



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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DIN- 20221264SW000000F7F8

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फाइल संख्या : File No : GAPPL/ADC/GSTP/2702/2022 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-126/2022-23**

दिनांक Date : **27-12-2022** जारी करने की तारीख Date of Issue : **27-12-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

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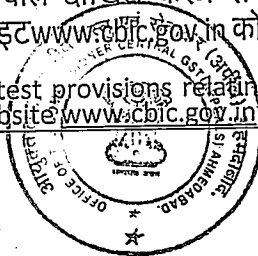
Arising out of Order-in-Original No. **88/AC/DEMAND/22-23 DT. 25.07.2022** issued by Assistant Commissioner, CGST & CX, Division-I, Ahmedabad North

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

**M/s. Ranbanka Aviation Private Limited, 18, Shiv Shopping Centre,
Airport Road, Hansol, Ahmedabad-380004**

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

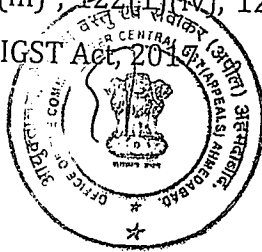


:: ORDER-IN-APPEAL ::

BRIEF FACTS OF THE CASE :

M/s. Ranbanka Aviation Private Limited, 18, Shiv Shopping Centre, Airport Road, Hansol, Ahmedabad-380004 (hereinafter referred to as "*the appellant*"), holding GSTIN 24AAGCR8551A2ZK, has filed appeal against Order-In-Original No.88/AC/DEMAND/22-23, dated 25.07.2022 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, CGST & C.Ex., Division-I [Naroda], Ahmedabad-North (hereinafter referred to as the adjudicating authority).

2. The facts leading to this case are that the officers from the Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit [AZU], Ahmedabad (hereinafter referred to as 'DGGI') visited the business premises of *the Appellant* on 18.01.2020. During the visit of officers of DGGI, it was noticed that *the appellant* has not paid GST for the period from February, 2019 to November, 2019 and therefore DGGI initiated proceeding by issuing a Show Cause Notice F.No.DGGI/AZU/Gr.C/12(4)111/2020-21, dated 07.07.2021 demanding CGST amount of Rs.58,74,373/- and SGST amount of Rs.58,74,373/- under Section 74(1) read with Section 76(2) of the Central Goods and Services Tax Act, 2017 /Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017 / GGST Act, 2017' and collectively as the 'GST Acts, 2017'), IGST amount of Rs.63,00,835/- under Section 74(1) read with Section 76(2) of the CGST Act 2017 with Section 20 of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the 'IGST Act, 2017') . The notice proposed to add GST amount of Rs.3,06,859/- to the output tax liability under second proviso to Section 37 of CGST Rules read with Rule 37 of Gujarat GST Rule, 2017 and to demand and recover under Section 74(1) of the CGST/SGST Act 2017; and to demand and recover ITC amount of Rs.1,99,223/- wrongly availed on the invoices which were not issued as per Rule 46(a) of CGST Rules, 2017 read with Section 31 of CGST Act, 2017 read with under Section 74(1) of the CGST/SGST Act ,2017. The notice proposes to demand interest on the CGST; SGST; IGST liability / ITC alleged to have wrongly availed under Section 50(1)/ 50(3) of the CGST/SGST Acts, 2017 read with Section 20 of the IGST Act, 2017; and also to impose penalty under Section 74, 76, 122(1)(iii) , 122(1)(iv), 122(1)(xv) & 122(2)(b) of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017.



3. The Adjudicating Authority vide Order-in-Original No.88/AC/DEMAND/22-23; dated 25.07.2022 :-

- (a) confirmed the demand of GST of Rs.1,80,49,581/- (CGST Rs.58,74,373/- + SGST Rs.58,74,373/- + IGST Rs.63,00,835/-) for the period from February, 2019 to December, 2019 under Section 74(1) read with Section 76(1) of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 and ordered appropriation of the same against payment made;
- (b) confirmed the demand of GST of Rs.3,06,859/- (CGST Rs.1,53,429/- & SGST Rs.1,53,429/-) under Section 74(1) of the CGST / Gujarat GST Acts;
- (c) confirmed the demand of applicable interest on the GST amount not paid of Rs.3,06,859/- (CGST Rs.1,53,429/- & SGST Rs.1,53,429/-) under Section 50 of the CGST / Gujarat GST Acts read with Section 20 of the IGST Act, 2017;
- (d) allowed the ITC amount of Rs.1,99,223/- availed on the invoices of Airport Authority of India.
- (e) confirmed the demand of applicable interest @ 18% amounting to Rs.10,52,924/- and appropriated Rs.9,94,566/- against outstanding liability and ordered for recovery of remaining interest amounting to Rs.58,358/- under Section 50 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017;
- (f) imposed penalty of Rs.79,15,575/- under Section 74 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 and Section 122 of the CGST Act, 2017;
- (g) did not propose penalty under Section 76 & 112 of the GST Acts, 2017.

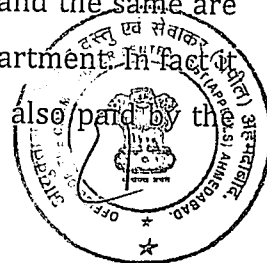
4. Being aggrieved, the appellant filed appeal wherein they, *inter alia*, contended that:-

- (a) the adjudicating authority has erred in confirming the demand and in imposing penalty under Section 74 of the CGST/SGST Act 2017. The appellant submitted that they have filed GSTR-1 for the period February, 2019 to August, 2019 and accounted for the details of taxable supply made for the period from February, 2019 to December, 2019 in their books of account. The officers of DGGI have determined the tax liability only from the books of accounts and GSTR-1 filed. In the circumstances, it is evident that there is no suppression of facts or mis-statement on their part and never intended to evade payment of GST. Booking of the transaction in the books of account is pointing to the fact that the appellant had no intention to evade tax. Further, the appellant filed GSTR-1 declaring the value of taxable supply made and



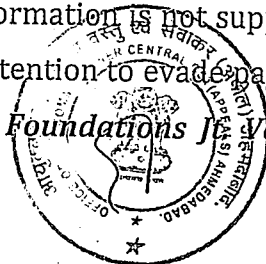
the tax liability. The appellant started paying GST and dues of GST of February, 2019 amounting to Rs.9,66,569/- was paid on 17.01.2020 i.e. before the officers of DGCI visited the business premises on 18.01.2020. This shows that the appellant had no intention to evade GST as alleged in the show cause notice. Further, the appellant had made the payment of remaining dues of GST within a period of 10 days and dues upto December, 2019 was completely paid by 1st February 2020 and GSTR-1 and GSTR-3B returns for the said period were filed. This fact is accepted in the show cause notice itself at paragraph 10.1(vii). Appellant also paid interest as applicable under Section 50 of GST Act, 2017 on 06.08.2021 and generated DRC-03. Thus it is evident that it is a case of mere late filing of GST returns and GST and certainly not a case of evasion of GST.

- (b) The appellant submitted that the payment of GST and filing of GST returns were made much prior to issue of the subject show cause notice. The computation of GST was made on the basis of the records maintained by the appellant and also on the basis of GSTR-1 returns filed. Under the circumstances it is clear that there is no *suppression* as alleged in the notice. Further, it is conspicuous that the notice did not mention as to how the appellant had suppressed the facts or made wilful misstatement to evade GST. In absence of any specific instance of giving false declaration or suppressing any vital facts from the department, the impugned order confirming the demand and imposing penalty under Section 74 of the CGST/SGST Act 2017 is not sustainable under law and is required to be set aside.
- (c) The appellant submitted that the show cause notice has taken reliance in the explanation 2 given under Section 74 of the CGST Act 2017 which explained the expression '*suppression*' to allege that the appellant suppressed the facts. From the plain reading of Explanation-2 to Section 74 of the CGST Act, 2017 it is crystal clear that suppression is (i) non-declaration of fact or information in the return, statement, report or any other document furnished or (ii) failure to furnish any information on being asked for. In the present case, it is not a case of non-declaration of fact or information in the return that was required to be filed. The appellant had filed GSTR-1 and GSTR-3B for the disputed period and the same are available in the GST network and can be easily verified by the department. In fact it is admitted in the show cause notice itself. All the tax dues were also paid by the



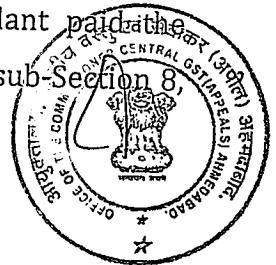
appellant while filing these returns. In the circumstances it cannot be alleged that there is suppression of fact or information due to non-declaration of the same in the returns that was required to be filed.

- (d) The appellant submitted that second limb of the term 'suppression' as provided in the said explanation is failure to furnish information on being asked for. The appellant had furnished the information to the officers of DGGI when they asked for it and the information was taken from the statutory records viz. ledger accounts of the appellant. The appellant had provided all the information called for by the DGGI officers when they visited the office premises and even after the visit as and when asked for. Therefore, it is crystal clear that it is not a case for invoking the provisions of Section 74 and 76(2) of the CGST/SGST Act 2017 for demanding the GST, but on the contrary, it is a case of just delayed payment of GST for which the GST Act has provided the provision for payment of interest under Section 50 ibid and thus, the impugned order confirming the demand and imposing penalty under Section 74 ibid is not sustainable under law and is required to be set aside.
- (e) The appellant relied upon in the case of *Pahwa Chemicals Pvt. Ltd - 2005 (189) ELT.257(SC)*. The appellant submitted that Supreme Court has held that mere failure to furnish information is not suppression of facts and extended period cannot invoke in such cases. The Apex Court has held that there should be some positive and deliberate withholding of information or giving false information so as to invoke extended period. The appellant had not withheld any information from the department or not provided any false information with intent to evade payment of service tax. In such cases there cannot be any suppression and hence extended period of limitation cannot be invoked.
- (f) Appellant further submitted that the show cause notice did not enumerate on what counts they had suppressed the facts. Mere mention of word 'suppression' in the notice does not make a case of invoking extended period. Hon'ble Supreme Court in various decisions had held that mere failure to give information is not suppression. There should be some positive misstatement with an intention to evade payment of duty. They have relied upon the case of *Continental Foundations Jt. Venture -*



2007(216)ELT-177(SC), Mysore Kirloskar Ltd- 2008 (226) E.LT-161 (SC), Cosmic Dye Chemical-1995(75) ELT-721 (SC), H.M.M. Limited-1995 (76) ELT-497 (SC).

- (g) The appellant contended that allegation of suppression of facts can be sustained only if the transactions of taxable supply are not reflected in the annual return also. The last date for filing annual return in FORM GSTR-9 for 2018-19 was 31.12.2020 as per Notification No. 41/2020-C.T., dated 5-5-2020 as amended and the last date for filing GSTR-9 for 2019-20 was 31.03.2021 as per Notification No. 95/2020-C.T., dated 30-12-2020, as amended. Officers of DGGI has visited the premises and booked the case of evasion of tax before the filing annual return for both the FY 2018-19 and 2019-20 by the appellant. Therefore, on this point also, the demand under Section 74 is not sustainable as the demand has been made before finalization of accounts and filing Annual Return in FORM GSTR-9.
- (h) The appellant submitted that when the provisions of Section 74 of the GST Act is not applicable, the correct provision to demand GST not paid/short paid is to issue notice under Section 73 of the CGST/SGST Act 2017.
- (i) Regarding the difference in value of taxable supply and tax paid as computed by the officers of DGGI and that reflected in the monthly return filed by the appellant, the appellant submitted that the officers of DGGI has considered the unfinalized accounts while computing the tax liability. The liability to pay GST arises on the basis of value of taxable supply reflected in the invoices issued after providing the taxable supply. The appellant had paid the tax on the basis of invoices issued and as reflected in the books of account.
- (j) Appellant further submitted that *the adjudicating authority* ought to have closed the proceedings under sub-section 8 of Section 73 of the CGST Act. The appellant submitted that they have paid the tax payable along with interest under Section 50 of the GST Act. The appellant paid interest as applicable under Section 50 of GST Act, 2017 on 06.08.2021 and generated the DRC-03. When the appellant paid the interest within 30 days of receipt of show cause notice, according to sub-Section 8, the proceedings should be treated as closed.



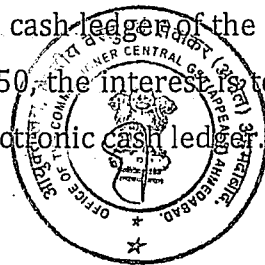
F.No. : GAPPL/ADC/GSTP/2702/2022-APPEAL

- (k) The appellant submitted that the adjudicating authority has erred in demanding differential interest under Section 50 amounting to Rs.58,358/-. The appellant submitted that interest under Section 50 is payable on the amount paid in cash only and interest is not required to be paid on the amount payable from the ITC credit available with the tax payer. The adjudicating authority, while computing the interest under Section 50, as given in the table at paragraph 36.3 of the impugned order, has considered the entire amount of GST instead of the amount payable from the cash ledger. The appellant had already paid the interest on the amount that was required to be paid from the cash ledger i.e. the amount payable in cash towards the GST liability and intimated the department. As per the GSTR-3B filed by the appellant the GST payable, paid and interest paid are as under:

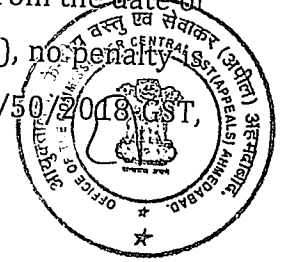
Month	GST payable as per GSTR-3B	GST paid through ITC credit	GST paid in cash	Interest paid
September-2019	1354375	219205	1135170	53181=94
October-2019	1350181	117334	1232847	41342=56
November-2019	1663895	150046	1513849	31355=34
December-2019	2768503	809636	1958867	11592=20

- (l) The appellant submitted that the adjudicating authority has considered the amount as demanded in the show cause notice and not the amount as declared in the GSTR-3B. While considering the amount as per SCN the adjudicating authority has not given any reason as to why the amount declared in the GSTR-3B has not been considered. When the appellant had filed the GSTR-3B and declared the tax liability, the adjudicating authority ought to have given his clear findings as to why the amount declared in the GSTR-3B is not correct and how he has computed the correct tax liability. In absence of the same, the amount declared in the GSTR-3B becomes final and the interest liability for late payment has to be computed on the amount as declared in the GSTR-3B.

- (m) The appellant further submitted that the adjudicating authority has made basic mistake in demanding interest on the entire tax liability instead of calculating the interest liability on the payment tax made from cash ledger of the appellant. As per the retrospective amendment made in Section 50, the interest is to be paid on that portion of the tax that is paid by debiting the electronic cash ledger.



- (n) Regarding the denial of Input Tax Credit of Rs.3,06,859/- , the appellant submitted that as per Rule 36(2) and Rule 37(1), the registered person is required to furnish the information in FORM GSTR-2. The adjudicating authority failed to take cognizance of the fact that filing of GSTR-2 has not been enabled in the GST network and hence the provisions of Rule 37(1) cannot be made applicable. Therefore the contention that the appellant was required to show the said amount as our tax liability is not sustainable under law and the demand of Rs.3,06,859/- has been made without authority of law.
- (o) The appellant submitted that in absence of filing FORM GSTR-2, it cannot be said that the appellant had availed Input tax credit. When no return in FORM GSTR-2 is filed, it cannot be said that the appellant had availed Input Tax Credit under Section 16 of the GST Acts, 2017 read with Rule 36 of the GST Rules. Therefore the demand of Rs.3,06,859/- is not sustainable on this ground also. The appellant further submitted that in absence of filing FORM GSTR-2, the amount of Input Tax Credit is reflected in electronic credit ledger of the registered person only when the GSTR-3B return is filed and, therefore, the date of availing input tax credit is deemed to be the date on which the GSTR-3B is filed. As per the provisions of Rule 37(4) of GST Rules, a registered person can re-avail the input tax credit reversed earlier. In view of the above, when the appellant had already made payment to the supplier of inward supply of service, the credit of ITC availed by the appellant became legal and the impugned order denying the credit of Rs.3,06,859/- is not sustainable.
- (p) Regarding the imposition of penalty under Section 74 of GST Act, 2017 the appellant submitted that the adjudicating authority has just repeated the allegation in the notice in his findings without discussing the legal provisions and the submissions of the appellant. The appellant submitted that this is a case of mere late payment of tax for which demand is to be made under Section 73 according to which when the tax along with interest is paid, no penalty is attracted and the proceedings are to be closed in accordance with sub-section (8) of Section 73 *ibid*. As the appellant had paid the tax before issue of notice and paid interest within 30 days from the date of receipt of the notice, as per the provisions contained in Section 73(8), no penalty is attracted. The appellant also relied upon C.B.I. & C. Circular No. 76/50/2018-GST, dated 31-12-2018.



(q) Regarding the imposition of penalty under various sub-sections of Section 122 ibid, the appellant submitted that since it is a genuine case of late payment of tax, the provisions of Section 122 is not applicable. They contended that the provision for imposing penalty on the failure to furnish return within the stipulated period is covered under Section 123 of the GST Act and when there is statutory provision under Section 123 ibid, for imposing penalty for late filing of returns, the penalty under Section 122 is undesirable and needs to be dropped. Further the statute provides that no penalty should be imposed for minor breached or procedural requirements or mistake made without fraudulent intent or gross negligence as provided under Section 126 of GST Act.

PERSONAL HEARING:

5. Personal hearing in this case was held on 16.12.2022, Shri M.H. Raval, Consultant, appeared in person, on behalf of the appellant as authorised representative. He reiterated the submissions made in appeal memorandum and also submitted a further written submission dated 16.12.2022.

DISCUSSION AND FINDINGS:-

6. I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal as well as at the time of personal hearing and find that appellant is mainly contesting the demand and imposition of penalty under Section 74 and 122 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017. According to the appellant it is a mere late payment and late filing of return and hence the provisions of Section 74 and 122 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 are not attracted. So the moot question to be answered in the present appeal is whether the demand of tax and imposition of penalty under Section 74 and 122 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 is proper or otherwise.

7. At the foremost, I observed that in the instant case the "impugned order" is of dated 25.07.2022 and appeal is filed on 23.09.2022. As per Section 107(1) of the CGST Act, 2017, the appeal is considered to be filed in time.

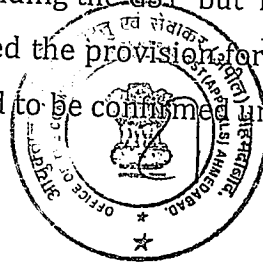
8. I find that the show cause notice proposed to recover the CGST, SGST and IGST not paid by the appellant for the period from February, 2019 to December, 2019. I find that the



appellant had filed GSTR-1 returns for the period from February, 2019 to August, 2019 and accounted for the details of taxable supply made for the period from February 2019 to December 2019 in their books of account. DGGI have determined the tax liability only from the books of accounts maintained by the appellant and from the GSTR-1 filed by them. Thus the instant matter is a just a case of delayed payment of tax liability on the part of appellant as no undeclared income or transaction was detected during the DGGI's investigation. I find that the show cause notice has taken reliance in the Explanation-2 given under Section 74 of the CGST Act, 2017 which explained the expression 'suppression' to allege that the appellant suppressed facts. Explanation-2 to Section 74 of the CGST Act 2017 reads as under:

"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."

From the plain reading of the above explanation it is evident that suppression is (i) non-declaration of fact or information in the return, statement, report or any other document furnished or (ii) failure to furnish any information on being asked for. In the present case, the appellant had booked their transaction in their books of account and filed GSTR-1 returns for certain period before the investigation took place. The amount of GST was determined on the basis of the transaction declared in their books of account. It is also observed that subsequently the appellant has filed GSTR-3B for the disputed period which was admitted in the notice itself. All the tax dues were also paid by the appellant while filing these returns. In the circumstances, I find that present matter is not a case where suppression of facts or non-declaration on the part of the appellant is proved. Further the term 'suppression' as provided in the said explanation is failure to furnish information on being asked for. Since, the show cause notice has been issued on the basis of information taken from the books of account of the appellant; it cannot be the case of failure to furnish information either. Therefore, I find that it is not a case for invoking the provisions of Section 74 and 76(2) of the CGST/SGST Act, 2017 for demanding the GST but it is a case of delayed payment of GST for which the GST Act has provided the provision for payment of interest under Section 50 ibid and the demand was required to be confirmed under Section 73 of the CGST/GGST Act, 2017.



9. I further find that the payment of GST and filing of GST returns were made much prior to issue of the subject show cause notice. Further, I find that the computation of GST was made on the basis of the records maintained by the tax payer and also on the basis of GSTR-1 returns filed by them. When the tax along with interest was paid within 30 days from the date of issuing the notice, according to sub-Section 8 of Section 73 of CGST/SGST Act 2017, no penalty was required to be imposed. Section 73 of the CGST/SGST Act 2017 which read as under:

SECTION 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-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 utilized for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.

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

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.



(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

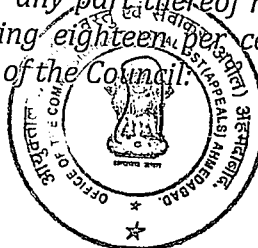
(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

10.1 I find that the adjudicating authority has held that the appellant has short paid interest. In this regard, I find that the appellant submitted particulars of tax and interest payable and paid and contended that they are entitled to the benefit of the proviso to Sub-section (1) of Section 50 of the CGST Act, 2017. The said proviso is for charging of interest only on that part of tax, which is paid through electronic cash ledger.

10.2 I find that, in the impugned order, the interest has been calculated on the entire amount of GST payable. As per Section 50 of the CGST Act 2017, the interest shall be levied on the portion of the tax that is paid by debiting the electronic cash ledger. The sub section (1) of Section 50 provides for interest on delayed payment of tax, which is 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.



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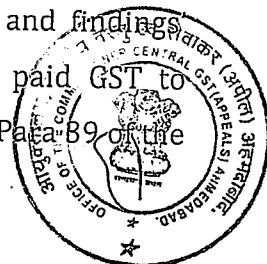
Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section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

10.3 In this case, I find that, the interest has been wrongly calculated on the entire amount of GST including that paid by debiting from electronic credit ledger. I find that the appellant had discharged the entire tax liability while filing GSTR-3B returns which has also been mentioned / appropriated in the impugned order. By following the proviso to sub section (1) of Section 50, the appellant has discharged the interest liability on that part of tax, which is paid through electronic cash ledger. Thus, the appellant has discharged their entire liability including that of interest within 30 days of issue of show cause notice. Therefore, I hold that there is no short payment of interest and exception clause in proviso to Section 50 is not applicable. Thus, it is a case of mere late payment of tax and since the tax along with interest is paid, no penalty is attracted and the proceedings are to be closed in accordance with sub-section (8) of Section 73 *ibid* which read as under:

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

11. As the tax payer had paid the tax before issue of the notice and also discharged the interest liability, as discussed in the above para, within thirty days of issue of show cause notice, therefore, as per the provisions contained in Section 73(8), no penalty is attracted and proceedings initiated in the show cause notice is deemed to be closed.

12.1 I find that the impugned order contains the findings with respect to allegation of collection of tax by the appellant but failure to deposit the same to the Government exchequer. Though it has been mentioned at several places in 'discussion and findings' portion of the impugned order that the appellant had collected but not paid GST to Government exchequer, it has categorically been mentioned at the last line of Para-89 of the impugned order as follows:-



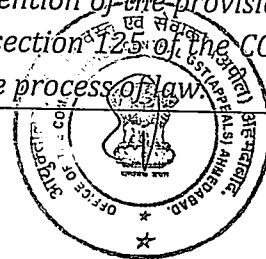
"39.... I do not much merit in the allegation that M/s. Ranbanka has collected tax and failed to deposit to the Govt. Exchequer, hence I do not propose penalty under Section 76."

At the operative portion of the impugned order (Para 40(ix) of the impugned order), the adjudicating authority has ordered that - "I do not propose penalty under Section 76 & 112 of the CGST Act, 2017 read with Section 76 of the Gujarat GST Act, 2017".

12.2 In view of the above findings by the adjudicating authority in the impugned order, I hold that the allegation of collection of tax by the appellant and not depositing the same to the Government Exchequer cannot be sustained.

12.3 I further find that the Central Board of Indirect Taxes & Customs (CBIC), vide Circular No. 76/50/2018-GST, dated 31.12.2018 clarified that no penalty is imposable even under Section 73 in such cases. In the said Circular, it has been clarified as follows:-

Sl. No.	Issue	Clarification
2.	Whether penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?	<p>1. As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.</p> <p>2. It may be noted that a show cause notice (SCN for short) is required to be issued to a person 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 for any reason under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.</p> <p>3. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.</p>

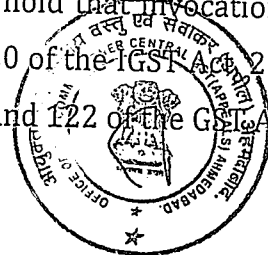


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Thus, as clarified in the aforesaid Circular, the provisions of Section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in Form GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It has been clarified that penalty under the provisions of Section 73(11) of the CGST Act is not payable in such cases. In the present case also, tax payer had paid the tax before issue of the notice and also discharged the interest liability within thirty days of issue of show cause notice, though such payment and filing of returns for February, 2019 to December, 2019 had been after the due date for payment of such tax and filing of such returns. As the CBIC has clarified that penalty under Section 73 of the GST Acts, 2017 cannot be imposed in such cases, the question of invoking provisions of Section 74 or 76 of the GST Acts, 2017 and imposition of penalty under Section 74 and 122 of the GST Acts read with Section 20 of the IGST Act, 2017 in this case does not arise. It will not be out of place here to mention that the provisions of Section 125 of the GST Acts, 2017 have not been invoked in the show cause notice or the impugned order.

13. Now coming to the issue of denial of Input Tax Credit of Rs.3,06,859/-. In this regard, I find that the said amount was proposed to be denied on the premises that the appellant had not paid the value of taxable supply within the stipulated period and hence they were required to show the same as their outward liability in the returns. The appellant contended that as per Rule 36(2) and Rule 37(1), the registered person is required to furnish the information in FORM GSTR-2. I find that the availing of ITC credit is reflected in the electronic credit ledger of a taxable person and the same is available only at the time of filing GSTR-3B returns. Therefore, I also find that the date of availing input tax credit is deemed to be the date on which the GSTR-3B is filed. In the present case, the appellant had already made payment to the supplier of inward supply of service, before filing GSTR-3B for the period under dispute, the credit of ITC availed by the appellant became legal and the impugned order denying the credit of Rs.3,06,859/- and recovery of interest thereon is not sustainable.

14. In view of the foregoing, I uphold the payment of Rs.1,80,49,581/- (Rs.58,74,373/- CGST + Rs.58,74,373/- SGST + Rs.63,00,835/- IGST), along with interest of Rs. 9,94,566/- already paid on net tax liability basis by the appellant. However, I hold that invocation of Section 74 and Section 76 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 for recovery of tax and also imposition of penalty under Section 74 and 122 of the GST Acts,



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2017 read with Section 20 of the IGST Act, 2017 and demand of interest on gross GST liability under Section 50 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 & also the demand of Rs.3,06,859/- alongwith interest, in the impugned order is not sustainable. The impugned order is modified and the appeal is allowed to the above extent.

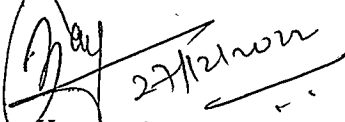
15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

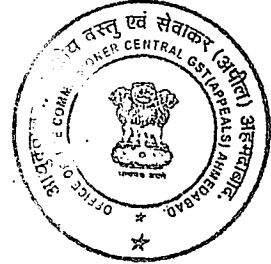

(Mihir Rayka)

Additional Commissioner (Appeals)

Attested


(Ajay Kumar Agarwal)
Superintendent (Appeals)
Central Tax,
Ahmedabad.

Date: 27.12.2022



By R.P.A.D.

To,
M/s. Ranbanka Aviation Private Limited,
18, Shiv Shopping Centre,
Airport Road, Hansol,
Ahmedabad-380004

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
5. The Assistant Commissioner, CGST & C. Ex, Division-I [Naroda], Ahmedabad-North.
- ✓ 6. Guard File.
7. P.A. File.

