2017 and rules made there under. I find that the adjudicating authority has discussed the contention of the appellant in the impugned order. I find that it is admitted by the appellant that they had made taxable supply during the period and also collected the applicable GST on such supplies. However, they did not make the payment nor filed the GSTR-1 & GSTR-3B Returns as alleged in the SCN.

7.1 The appellant had put forth an argument before the adjudicating authority as well as in the present appeal that the GSTR-3B is not a return as per Section 39 of the CGST Act, 2017. They claimed that in terms of Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, the prescribes returns to be filed is FORM GSTR-3 which shall be electronically generated on the basis of information furnished through FORM GSTR-1. The PART-B of the said return shall be electronically generated on the basis of the return in FORM GSTR-3B. So, Form GSTR-3B is a part of the Form GSTR- 3. Further, Form GSTR-3B filed is just a provisional return, which is subject to the finalization by filing Form GSTR-3 by rectifying any discrepancy and paying corresponding tax etc. Where the amount of input tax credit in FORM GSTR-3 exceeds the amount of input tax credit in terms of FORM GSTR-3B, the additional amount shall be credited to the electronic credit ledger of the registered person. If the taxpayer has claimed a lesser amount in GSTR-3B than the amount of ITC as per the Form GSTR- 3, then the difference would be credited to the electronic credit ledger. Thus, Form GSTR-3 is not the final statement/return to claim ITC and the eligibility to claim ITC is



governed by Form GSTR-3. Therefore, to that extent the impugned order is baseless and liable to be set aside.

7.2 In terms of Section 37 of the CGST, Act 2017 read with Rule 59 of the CGST, Rules, 2017, every registered person has to furnish details of outward supplies of goods or services effected during a tax period, in Form GSTR-1 electronically for the month or the quarter, as the case may be. Similarly, Section 39 read with Rule 61 provides that every registered person other than a person referred to in Section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under 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, shall furnish a return in **FORM GSTR-3B** within such time, as may be prescribed. Relevant provisions of CGST, Act and Rules, are reproduced below, for better understanding of the issue.

"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, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

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

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

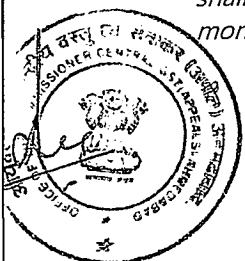
Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner."

*"RULE 59. Form and manner of furnishing details of outward supplies. — (1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in **FORM GSTR-1** for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner."*

"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, in such form and manner as may be prescribed, 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 as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.



(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) 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.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in there turn to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

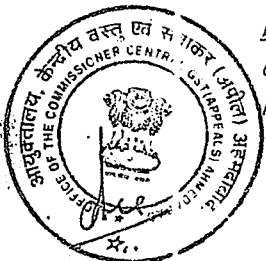
(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him."

"RULE-161. Form and manner of furnishing of return. - (1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR-3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner."

Now, to examine the contention of the appellant whether they were not required to file GSTR-3B when it is not a prescribed document under the law, I reproduce the decisions passed in the case of AAP and Co.- 2019 (26) G.S.T.L. 481 (Guj.) wherein Hon'ble High Court of Gujarat disposed of the Writ Petition and held that;

"27. Section 16(4) of the CGST Act/GGST Act provides that the last date for taking the input tax credit in respect of any invoice or debit note pertaining to a financial year is the due date of furnishing of the return under Section 39 for the month of September following the end of the financial year or furnishing of the relevant annual return, whichever is earlier.

28. Therefore, the moot question is, whether the return in Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act. The aforesaid press release is valid and in consonance with Section 16(4) of the CGST Act/GGST Act only if Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act.



29. Section 39(1) of the CGST/GGST Act provides that every taxpayer, except a few special categories of persons, shall furnish a monthly return in such form and manner as may be prescribed. Rule 61 of the CGST Rules/GGST Rules prescribes the form and manner of submission of monthly return. Sub-rule 1 of Rule 61 of the CGST Rules/GGST Rules provides that the return required to be filed in terms of Section 39(1) of the CGST/GGST Act is to be furnished in Form GSTR-3.

30. It would be apposite to state that initially it was decided to have three returns in a month, i.e. return for outward supplies i.e. GSTR-1 in terms of Section 37, return for inward supplies in terms of Section 38, i.e. GSTR-2 and a combined return in Form GSTR-3. However, considering technical glitches in the GSTN portal as well as difficulty faced by the taxpayers it was decided to keep filing of GSTR-2 and GSTR-3 in abeyance. Therefore, in order to ease the burden of the taxpayer for some time, it was decided in the 18th GST Council meeting to allow filing of a shorter return in Form GSTR-3B for initial period. It was not introduced as a return in lieu of return required to be filed in Form GSTR-3. The return in Form GSTR-3B is only a temporary stop gap arrangement till due date of filing the return in Form GSTR-3 is notified. Notifications are being issued from time to time extending the due date of filing of the return in Form GST-3, i.e. return required to be filed under Section 39 of the CGST Act/GGST Act. It was notified vide Notification No. 44/2018-Central Tax, dated 10th September, 2018 that the due date of filing the return under Section 39 of the Act, for the months of July, 2017 to March, 2019 shall be subsequently notified in the Official Gazette.

31. It would also be apposite to point out that the Notification No. 10/2017-Central Tax, dated 28th June, 2017 which introduced mandatory filing of the return in Form GSTR-3B stated that it is a return in lieu of Form GSTR-3. However, the Government, on realising its mistake that the return in Form GSTR-3B is not intended to be in lieu of Form GSTR-3, rectified its mistake retrospectively vide Notification No. 17/2017-Central Tax, dated 27th July, 2017 and omitted the reference to return in Form GSTR-3B being return in lieu of Form GSTR-3.

32. Thus, in view of the above, the impugned press release dated 18th October, 2018 could be said to be illegal to the extent that its para-3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July, 2017 to March, 2018 is the last date for the filing of return in Form GSTR-3B.

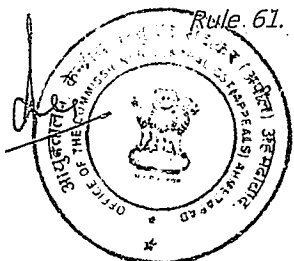
33. The said clarification could be said to be contrary to Section 16(4) of the CGST Act/GGST Act read with Section 39(1) of the CGST Act/GGST Act read with Rule 61 of the CGST Rules/GGST Rules.

34. With the above, this writ-application stands disposed of."

[Emphasis Supplied]

7.3 However, the above decision was reversed by Hon'ble Apex Court in the Civil Appeal No. 5978 of 2021, filed by **U.O.I Vs AAP and Co**, as reported in *2021 (55) G.S.T.L. 513 (S.C.)*. The Hon'ble Apex Court held that the above judgment of Hon'ble Gujarat High Court has been expressly overruled by a three-Judge Bench decision of this Court in Civil Appeal No. 6520 of 2021 titled *Union of India v. Bharti Airtel Ltd. & Ors.*, reported in *2021 (54) G.S.T.L. 257 (S.C.)*. The relevant text of the decision passed in *Bharti Airtel* is reproduced below;

" 39. It is futile to urge that Section 39(9) has no application to the fact situation of the present case. In that, allowing filing of return in Form GSTR-3B albeit a stop gap arrangement, is ascribable to Section 39 of the 2017 Act read with Rule 61 of the 2017 Rules. Indeed, it is not comparable to the mechanism specified for electronically generated Form GSTR-3 referable to Rule 61. Nevertheless, Form GSTR-3B is prescribed as a "return" to be furnished by the



registered person and by the subsequent amendment of Rule 61(5) brought into force with effect from 1-1-2017, it has been clarified that such person need not furnish return in Form GSTR-3 later on. Notably, the validity of that amendment including that of Notification dated 9-10-2019 bearing No. 49/2019, is not put in issue before us.

40.No doubt, in the initial stages, it was notified that Form GSTR-3B will be in lieu of Form GSTR-3 but that was soon corrected by deletion of that expression. At the same time, as the mechanism for furnishing return in terms of Sections 37 and 38 was not operationalized during the relevant period (July to September, 2017) and became operational only later, the efficacy of Form GSTR-3B being a stop gap arrangement for furnishing of return, as was required under Section 39 read with Rule 61, would not stand whittled down in any manner. It would still be considered as a return for all purposes though filled manually electronically.

41.The Gujarat High Court. in the case of AAP & Co., Chartered Accountants through Authorized Partner v. Union of India & Ors. [2019-TIOL-1422-HC-AHM-GST = 2019 (26) G.S.T.L. 481 (Guj.)], was called upon to consider the question whether the return in Form GSTR-3B is the return required to be filed under Section 39 of the 2017 Act. Although, at the outset it noted that the concerned writ petition had been rendered infructuous but, went on to answer the question raised therein. It took the view that Form GSTR-3B was only a temporary stop-gap arrangement till due date of filing of return Form GSTR-3 is notified. We do not subscribe to that view. Our view stands reinforced by the subsequent amendment to Rule 61(5), restating and clarifying the position that where return in Form GSTR-3B has been furnished by the registered person, he shall not be required to furnish the return in Form GSTR-3. This amendment was notified and came into effect from 1-7-2017 [Vide Notification/GSR No. 772(E), dated 9th October, 2019] retrospectively. The validity of this amendment has not been put in issue."

[Emphasis Supplied]

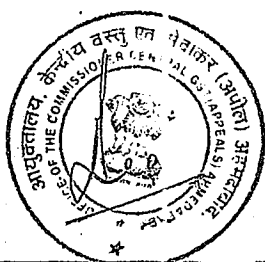
Thus, applying the ratio of Hon'ble Apex Court's decision, I do not find merit in the argument of the appellant that Form-3B is not a prescribed return, hence, was not required to be filed.

8. In terms of Section 7 of the CGST Act, 2017, all supplies are taxable supply if made for a consideration, in the course or furtherance of business. All such supplies attract levy and collection of GST under Section 9 of the CGST Act. I find that the appellant are engaged in the manufacture of Stainless Steel Billets, Flats, Black bars, Bright Bars etc and supplied these goods to their clients, therefore, by virtue of Section 7 and 9 of the Act, the appellant was required to pay GST on their supplies, at applicable rate. In terms of Section 12 of the Act, the payment of GST payable on supply of goods should be either the date of issue of invoice or the date of receipt of payment, whichever is earlier, and in terms of Section 15, the value of supply of goods and services shall be the transaction value, which is the price actually paid or payable for the said supply where the recipient and provider of supply are not related and price is the sole consideration for the supply. Relevant portion of Section 12 and Section 15 are reproduced below;

"Section 12. Time of supply of goods—

(1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the earlier of the following dates, namely:—



(a) the date of issue of invoice by the supplier or last date on which he is required, under section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Section 15. Value of taxable supply—(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and the State Governments.

*Explanation.—*For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy."

8.1 I find that in the instant case, the appellant is registered with the department. They were making taxable supplies and in terms of Section 9, though they were levying and collecting GST, but were not discharging their tax liability as stipulated under Section 12 of the Act. They, however, subsequently filed their GSTR-1 for (February, 2018 to April, 2018) in July, 2018 and September, 2018 and discharged their tax liability by filing GSTR-3B for the period September, 2017 to April, 2018, in June, 2018, July, 2018, September, 2018 and October, 2018. Thus, the tax payments for these period as well as the statutory returns were filed subsequent to initiation of investigation but before issuance of SCN.

8.2 So far as the GST liability is concerned, I find the demand has been raised under Section 74(1) alleging suppression. Relevant text of Section 74 of CGST Act, 2017 is reproduced:-

SECTION 74. Determination of tax not paid or short paid or erroneously refunded or



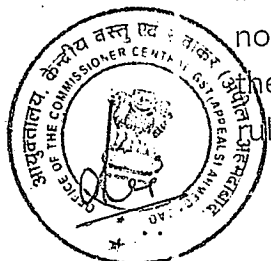
input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. — (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

Explanation 2. — 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 thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

8.3 On bare perusal of the legal provision under Section 74, it is apparent that in a case where it appears to a proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax, which has not been paid or has been short paid or to whom refund has been erroneously made or who has wrongly availed or utilised input tax credit requiring him to show cause as to why he should not pay the amount specified in the notice along with the interest payable thereupon under Section 50 and a penalty equivalent to the tax specified in the notice. The ingredients of Section 74 of the Act require either of the following ingredients to be satisfied for proceeding there under *i.e.* that the tax in question has not been paid or short paid or erroneously refunded or the ITC has been wrongly availed or *utilized by reason of fraud or any wilful misstatement or suppression of facts to evade tax.*

8.4 In the instant case, the appellant has filed the GSTR-1 and GSTR-3B belatedly. The notice alleges that the appellant had suppressed the taxable income by not filing the GSTR-1 and GSTR-3B returns timely for the period from **September, 2017 to April, 2018**, under Section 37 & Section 39 of the CGST, Act, 2017. I, however, find that the appellant has filed the GSTR-1 for the period from July, 2017 to January, 2018 in time. So, for the said period, I find that there is no suppression. However, for the period from February, 2018 to April, 2018, the appellant did not file the GSTR-1 in time as the same was filed in July, 2018 & September, 2018 *i.e.* beyond the due date prescribed in the statute. It is also observed that the appellant, for the period from September, 2017 to April, 2018, did not file the GSTR-3B in time but filed the same belatedly after initiation of investigation. So, both the returns were subsequently filed though belatedly and after initiation of investigation. I find that mere non-filing of returns and delayed payment of tax cannot be ground 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 any 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 shall amount to suppression. I find that 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, which the appellant were required to declare in their GSTR-1 Return, but failed to declare. I, therefore, find that the GST demand amounting to Rs.13,28,76,138/- made under Section 74 (1) is not sustainable as no suppression is brought on record to invoke the provisions of extended period of limitation.

8.5 I, however, find that the demand should have been raised under Section 73(1) of the CGST Act, 2017. I, therefore, in terms of Section 75(2) of the CGST Act, 2017, hold that the proper officer shall re-determine the tax payable by the appellant by deeming the notice have been issued under Section 73(1) in accordance with the provisions of sub-section (2) of Section 75 of the said Act and within the time limit specified under Section 75(3). Relevant provision of Section 75(2) is reproduced below:-

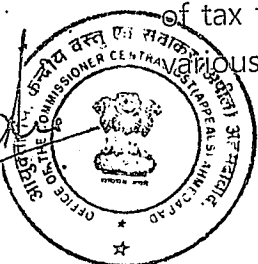
SECTION 75. General provisions relating to determination of tax. —

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

8.6 This provision was further clarified by the CBIC vide Circular No.185/17/2022-GST dated 27.12.2022, wherein it was stated that where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act, for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act.

8.7 Thus, in terms of Section 75(2) of the CGST Act, 2017 and CBIC's above clarification, the impugned order confirming the tax payable by the appellant under Section 74(1), needs to be determined by the proper officer by deeming, as if the SCN has been issued under Section 73(1) of the Act.

9. On the interest liability, the appellant have contended that levy of interest u/s 50(1) of the CGST Act, 2017 shall be payable only on the net tax liability i.e. on the actual amount of tax withheld by delayed filing of the return. It is claimed that interest can be demanded only on the said portion of output tax paid with delay and that the input tax credit available with them should be considered as tax already paid hence only payment of tax from the cash account would be considered for levy of interest. They relied on various case laws.



9.1 To examine this issue, Section 50 of the CGST Act, 2017, applicable at the relevant time is reproduced below;

50. Interest on delayed payment of tax—(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 per cent., 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 output 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 per cent., as may be notified by the Government on the recommendations of the Council.

9.2 Subsequently, amendments were made in Section 50 vide F.A (No.2), 2019 and F.A. 2021 and the amended provision was given effect from 01.06.2021. The amended provisions are reproduced below:-

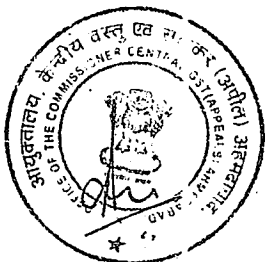
SECTION 50. Interest on delayed payment of tax. — (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or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

[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.]

9.3 Thereafter, Section 50 was further substituted (w.e.f. 1st July, 2017) vide Section 111 of the Finance Act 2022 (No. 06 of 2022) - brought into force from 05-07-2022 vide Notification No. 9/2022-C.T, dated 05-07-2022. The substituted Section 50 is reproduced below;

50. Interest on delayed payment of tax.— (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, 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 per cent., as may be notified by the Government on the recommendations of the Council:

[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.]

(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.

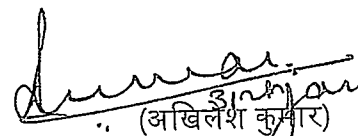
9.4 From the plain reading of the above substituted Section 50, it is clear that the interest under Section 50 of the CGST Act, 2017 can only be levied on the net tax liability and not on the gross tax liability where the supplies made during the tax period are declared in the return after the due date. However, where such returns are furnished after commencement of any proceedings under Section 73 or Section 74 in respect of said period, then interest shall be payable on the entire amount. In the instant case, I find that for the period September, 2017 to April, 2018, the returns were filed by the appellant before commencement of proceedings under Section 74. Therefore, in terms of amended Section 50, which was given retrospective effect vide Notification No. 9/2022-C.T, dated 05-07-2022, the interest shall be payable only on the net cash tax liability (i.e. that portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger). I, therefore, find that to that extent the demand of interest on the gross tax payable is not legally sustainable and order to recover interest only on the net cash tax liability subject to the re-determination of demand under Section 73(1).

10. Further, it is also observed that penalty has been imposed under Section 74 as well as under Section 122(1) and 122(2) on the appellant. As the impugned order confirming the tax payable by the appellant under Section 74(1), needs to be re-determined by the proper officer, by deeming as if the SCN has been issued under Section 73(1) of the CGST Act, 2017, I, therefore, find that the imposition of penalty also needs to be re-determined in terms of Section 73 of the CGST, Act, 2017.

11. In view of the above discussions and findings, the impugned O-I-O is set-aside and sent back to the adjudicating authority for re-determination of tax, interest and penalty.

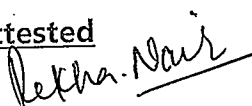
अपीलकर्ताद्वारा दर्ज की गई अपील कानिपटाराउपरोक्त तरीके से किया जाता है।

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


(अखिलेश कुमार) no 23..
आयुक्त (अपील्स)

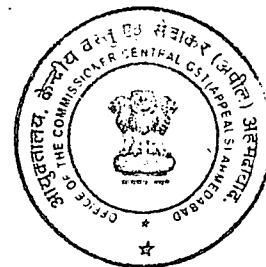
Date: 1.2023

Attested


(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
M/s. Nami Steel Pvt. Ltd.,



Appellant

Survey No. 316(P), 317(P), 342(P) & 343(P),
Opp. Chharodi Railway Station, Nano Ford Road,
Taluka Sanand,
Ahmedabad – 382170

The Additional Commissioner,
Central GST,
Ahmedabad North

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Additional Commissioner, Central GST, Ahmedabad North.
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
5. The Superintendent (System), CGST (Appeal), Ahmedabad for uploading the OIAs on
the web-site.
6. ~~Guard File.~~

