



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1906/2022 / 1163 - 69
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and date	AHM-CGST-002-APP-ADC-10/2023-24 and 17.05.2023
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपरआयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	17.05.2023
(ङ)	Arising out of Order-In-Original No CGST/A'bad North/Div VII/ST/DC/202/2021-22 dated 30.03.2022 passed by The Deputy Commissioner, CGST, Division - VII (S G Highway East), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Karnavati Light and Sound (Legal Name - Ashish Ganpatbhai Sharma) (GSTIN-24AFAPS3387K1Z4) G-99/1177, Shivam Apartment, Nr. Vyasvadi, Nava Wadaj, Ahmedabad, Gujarat-380013

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



ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE :

M/s. Karnavati Light and Sound [Legal Name : Ashish Ganpatbhai Sharma], G-99/1177, Shivam Apartment, Nr. Vyasvadi, Nava Wadaj, Ahmedabad, Gujarat -380013 (hereinafter referred to as "*the appellant*"), holding GST Number 24AFAPS3387K1Z4 has filed appeal against Order-In-Original No. CGST/ A'bad North/ Div-VII/ ST/ DC/ 202/ 2021-22, dated 30.03.2022 (hereinafter referred to as the "*impugned order*") passed by the Deputy Commissioner, CGST & C.Ex., Division-VII [S.G.Highway-East], Ahmedabad-North Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. The facts leading to this case are that the appellant is engaged in providing the theme-based wedding lights, sound systems / music arrangement in various event classified under the category of "Pandal or Shamiana Service [SAC-00440054]" (hereinafter referred to as "said services"). The said services are taxable @18% (CGST-9% + SGST 9%) under the CGST Act, 2017 read with Gujarat State GST Act, 2017 (hereinafter referred to as "the Acts, 2017" by virtue of Notification No. 11/2017- Central Tax (Rate) dated 28.06.20217 as amended.

3.1 Based on information received from the source and further developed by the Officers of Directorate General of Goods & Service Tax Intelligence (DGGI), Ahmedabad Zonal Unit (AZU), Ahmedaabd (hereinafter referred to as 'DGGI'), during the search / visit of business premises of the appellant and investigation conducted by the Officers from the DGGI (hereinafter referred to as 'DGGI'), it was observed that the appellant had suppressed and under reported the taxable supplies by way of providing theme-bases wedding lights, sound systems/ music arrangement in various events by way of collecting major portion of such taxable value of services so provided, in cash and had not accounted for such cash receipts in their books of accounts. Thus, the appellant wilfully and knowingly indulged in evasion of GST by way of suppressing and under-reporting of their actual taxable receipts in the GSTR-



3B & GSTR-1 returns filed by them during the period from FY 2017-18 (From July 2017) to 2019-2020 (upto August 2019). After investigation, it was revealed that the appellant have failed to discharge the applicable GST on the outward taxable supplies made by them during the period from July-2017 to August-2019 on the taxable income received by them from their clients / customers in cash. For their wilful act of suppression and mis-declaration of facts with sole intent to evade GST, the extended period of five years as per provisions under Section 74 of the CGST/GGST Act, 2017 is invoked for demand of applicable GST on unaccounted cash receipts received during the period from July 2017 to August 2019. Accordingly, it appeared that the appellant have evaded payment on unaccounted cash of Rs.9,20,41,930/- (Rupees Nine Crore Twenty Lakh Forty One Thousand Nine Hundred Thirty Only) which is required to be added to their taxable value and applicable GST amounting to Rs. 1,65,67,548/- (Rupees One Crore Sixty Five Lakhs Sixty Seven Thousand Five Hundred Forty Eight only) is required to be demanded and recovered from them by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 74 of the GGST Act, 2017.

3.2 Accordingly, the appellant was issued Show Cause Notice vide F. No. DGGI/AZU/Gr.A/36-133/2021-22 dated 31.01.2022 by the Deputy Director, DGGI, Ahmedabad Zonal Unit, Ahmedabad as to why :

- The unaccounted cash amount of Rs. 9,20,41,930/- received by them during the period from July 2017 to August 2019 for providing taxable supplies / services should not be added to their taxable value;
- The applicable GST amount of Rs.1,65,67,548/- (CGST Rs. 82,83,774/- + SGST Rs. 82,83,774/-) on such unaccounted cash receipts during the period from July 2017 to August 2019 should not be demanded and recovered from them under section 74(1) of the CGST Act, 2017 read with Section 74(1) of the GGST Act, 2017;
- Interest at applicable rates should not be demanded and recovered from them under Section 50 of the CGST Act, 2017 read with Section 50 of GGST Act 2017 on the GST liability of Rs.1,65,67,548/-;
- Penalty should not be imposed upon them under Section 74 of CGST Act, 2017 read with Section 74 of the GGST Act, 2017 for non-payment of GST liabilities amounting to Rs.1,65,67,548/-;



- Penalty should not be imposed upon them under Section 122(1) of the CGST Act, 2017 & GGST Act, 2017 for offences specified in clause (i), (iii), (x), (xv) & (xvi) of Section 122(1) of CGST Act, 2017 & GGST Act, 2017 for supplying services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply, for collecting tax and not depositing to the Govt. beyond a period of three months from the date on which such payment becomes due; for falsifying financial records or furnishing false information in return with an intention to evade payment of tax due under the Acts, 2017; for suppressing the turnover leading to evasion of tax under the Act, 2017 for failing to keep, maintain or retain books of account and other documents in accordance with the provisions of the Acts, 2017 or the rules made thereunder;
- Penalty should not be imposed upon them under section 122(2)(b) of the Acts, 2017 for reason of fraud or wilful misstatement or suppression of facts to evade tax;
- Penalty should not be imposed upon them under Section 122(3)(e) of the Acts, 2017 for failing to issue invoice in accordance with the provisions of the Acts, 2017 or the rules made thereunder or fails to account for an invoice in their books of account.

3.3 The impugned Show Cause Notice dated 31.01.2022 has been adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority has passed the impugned order, which is briefly summarized as below :

- They ordered that the unaccounted cash amount of Rs. 9,20,41,930/- received by them during the period from July 2017 to August 2019 for providing taxable supplies/ services should be added to their taxable value declared by them during the said period;
- They ordered to confirm the applicable GST liability amounting to Rs. 1,65,67,548/- (CGST Rs. 82,83,774/- + SGST Rs.82,83,548/-) on such unaccounted cash receipts during the period from July 2017 to August 2019 should be demanded and recovered from them under Section 74(1) of the Acts, 2017;



- They ordered that the interest at applicable rates should be demanded and recovered from them under Section 50 of the Acts, 2017 on the GST liability of Rs. 1,65,67,548/-;
- They imposed penalty of Rs.1,65,67,548/- (CGST Rs. 82,83,774/- + SGST Rs.82,83,548/-) upon them under Section 74 of the Acts, 2017 for non-payment of GST liabilities of Rs.1,65,67,548/-;
- They imposed penalty of Rs. 25,000/- upon them under Section 122(3)(e) of the Acts, 2017 for failing to issue invoice in accordance with the provisions of the Acts, 2017 or the rules made thereunder or fails to account for an invoice in his books of account.

4. Being aggrieved with the impugned order, the appellant preferred this appeal on 08.06.2022 on the grounds, which are reproduced in the following paragraphs:

4.1 As per the work flow of the services provided by the appellant

- (i) prospective customer approaches to the appellant to receive the services;
- (ii) appellant provides with the estimates. Such estimates are prepared in excel sheets and it is quite logical that such estimates do not form part of accounting till the service provision and consideration is finalized;
- (iii) The rates are negotiated by the prospective customers and then rates are finalized depending upon the date on which such services are proposed to be provided;
- (iv) After the provision of services, Mr. Ashish Sharma, Proprietor, instructs the back office worker Ms. Hirva Vyas for raising invoice and invoice is prepared by Ms. Hirva Vyas according to instructions received from the proprietor, Mr. Ashish Sharma;
- (v) after the invoice is raised, such invoice is received by Mr. Daxesh Kadia, the Accountant for booking such invoice in books of accounts;
- (vi) Upon raising of invoice, no further reduction is done, and consideration is received according to the invoice raised upon the Customer.



4.2 The excel working which is relied upon by the Officers of DGGI is merely the file in which estimates are prepared for prospective customers of the appellant. It does not mean the appellant has provided service for such value to the Customer.

4.3 The departmental officer has relied on contradict statements given by two different employees without any substantial proof.

- In statement recorded on 22.08.2019 of Ms. Hirva Vyas, Back-Office Worker of the appellant, she stated that she prepared the invoices as per instructions from Mr. Ashish Sharma, proprietor of the firm and she was not aware of any cash dealings, but the invoice made by her was finally booked in books of accounts and she denied about the concept of cash amount and cheque amount.
- While in statement of Mr. Daxesh Kadia, Accountant, he stated that "difference" mentioned in the excel sheet are the amount collected in cash.
- It is submitted that both, Ms. Hirva Vyas and Mr. Daxesh Kadia are having different roles in the firm and both the roles are related to invoicing and its accounting. Hence, in the investigation carried out by DGGI, there are two contradictory statements of two different employees of the appellant; wherein one employee states that difference column mentioned in the excel sheet is for the cash amount while another employee who prepares final invoices is unaware about any such cash amount collected over and above the final invoice prepared by her. Hence, such statement of Accountant Mr. Daxesh Kadia cannot be relied upon without any substantial proof.

4.4 There is no corroborative evidence found except Excel Sheet prepared for estimations given to prospective customers:

- Except the statements of the Accountant Mr. Daxesh Kadia and of the Proprietor Mr. Ashish Sharma recorded during the search proceedings there is no further corroborative evidence produced by the Officers regarding suppression of the value of services provided;
- The most outstanding fact to be noted is that there was no unaccounted cash seizure during the search conducted by the Officers of DGGI, when



a charge of collection of huge amount of Rs. 9 Crores approx. is under consideration. This fact points out to the inescapable conclusion that they had not indulged in any sort of cash dealing with the customers.

- In the facts of the case, leave alone other corroborative evidence, even the so-called author of the Excel sheets has not been examined. It is also noteworthy that the Excel sheets mentioned the names of the buyers and in such a situation; the investigating officers could very well have extended the inquiry at the Customer's end.

4.5 The judicial principles regarding the evidentiary value of such documents have been clearly spelt out in the following case laws:

- Kashmir Vanaspati P Ltd., as reported at 1989 (39) ELT 655 (T);
- Laxmi Engg. Works, reported at [2011 (134) ELT 811 (T)];
- Gurpreet Rubber Industries, reported at [1996 (82) ELT 347 (T)];
- Universal Polythelene Ind., reported at 2001 (130) ELT 228 (T);
- Shree Narottam Udyog P Ltd, reported at 2003 (158) ELT 40 (T);
- Brims Products, reported at 2001 (130) ELT 719 (T);
- T G L Poshak Corp., reported at 2002 (140) ELT 187 (T);
- Durga Trading Co., reported at 2002 (148) ELT 967 (T) as maintained at 2003 (157) ELT A315 (SC);
- D. P. Industries, reported at 2007 (218) ELT 242 (Tri-Del.);

4.6 It is further submitted that for confirming the demand of GST, there must be some corroborative evidence like statement of service recipient who agrees that such cash payments was made to the appellant. However, there is no such corroborative evidence except the statement of Accountant which was forcibly confirmed by the Proprietor. Hence, if the appellant do not take into consideration the statements of Accountant and Proprietor then there is no evidence produced by the officers wherein it can be said that the appellant has collected such extra amount from the recipient of service. Merely on the basis of an excel working which is used for giving estimates to the prospective customers, GST cannot be demanded. And mere allegation based on estimates prepared by the appellant should not be the only basis for demanding GST.



4.7 Further, in the impugned order it is alleged everywhere that the appellant is in receipt of cash from its customers, however, during the search proceedings by DGGI at the premises of the appellant, no cash was found based on which such allegation of non-payment of GST is made.

4.8 It is further submitted that when no GST is payable, the question of interest under section 50 of CGST Act, 2017 does not arise.

4.9 Penalty under section 74 of CGST Act, 2017 can be levied only if there is a fraud, collusion, wilful mis-statement, suppression of facts or contravention of any provisions with intent to evade payment of GST and it can be imposed by invoking larger period or extended period for issue of Show Cause Notice. Demands for extended period are to be invoked only in unusual circumstances, with a very serious allegation of suppression of facts and intention to evade payment of GST. This can be invoked only if the appellant has deliberately done an action with an intention to hide certain facts from the departments and department has confirmed it beyond doubt with aid of corroborative evidence that there was a deliberate act on part of assessee to evade tax. The appellant has co-operated and submitted all necessary documents demanded as and when during search proceedings, which proves that there is no mala-fide intention. No penalty could be levied until it is proved that there was an active concealment or deliberate furnishing of inaccurate particulars. The appellant made reliance on the decision delivered by Bombay High Court in case of CIT Vs. Dalmia Dyechem Industries Ltd.

4.10 Penalty under Section 122 of the CGST Act, 2017 is not applicable as they have not contravened any provision of the CGST Act, 2017 or Rules made thereunder as alleged in the impugned order.

4.11 Without prejudice, the amount received should be treated as inclusive of taxes. According to Rule 35 of the CGST Rules, 2017 where the value of supply is inclusive of integrated tax or, as the case may be, Central Tax, State Tax, Union Territory Tax, the tax amount shall be determined as



Tax amount – (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UGST) (100 + sum of tax rates, as applicable, in %).

The appellant made reliance on the following judgments :

- Commr. Of Cen. Excise & Cus., Patna Versus M/s. Advantage Media Consultant & Anr. [2008 (10) TMI 570- SC];
- Commr. Of Service Tax, Mumbai-I versus Allied Aviation Ltd. [2017 (4) TMI 438- CESTAT Mumbai];
- Commr. Of Central Excise, Delhi Vs. Maruti Udyog Ltd [2012 (141)ELT 3 (SC)]

Personal Hearing:

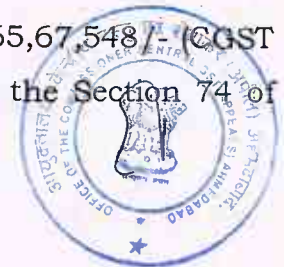
5. The appellant was granted personal hearing on 2.12.2022 & 26.12.2022. No one appeared for the personal hearing. However, the personal hearing in the matter was fixed on 11.01.2023, Mr. Rashmin Vaja & Mr. Amish Khandhar, both Chartered Accountants, appeared for hearing in the matter as authorized representatives on behalf of the appellant. They re-iterated the submission made in the Appeal memorandum and have nothing more to add to their written submission till date.

Discussion and Findings:

6. I have carefully gone through the facts of the case available on record and grounds of appeal in the Appeal Memorandum as well as the oral submissions made by the appellant at the time of hearing. The issues to be decided in the present appeal are

(i) Whether the amount of Rs. 9,20,41,930/- received by the appellant during the period from July-2017 to August-2019, as unaccounted cash for providing taxable supplies / services on which GST liability should be demanded and recovered under Section 74(1) of the CGST Act, 2017 read with the GGST Act, 2017, is legally correct or otherwise?

(ii) Whether the demand of GST liability amounting to Rs. 1,65,67,548/- (CGST Rs. 82,83,774/- + SGST Rs. 82,83,774/-) confirmed under the Section 74 of



the CGST Act, 2017 alongwith interest leviable thereon under Section 50 of the CGST Act, 2017 is legally correct or otherwise?

(iii) Whether the penalty of Rs.1,65,67,548/- (CGST Rs. 82,83,774/- + SGST Rs. 82,83,774/-) imposed upon the appellant under Section 74 of the CGST &GGST Act, 2017 is legally correct or otherwise?

(iv) Whether the penalty of Rs. 25,000/- imposed upon the appellant under Section 122(3)(e) of the CGST & GGST Act, 2017, is legally correct or otherwise?

7. It is observed from the case records that during the search conducted at the office premises of the appellant at G-99/1177, Shivam Apartment, Near Vyasvadi, Nava Wadaj, Ahmedabad on 21-22/08/2019 by the Officers of DGGI, Ahmedabad Zonal Unit, Ahmedabad, a pen drive was recovered from the possession of Shri Ashish Sharma, Proprietor of the appellant firm. On being asked about the data in the pen-drive, Shri Ashish Sharma, informed that the said pen-drive contained the accounting data of their business for the F.Y 2014-15 onwards and the data in the pen drive was entered and maintained by Shri Daxesh Kadia, Accountant of the appellant firm on his directions. Subsequently, the officers took the print outs of the relevant pages of the said pen drive and also withdrew the same alongwith other relevant records from the said officer premises of the appellant.

7.1 It is, further observed that a statement of Ms. Hirva Vyas, Back Office Worker of the appellant, was also recorded on 22.08.2019 wherein she, inter-alia, stated that her role in the firm was to prepare the bills / invoices on the directions of Shri Ashish Sharma, Proprietor of the appellant firm, and she was not aware of the final bill amount viz. Cash amount and cheque amount and also not aware about taxation.

7.2 Further, a statement of Shri Daxesh Kadia, Accountant of the appellant firm, was also recorded on 22.08.2019 wherein, he inter-alia stated that as briefly produced below:



- He was working as an Accountant of the appellant firm and his role was to prepare the bills/ invoices containing the details of GST/GST and these bills are printed on the letter head of the appellant firm. He was responsible for maintaining books of account for the firm and also responsible for handling cash in the firm, under the supervision and directions of Shri Ashish Sharma, Proprietor.
- He confirmed that he entered and maintained the data contained in the excel sheets stored in the pen drive withdrawn under Panchnama dated 21/22.08.2019. He further, stated that in the said pen drive, the excel workbooks were maintained year-wise as well as party-wise and event-wise. In each of the Excel Workbook, the worksheets were prepared showing the details of a particular party / client. The total amount shown in the excel worksheet comprise of the Actual Amount i.e the total amount quoted by them, the Final Amount (i.e the amount finally received by them after negotiation, the bill amount i.e the amount for which invoices were to be raised and were to be considered for payment of GST and the difference (Cash) amount i.e the amount, which was received in cash and which was not taken into account for calculation of tax purpose. Such amount did not form part of the Balance Sheet and no GST was paid against such amount received in cash.
- On being asked about the data for 2017-18, as available in the pen drive seized under the Panchnama dated 21-22.08.2019 in excel file "17-18 Receipt Summary Anand Montek" and reproduced under the table at Para 5.2 (iii) of the SCN dtd 31.1.2022 and at Para 4.3 (iii) of the impugned order, he explained that it was the summary bills raised to and cash received from M/s. Anand Decorators for certain functions organized by them in *Montekristo Banquet* towards providing services in the year 2017-18. The amount shown under the column "Difference" is the cash amount received towards providing the said taxable services to the recipients and this cash amount was neither accounted for their books of account nor GST was paid on this amount.



- Further, he also stated that their firm has issued invoices to the clients only to the extent of the amounts which are shown as Bill Amount. No invoice is raised /issued towards the considerations received in cash and shown as Difference in the said excel sheets. Their firm is maintaining / recording the payment received through cheque and shown as Bill Amount in the said excel sheets, in the books of account and discharge the applicable GST on such amount. The firm does not record the payments received in cash and shown as Difference Amount in the said excel sheets recovered from the pen drive. The reason for maintaining the details of payments received through cheque into the books of account is to present the said books of accounts to the Govt. authorities and in order to evade GST, the cash amount received from the clients are not reflected in the accounted data of the firm, as the said cash transactions were not considered for payment of GST and no GST has been paid on such unaccounted cash receipts.
- He also confirmed the details of total cash received by their firm for the period July 2017 to August 2019, maintained by him in the excel sheets stored in pen drive, withdrawn under the Panchnama dated 21-22/08/2019 and in token of its correctness, also put his signature on the printouts of summary sheets taken from the said excel sheets.

7.3 It is also observed that a statement of Shri Ashish Sharma, Proprietor of the appellant firm, was also recorded on 22.08.2019, wherein he, inter-alia stated as briefly reproduced below:

- He confirmed the submissions of Ms. Hirva Vyas, Back Office Worker, and Shri Daxesh Kadia, Accountant, in their respective statements recorded on 22.08.2019.
- He also confirmed that the entries recorded / maintained in the pen drive recovered during search on 21-22.08.2019 by their accountant Shri Daxesh Kadia, was as per his directions. He further stated that the cash amount i.e. the Difference of Final Amount and the Bill Amount received from the clients, were



intentionally not accounted for in order to evade the GST. He also stated that as Shri Daxesh Kadia had recorded and maintained the data in the pen drive on his directions and he also being the Proprietor of the firm, **he accepted his responsibility towards the suppression of facts to the extent** that the gross amount received by their firm towards providing taxable services had not been accounted for and the GST was not been properly discharged on such amounts.

- On being asked about the data for 2017-18 available in excel file "17-18 Receipt Summary Bhavesh" in the pen drive seized under the Panchnama dated 21-22.08.2019 and reproduced under the table at Para 5.3 (v) of the impugned order, he explained that it was the summary of bills raised to and cash received from M/s. Bhavesh Decorators for certain functions organized by them in Mangalya Party Plot and other Party Plots towards providing taxable services in the year 2017-18. The amount shown under the column "*Difference*" was the difference of the total amount received minus the amount for which invoice was raised and GST on such invoice value was charged. In other terms, the amount shown under the column "*Difference*" was the cash amount received towards providing taxable services to M/s. Bhavesh Decorators. This cash amount had neither been accounted for in their books of account nor GST had been paid on this amount.
- He also shown his agreement with the figures submitted by Shri Daxesh Kadia, in his statement dated 22.08.2019, as regards the total cash received by their firm and applicable GST on the same.

7.4 It is also observed that a further statement of Shri Ashish Sharma, Proprietor of the appellatant firm, was also recorded on 16.10.2019 & 25.01.2022 wherein, he, inter-alia, stated as briefly reproduced below:

- He certified and confirmed the contents of the print-outs of relevant excel files taken out from his pen drive seized under the Panchnama dated 21-22.08.2019 and also stated that this data was prepared and maintained by their Accountant, **Shri Daxesh Kadia**, on his directions, in respect of all the transactions



pertaining to the services provided by the appellant. He further stated that the entire file contains to sort of documents viz. Bills and Sales summary for each of their client. As regards the estimated bill raised in favour of M/s. Green Leaves Management Pvt. Ltd., in respect of certain functions organized in Andaaz Party plot during the period from 17.01.2019 to 09.03.2019 and other party plots towards providing taxable services in the year 2017-18 & 2018-19, he explained that they prepared estimate bill to give their client on idea about how much their services would cost for a particular occasion. Then, all such estimate bills issued for a particular client were then consolidated in a summary sheet. In respect of the summary sheet re-produced at Para 7 (x) of the Show Cause notice "impugned order" dtd 31.12.2022, he stated that they had provided services to M/s. Green Leaves Management Pvt. Ltd., for functions organized by them at Andaaz Party Plot.

- As regards the process of managing details of cash as well as cheque, he explained that "the party-wise/ venue-wise summary of individual functions were recorded in the excel sheet to get a consolidated details of the work done for a particular client. The details sheet and the summary sheet contain the estimated amount given by them to the party. The final settlement with their clients was normally done on yearly basis and the details were recorded in Excel files as Receipt Summary. In the receipt summary the details of finally settled amount i.e the final amount to be received by them from the client were given. The amount which was to be received in cash and the amount which was to be received through cheques, for which proper bills were to be raised, were also mentioned in the receipt summary sheets. He also explained that the details of Receipt Summary maintained in case of **M/s. Green Leaves Management Pvt Ltd.**, that they had given estimated bills of Rs. 1,34,81,485/- for the services provided to M/s. Green Leave Management Pvt. Ltd., in various events / functions during the F.Y 2018-19, against which proper bill invoices for Rs. 20,98,695/- were raised by them and GST of Rs. 6,26,520/- was charged on the said invoices. Thus, the total billed



amount including GST was Rs. 24,76,460/-. The amount shown under the column "Difference" i.e Rs. 94,46,190/- is the difference of the total amount received from M/s. Green Leaves Management Pvt. Ltd., minus the amount for which invoice has been raised and GST on such invoice value has been charged. In other terms, the amount shown under the column "Difference" is the cash amount received towards providing taxable services to M/s. Green Leaves Management Pvt Ltd. This cash amount has neither been accounted for in their books of account nor GST has been paid on this amount.

- He further stated that with respect to the total cash received by their firm and during the period July 2017 to August 2019 were reflected in the venue-wise or party-wise summarises prepared for each financial year. These summarized sheets show the final settlement amount with the parties and the final amount received by them in cheque as well as in cash. For quantification of GST liability, the estimated bills shown in the individual worksheets. After the complete entry, party-wise and year wise summary was made. He stated that he also compared with the financial records, the party-wise summary sheets, wherever available, reflected the total amount received (accounted as well as unaccounted) from a particular party in a particular financial year. Hence, the party-wise summary prepared on the basis of individual sheets showing estimate bill were compared with the details of party-wise summary withdrawn in made-up files and amount shown in the party-wise summary sheet was taken for tax calculation purpose. The amount thus arrived indicated the total amount received by the appellant firm which included the amount received through cheque (i.e the amount for which proper invoices have been raised and GST has been paid) alongwith the amount, which is received in cash (i.e the amount on which no GST has been paid). GST has already been paid on the amount received from a party, as shown in sales ledger, the difference of the total billed amount (party wise) as per excel sheet and as per the sales ledger were considered to be



their unaccounted cash receipts which worked out to be Rs. 9,20,41,930/- as per table mentioned at Para 7 (xxii) of the Show Cause Notice dated 31.01.2022, and accordingly the difference of the outstanding GST liability worked out under the impugned order to be Rs. 1,65,67,547/- during the F.Y 2017-18 (From July 2017) to FY 2019-20 (upto August 2019). Accordingly, he also confirmed in his statements dated 22.08.2019, 16.10.2019 and 25.01.2022 that the suppression made by them by way of not including the unaccounted cash received towards providing taxable services into their books of accounts and not discharging the GST liability resulting into evasion of GST during the said period. He also confirmed that details of un-accounted cash receipt by the appellant during the said period and assured to pay the applicable GST leviable on the said un-accounted cash receipt at the earliest alongwith interest and penalty.

8. I find as per the fact available on record that Ms. Hirva Vyas, Back Office Worker, in her statement recorded on 22.08.2019 stated that her role in the firm was to prepared the bills / invoices on the directions of Shri Ashish Sharma and she used to hand over the printed excel sheets to the accountant of the firm, Shri Daxesh Kadia, and she was not aware of the final bill amount viz. Cash amount and cheque amount and about taxation. Accordingly, I find that the contentions of the appellant that *"Ms. Hirva Vyas, stated that she was not aware of any cash dealings, but the invoice made by her was finally booked in books of accounts and she denied about the concept of cash amount and cheque amount"*, is factually incorrect as per the depositions made by the Proprietor of appellant.

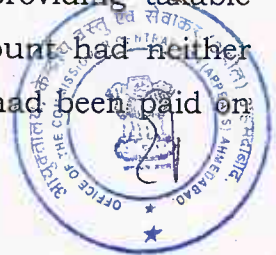
8.1 Further, I find that Shri Daxesh Kadia, Accountant, in his statement recorded on 22.08.2019 stated that *"(i) He was responsible for maintaining the books of account of the firm and also responsible for handling cash in the firm, under the supervision and direction of Shri Ashish Sharma, Proprietor of the appellant firm; (ii) He entered and maintained the data contained in the excel sheets stored in the pen drive withdrawn under Panchnama dated 21/22.08.2019; (iii) The total amounts shown in the excel worksheet comprise of*



the Actual Amount, i.e the total amount quoted by them, the Final Amount i.e the amount finally received by them after negotiation, the Bill Amount i.e the amount for which invoices were to be raised and were to be considered for payment of GST and the Difference (Cash) amount i.e the amount, which was received in cash and which was not taken into account for calculation of tax purpose; (iv) their firm has issued invoices to the clients only to the extent of the amounts which are shown as Bill Amount. No invoice is raised / issued towards the considerations received in cash and shown as Difference in the said excel sheets.”. Accordingly, I find that the contention of the appellant that “there are two contradictory statements of two different employees of the appellant; wherein one employee states that difference column mentioned in the excel sheet is for the cash amount while another employee who prepares final invoices is unaware about any such cash amount collected over and above the final invoice prepared by her” do not hold any merit.

8.2 As regards the contention of the appellant is mentioned in Para 4.4 above, I find that Shri Ashish Sharma, in his statement recorded on 22.08.2019, inter-alia, stated as follows :

- He confirmed that the facts stated by Shri Daxesh Kadia during his statement dated 22.08.2019 were absolutely true and correct and he agreed with the same.
- He further stated that the cash amount i.e the difference of Final Amount and Bill amount received from the clients were intentionally not accounted for in order to evade GST.
- While explaining the details maintained in excel file “17-18 Receipt Summary Bhavesh” under the sub-folder “(17-18) KLS Receipt Summary” of folder “KLS 2017-18”, he stated that the amount shown under the column “Difference” was the difference of the total amount received minus the amount for which invoice was raised and GST on such invoice value was charged. In other terms, the amount shown under the column “Difference” was the cash amount received towards providing taxable services to M/s. Bhavesh Decorators. This cash amount had neither been accounted for in their books of account nor GST had been paid on this amount.

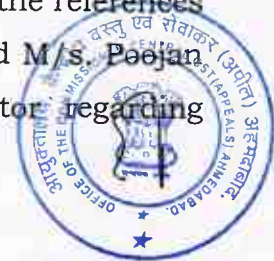


8.2.1 Further, I find that Shri Ashish Sharma, in his further statement recorded on 16.10.2019, also, inter-alia, stated as follows:

- With mutual consent of their clients, they received certain portion of the taxable income in cash for which they did not raise proper bill / invoice. They issued proper bill / invoice for the amount which was received by them through cheque only. The amount received through cheques were accounted for in their books of accounts and GST was discharged on the same properly;
- With respect to the consideration received by them in cash, he stated that the cash amount was not taken into their books of account and the same had not been considered for the purpose of calculation of GST and no GST had been discharged by them on the same.

8.2.2 Further, I find that there is no records produced by the appellant showing that they had filed any affidavit before any court of law under-which any of the above mentioned statement recorded at different point of time during investigation have been retracted by them. No such retraction was filed before investigation or adjudicating authority either. The statements recorded under Section 70 of the CGST Act, 2017 are admissible piece of evidence. Hence, I find that the Proprietor of the appellant firm has accepted the evasion of GST in his statements.

8.3 As regards the contention of the appellant that "*there are no corroborative evidences*", I find as per the facts mentioned at **Para 8** of the Show Cause Notice "impugned order" dtd 31.01.2022 that the investigation was also extended to their major service recipients, viz. M/s. Green Leaves Management Pvt Ltd., and M/s. Poojan Decor by way of issuance of summons to them for recording their statements. A statement of Shri Pinkal Dandwala, Director of M/s. Green Leaves Management Pvt. Ltd and partner of M/s. Poojan Decor was recorded on 16.10.2019 wherein he confirmed the content of the statement dated 16.10.2019 of Shri Ashish Sharma in respect of the references made by him about M/s. Green Leaves Management Pvt. Ltd and M/s. Poojan Decor. Accordingly, I find that the version of the Proprietor regarding



acceptance of tax evasion is also corroborated by the version of recipient of services as well.

8.4 It is observed that the appellant has contended as mentioned in Para - 4.6 /4.7 above that “ *for confirming the demand of GST, there must be some corroborative evidence like statement of service recipient who agrees that such cash payments was made to the appellant. However, there is no such corroborative evidence except the statement of Accountant which was forcibly confirmed by the Proprietor. Hence, if the appellant do not take into consideration the statements of Accountant and Proprietor then there is no evidence produced by the officers wherein it can be said that the appellant has collected such extra amount from the recipient of service. Merely on the basis of an excel working which is used for giving estimates to the prospective customers, GST cannot be demanded. And mere allegation based on estimates prepared by the appellant should not be the only basis for demanding GST.*”

8.5 As regards the said contention, on going through the Show Cause Notice dated 31.12.2022 issued to the appellant in the matter, I find that the Difference Amount of Excel Sheet and Sales Register (unaccounted cash receipt) has been worked out as per the “Exhibit-I” to the Show Cause Notice showing year-wise details. Further, I also find that the said Exhibit-‘I’ contain the party wise details for the respective year / period. Accordingly, I find that the contention of the appellant that “...*there is no evidence produced by the officers wherein it can be said that the appellant has collected such extra amount from the recipient of service and giving estimates to the prospective customers, GST cannot be demanded*” is factually incorrect.

9. It is observed that the appellant has relied upon certain case laws, as mentioned in Para 4.5 above, under-which the judicial principles regarding the evidentiary value of such documents have been spelt out. I have gone through the said case laws to examine whether the same is applicable to the facts of the present case and find as below:-



(i) Kashmir Vanaspati P. Ltd., as reported at [1989 (39) ELT 655(T)]

The cited case involving Clandestine removal of manufactured finished goods. The H'ble Tribunal, New Delhi held that "Note Book maintained by labourers containing un-authenticated entries and over-writings not a dependable record to establish clandestine removal unless same supported by other evidence such as raw material consumed, goods actually manufactured and packed etc."

(ii) Laxmi Enqq. Works reported at [2991 (134) ELT 811 (T)]

In the said case, the H'ble Tribunal held that "Department's case based only on slips allegedly recovered by Income Tax Department from factory premises of the assessee, which did not contain names of customers or any other details regarding receipt or manufacture and clearance - Charge not proved."

(iii) Gurpreet Rubber Industries reported at [1996 (82) ELT 347 (T)]

In the cited case, the H'ble Tribunal held that "Note book maintained by a casual worker containing entries of production not to be relied upon to establish clandestine removal unless supported by other evidence such as installed capacity of factory, raw-material utilization, labour employed etc."

(iv) Universal Polythelene Ind. reported at [2001 (130) ELT 228 (T)]

In the said case, the H'ble Tribunal held that "we also find that no evidences except the differences in figures of production in RT-12 returns and balance sheet has been produced by the Revenue to show the actual manufacture of goods in question. Respondents have explained the inflated figures in their balance sheet for the purpose of loan etc. And to project the rosy picture of the company."

(v) Shree Narottam Udyog P. Ltd., reported at [2003 (158) ELT 40 (T)]

In the cited case, the H'ble Tribunal held that "From the above observations made by the original adjudicating authority, it becomes clear that he was basing his decision on the inferences and not on any solid evidences. It is well-settled that charge of clandestine removal is a serious charge and is required to be proved by the Revenue beyond doubt on the basis of affirmative evidences. There is none in the present case, as discussed above."



(vi) Brims Products reported at [2001 (130) ELT 719 (T)]

In the said case, H'ble Tribunal observed that "4. The adjudicating authority has mainly relied upon the records of the transport company to prove clandestine removal of pan masala..... The instant demand in question has been calculated on the basis of some raw materials received in the factory during the said period. There is no evidence of receipt of raw materials required for the manufacture of pan masala in question...."

(vii) T G L Poshak Corp reported at [2002 (140) ELT 187 (T)]

In the cited case, the H'ble Tribunal observed that "There is no seizure of goods or statements from the purchaser of goods who have paid money and the amount received by them, appellants have also not recovered, nor there is any proof that amount said to have been received has flown back."

(viii) Durga Trading Co. Reported at [2002 (148) ELT 967 (T)] as maintained at [2003 (157) ELT A 315]

In the said case, the H'ble Tribunal observed that "In absence of any corroborative evidence like consumption of excess electricity or statements of buyers, it could be not also be said that noticee company clandestinely removed goods manufactured from stock found short."

(ix) D.P. Industries reported at [2007 (218) ELT 242 (Tri. Del.)]

In the said case, H'ble Tribunal held that "In absence of sufficient corroborative evidence like receipt of excess raw materials, power consumption, receipt of unaccounted money, demand of duty, interest and penalty not sustainable."

9.1 In the present case, as per the facts available on record, I find it undisputed that the appellant are engaged in providing taxable services of theme bases wedding lights, sound systems / music arrangement in various events classified under the category of "Pandal or Shamiana Service [SAC-00440054]" which are taxable services @18% GST [CGST @9% + SGST @9%] and appellant is having GSTIN registration for the same. Further, Shri Daxesh Kadia, Accountant, of the firm in his statement dated 22.08.2019 and Shri Ashish Sharma, Proprietor, in his statement dated 22.08.2019, 16.10.2019 and 25.01.2022, have inter-alia confirmed that "they have been evading ST/GST by way of receiving part payment towards providing taxable services in



cash and part payment in cheque; the amount received through cheques were reflected in their books of account and GST liability was discharged on the same and corresponding GSTR-1 / GSTR-3B returns were filed; the amount received in cash were not reflected in their books of account; and they have evaded GST by way of not paying GST on such un-accounted cash receipt”.

Further, I find that during the investigation extended to major service recipients of the appellant, Shri Pinkal Dandwala, Director of M/s. Green Leaves Management Pvt. Ltd., and Partner of M/s. Poojan Decor, in his statement recorded on 16.10.2019 confirmed that content of the statement dated 16.10.2019 of Shri Ashish Sharma in respect to the references made by him about the said firms / service recipients.

Accordingly, I find that considering the facts of the present case and the evidences produced by the investigating authority, the abovementioned case laws relied upon by the appellant as Para-9 above would not be applicable in the present case. Hence, the contention of the appellant is not legally sustainable.

10. As regards the contention of the appellant as mentioned in Para – 4.9 above, in respect of the penalty imposed under Section 74 of the CGST read with the GGST Act, 2017, the relevant provision of the Section 74 of the act is reproduced below:

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.



10.1 In the present case, I find that as per the statements recorded on 22.08.2019 of Shri Daxesh Kadia, Accountant and of Shri Ashish Sharma, Proprietor, on 22.08.2019, 16.10.2019 and 25.01.2022, they categorically admitted that the appellant had been bifurcated their total taxable Income into two parts viz. Cash and Cheque. The amounts received through cheques were recorded in their books of accounts and applicable GST was being discharged on the same and corresponding GSTR-3B returns have been filed by them duly incorporating the same. However, they were not taking into account the cash amount received by them towards providing taxable services and also not discharging GST liability on such cash amount received by them. The amount received in Cash were never reflected in GSTR-1 & GSTR-3B returns filed by them or in any statutory documents. By doing so, the appellant have suppressed the facts and not declared information which the appellant is required to declare in their return under the CGST Act, 2017 read with GGST Act, 2017 and rules made thereunder.

10.2 As per the facts available on record, it is categorically admitted in the present case that the proprietor of the appellant had resorted to suppression of taxable value by receiving substantial part of consideration in cash which was never reflected in any statutory documents including the GSTR-1 & GSTR-3B returns. Accordingly, it is a clear case of wilful mis-statement and suppression of facts by the appellant with an intent to evade the payment of GST, which is liable to be recovered invoking the larger period or extended period in terms of Section 74 of the CGST Act, 2017 read with Section 74 of the GGST Act, 2017. Since, the intention of evasion of duty with mala-fide intent on the part of the Proprietor of the appellant firm is also apparent, the appellant is also liable for imposition of penalty under Section 122 of the CGST Act, 2017 and Section 122 of the GGST Act, 2017. However, as per Section 75(13) of the CGST Act, 2017 read with Section 75(13) of GGST Act, 2017 – General provisions relating to determination of tax as under –

“Section 75(13) :- Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provisions of this Act-“.



In this regard, I uphold that penalty except Section 74(1) of CGST Act, 2017 read with Section 74(1) of GGST Act, 2017 is not imposable. Therefore, I uphold that the penalty under Section 122(1)(i), (iii), (x), (xv) and (xvi) of CGST Act, 2017 read with Section 122(1)(i), (iii), (x), (xv) and (xvi) of GGST Act, 2017 should not be imposed. Further, I uphold the penalty under Section 122(3)(e) of the CGST Act, 2017 read with section 122(3)(e) of the GGST Act, 2017. For this, I rely upon the Order-in-Appeal No. AHM-EXCUS-002-APP-06/2022-23 dated 01.06.2022 passed by the Commissioner, CGST Appeals, Ahmedabad.

10.3 In view of the above discussions, I do not find any merit in the contention of the appellant so as to intervene in the impugned order passed by the adjudicating authority. Accordingly, I find that the impugned order of the adjudicating authority is legally correct and proper and hence uphold. Thus, I reject the present appeal of the appellant on the above grounds.

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

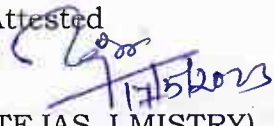
The appeal filed by the *appellant* stands disposed of in above terms.


17/05/23
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 17.05.2023

Attested


(TEJAS J MISTRY)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To
M/s. Karnavati Light and Sound [GSTIN : 24AFAPS3387K1Z4],
G-99/1177, Shivam Apartment,
Nr. Vyasvadi,
Nava Wadaj,
Ahmedabad,
Gujarat -380013.

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, CGST & C.Ex., Ahmedabad-North
5. The Deputy/ Assistant Commissioner, CGST & C. Ex, Division-VII [S.G.Highway- East], Ahmedabad-North.
6. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
7. Guard File/ P.A. File.



