



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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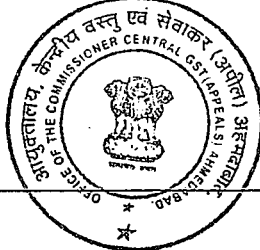


By Regd. Post

DIN NO.: 20230664SW0000222A8A

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2431/2022 / 1900 - 1906
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-ADC-11/2023-24 and 31.05.2023
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.06.2023
(ङ)	Arising out of Order-In-Original CGST/WT07/RAJ/06/2022-23 dated 12.04.222 passed by The Assistant/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 Maruti Security Services (Shrikant R Tiwari) (GSTIN-24AEDPT0749Q1ZY) 302, Narayan Complex, Opp. Havmor, Navrangpura, Ahmedabad, Gujarat-380009

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> 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 :

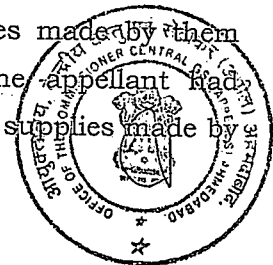
M/s. Maruti Security Services [Legal Name : Shrikant R Tiwari], 302, Narayan Complex, Opp. Havmor, Navrangpura, Ahmedabad, Gujarat : 380 009 (hereinafter referred to as "*the appellant*"), holding GST Number 24AEDPT0749Q1ZY has filed appeal against Order-In-Original No. CGST/ WT07/RAJ/06/2022-23, dated 12.04.2022 (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 rendition of Security and other services and had supplied "security / guarding services" to the various clients during the period from July-2017 to September-2018 fall under Chapter Heading 9985 and attract GST@18% (CGST@9% + SGST@9%).

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), Ahmedabad (hereinafter referred to as '*DGGI*'), during the search / visit of business premises of the appellant on 25.10.20218 and investigation conducted by the Officers from the DGGI (hereinafter referred to as '*DGGI*'), it was observed that the appellant had suppressed the actual turnover in respect of the services provided by the appellant and accordingly they indulged into evasion of service tax during the pre-GST period as well as during the Post-GST period.

The appellant has supplied the "security services" to their customers /clients for which they had issued tax invoices wherein they charged and collected GST@18% (CGST@9% + SGST@9%). Such transactions / tax invoices were duly recorded in the party wise bill / sales registers maintained by them at their office premises which were seized during the course of such proceedings on 25.10.2018.

Further, investigation revealed that the appellant had failed to file GSTR-3B returns for the period from July-2018 to September-2018 within the prescribed due dates. The appellant filed the GSTR-3B returns for the period from July-2018 to September-2018 on 27.10.2018, post initiation of proceedings by DGGI, AZU. Further, the appellant had failed to file the above referred GSTR-3B returns but they had also resorted to under-reporting / suppression of the outward supplies made by them during the period from July-2017 to September-2018. Thus, the appellant had suppressed a total value of Rs. 2,36,11,563/- in respect of outward supplies made by



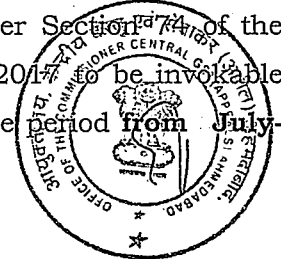
F.No. : GAPPL/ADC/GSTP/2431/2022-APPEAL

them during the period from July-2017 to September-2018, by way of under-reporting and suppression of the information in respect of such supplied services. Investigation clearly revealed that the appellant had failed to report / include taxable outward supplies recorded in the party wise sales / bill registers maintained by them in the GSTR-1M returns filed by them. Investigation also revealed that there existed evidence for supplies in the form of invoices which were also seized during search, but the appellant had deliberately suppressed information in respect of such supplies in the GSTR-1M returns filed by them. Thus, they suppressed the true value of taxable supplies made by them during the aforesaid period with intent to evade payment of applicable GST thereon by resorting to the above modus.

Investigation further revealed that by resorting the above modus (and by way of non filing of the GSTR-3B returns for the period July-2018 to September-2018), the appellant have short-paid/not-paid GST liability amounting to Rs. 60,30,664/- (CGST Rs.30,15,332/- + SGST Rs. 30,15,332/-). Out of the said GST liability short-paid / not-paid by the appellant, they have paid GST liability amounting to Rs. 17,72,470/- on 27.10.2018, post initiation of proceedings against them. Therefore, remaining GST liability of Rs. 42,58,194/- (Rs. 60,30,664 - Rs.17,72,470) (CGST : Rs. 21,29,097/- + SGST : Rs. 21,29,097/-) is required to be recovered from them under Section 74 of the CGST Act, 2017 read with GGST Act, 2017 with interest under Section 50 of the CGST Act, 2017 read with GGST Act, 2017. The GST liability of Rs. 17,72,470/- (CGST : Rs. 8,86,235/- + SGST Rs. 8,86,235/-) paid by the appellant during post initiation of proceedings is required to be appropriated against the aforesaid GST liability short-paid / not-paid by the appellant. Further the adjudicating authority has imposed equivalent penalty 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/ 12(4) 175/2019-20 dated 31.05.2022 by the Deputy Director, DGGI, Ahmedabad Zonal Unit, Ahmedabad as to why:-

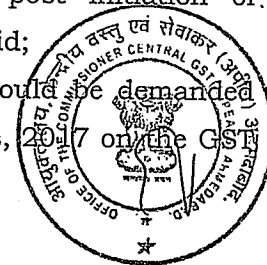
- The appellant had failed to discharge the applicable GST on the outward taxable supplies made by them (as recorded in the party wise sales / bill registers) during the period from July-2017 to September-2018 and for their wilful act of suppression and mis-declaration of facts with sole intent to evade GST, the extended period of five years, as provided under Section 74 of the CGST Act, 2017 read with Section 74 of the GGST Act, 2017, to be inoperative from demanding GST liability short-paid / not-paid for the period from July-2017 to September-2018;



- The GST liability of Rs. 60,30,664/- (CGST Rs. 30,15,332/- + SGST Rs. 30,15,332/-) short-paid /not-paid for the period from July-2017 to September-2018 on account of supply of taxable services of “security / guarding” should not be recovered from them by invoking extend period under Section 74(1) of the CGST Act ,2017 read with Section 74(1) of the GGST Act, 2017;
- The GST amounting to Rs.17,72,500/- (CGST Rs. 8,86,235/- + SGST Rs. 8,86,235/-) paid post initiation of proceedings on 25.10.2018 should not be appropriated against the GST amount short-paid / not-paid.
- 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.60,30,664/-;
- Penalty should not be imposed upon them under Section 74 of CGST Act, 2017 read with Section 74 of the GGST Act, 2017 for short-payment /non-payment of GST liabilities amounting to Rs.60,30,664/-;
- Penalty should not be imposed upon them under Section 122(1) of the CGST Act, 2017 & GGST Act, 2017 for offences specified in clause (iii),(iv) & (xv) of Section 122(1) of CGST Act, 2017 & GGST Act, 2017 for suppression of turnover leading to evasion of tax;
- Penalty should not be imposed upon them under Section 122(2)(b) of the CGST Act, 2017 read with GGST Act, 2017 for resorting to wilful misstatement and suppression to evade tax.

3.3 The impugned Show Cause Notice dated 31.05.2022 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 to confirm the GST amounting to Rs. 60,30,664/- (CGST Rs. 30,15,332/- + SGST Rs. 30,15,332/-) short-paid / not-paid by them during the period from July 2017 to September-2018 on account of supply of taxable services of “security / guarding” should be demanded and recovered under Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the GGST Act, 2017;
- They ordered to appropriate the applicable GST of Rs.17,72,500/- (CGST Rs. 8,86,235/- + SGST Rs. 8,86,235/-) paid post initiation of proceedings on 25.10.2018 against short-paid / not-paid;
- 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. 60,30,664/-;



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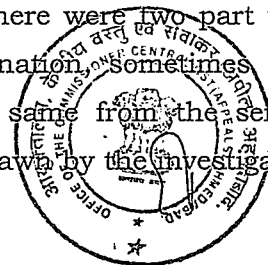
- They imposed penalty of Rs.60,30,664/- (CGST Rs. 30,15,332/- + SGST Rs.30,15,332/-) upon them under Section 74 of the Acts, 2017 for short-payment / non-payment of GST liabilities of Rs.60,30,664/-;

4. Being aggrieved with the impugned order, the appellant preferred this appeal on 12.08.2022 on the grounds, which are reproduced in the following paragraphs:

4.1 The appellant could not defend the matter before the adjudicating authority. No defence reply was filed and no personal hearing was attended, in which the third and last PH communication held on 28.03.2022 was never received by the applicant. The Proprietor of the firm is just literate and can fill a bank pay-in-slip in Hindi, who is basically, a person, engaged in security related matters. In the COVID and post COVID scenario, there was a big loss of business and the company was reeling under financial misery and could not hire services of an expert or consultant. In order to run security, the prime concern is first to pay the guard or else the business shall be lost. As deposed in the statement dated 25.10.2018 that out of two part time employee one expired in 2018 and therefore being unaware of the details recorded in the Sales Register the applicant could not give factual reply. The compulsion under which the company underwent distress may be pardoned and not filing this first-stage appeal at a belated date.

- With due reference, it is submitted that the various submission made are without prejudice to each other and they are independent. At the outset the appellant refutes all accusations against them as the same are based on assumption and presumption in totality. The contentions made in the Show Cause Notice are imaginary and incorrect and are based entirely on assumptions and presumptions. The appellant alleged to have contravened any rule / provisions of the CGST Act 2017 / SGST 2017 / CGST Rule 2017. The appellant submits that the proceedings as initiated vide the impugned SCN are only arbitrary and against the facts.

- It is further submitted that the demand was issued based upon the various documents resumed from the premises of the appellant on 25.10.2018. The papers so resumed were inclusive of certain invoices which were amended, revised or rough copies of a given final invoice. In our office, there were two part time employee engaged in book keeping. In lack of co-ordination, sometimes dual entries occurred in the examination of veracity of the same from the service receiver concerned. Therefore, the various work sheets drawn by the investigation

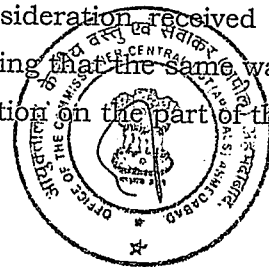


are not supported with any material evidence and thus the allegations are not worth admission.

➤ Further, submitted that appellant's service is service where they need to engage manpower and without manpower security or guard service cannot be rendered. Therefore, it was necessary for investigation to look into the expenditures incurred on salary and other benefits passed on to the guards engaged by the appellant. Such workforce does have EPF and Gratuity like benefits, being recorded by the Govt. Regulatory / Controlling Authority. Therefore, payments of wages to employee / guards is itself a testimony of their workforce. Balance sheet for any given period is a mirror of the expenditures so incurred on this count. The data compiled by the investigation is erroneous and without any substance and it is a case of exploitation of incorrect data that erupted at appellants' end due to lack of co-ordination between two part time employee, in which as explained herein above that amended and original bills, rectified bills and cancelled bill also got reflected in their sales register and such invoices also got duplicated in their physical records. The reasons for change or altering a given invoice is attributed due to the following factors :

- 1) The guard was found sleeping;
- 2) The guard was untidy dress;
- 3) The guard reported late for duty;
- 4) The guard did not attend a given matter promptly;
- 5) Two guards on duty argued against each other;
- 6) The guard misbehaved;
- 7) The guard left early and variety of such issues.

Such occurrences force the appellant to rectify and settle a given bill by reducing the service charges billed to them. Therefore, for a particular month for any given party, the particular bill may be found multiple time or say more than once, where the casual employees and thus, there were inconsistencies in bills entered in Sales Register, bills firstly prepared and bills finally submitted to the service receivers. The investigation exploited these short comings to arrive at higher value and demand the tax accordingly. The appellant therefore rely upon the decision held by the H'ble Apex Court in case of Oudh Sugar - 1978 (2) ELT (J 172) (SC) wherein it is held that *allegations must be based on evidence and not mere assumptions*. The various work sheets prepared and annexed to the SCN showed that against many bills / invoices, in the column of consideration received is shown to be blank or shown as received in cash. Merely saying that the same was received in cash is of no avail, it is just nothing but assumption on the part of the



investigation, however, the department was at liberty to examine the alleged service receivers but no evidence has been adduced on this count. No evidence has been adduced that the incomplete, rough, amended invoices as resumed from the premises of appellant were related to actual consideration charged from the service receivers. No extended investigation / inquiry is raised before the service receivers and bank account of the appellant has not been taken into consideration. No evidences / documents has been gathered that the incomplete, rough, amended invoices as resumed from the appellant's premises were related to actual consideration charged from the service recipients. Thus, the entire demand is without any cogent or worthy evidence. There are no corroborative evidences obtained /gathered from service receivers or the appellants bank account and books of account. No efforts have been made to examine the veracity of the given account, receipts of payments against invoices issued from the service receivers and many a bills / vouchers / invoices prepared on rough basis to prepare a final invoice have been taken into consideration to arrive at taxable value and to determine the applicable tax. In the interest of natural justice, the testimony of various service receivers, their accounting records banking details ought to have been taken into consideration.

➤ Further, the appellant submitted that they are a service provider from unorganized sector and providing security service. There has always been dispute on the rates and charges. All these factors leads to change in bills / invoices and in such cases certain invalid / amended invoices were also found during the searches and the same have been formed base for preparing the work sheets and incorporation thereof in the SCN. Therefore, the entire SCN is based on imaginary allegations without corroborative evidence. Merely a piece of paper can hold no water, unless the same is supported with cogent evidence like books of account, the testimony of service receivers etc. For this, they placed reliance on the following decisions:

- i) 2020 (372) E.L.T. 121 (Tri-Ahmd.) – Shri Krishna Industries Vs Commissioner of C.Ex. & ST, Vadodara-II. (Final Order NO. A/11030/2019-WZB/AHD, dated 28.06.2019 in Appeal No. E/450/2011-DB;
- ii) 2015 (329) E.L.T 121 (Tri. Del.) :- Raja Dyeing Vs. Commissioner of Central Excise, Ludhiana;
- iii) 2016 (343) E.L.T 221 (Tri.Del) : Sun Ultra Technologies Pvt Ltd Vs. Commissioner of C.Ex., Indore.

The aforesaid case laws are relating the Central Excise, however, the appellant placed in same situation, where no evidences have been adduced in respect of consideration received in Cash and also there is no evidence adduced from any of

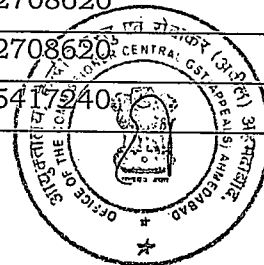


the alleged service received that the services rendered to them. It is further submitted that mere some papers, rejected, duplicate, amended, revised invoices and duplication of entries and extra entries in Sales Register by two part-time employees just as a matter of overlapping and duplication cannot sustain the demand, hence the whole SCN is baseless and without corroborative evidences deserves to be dropped and accordingly the impugned order is just a reproduction of SCN and deserves to be set aside.

- As per the SCN, the instant demand pertains to the period from July 2017 to September 2018, for sake of convenience, the investigation is said to be bifurcated into two parts viz. From July 2017 to March 2018 (FY 2017-18) and From April 2018 to September 2018 (FY 2018-19). The scrutiny of documents seized during the searches and subsequently submitted by them like Sales Invoices, Sales Register / Ledgers (July 17 to Sept. 18)). In case of the FY 2017-18, the Annual GSTR-9 was already on records and required to prepared a reconciliation of income. The appellant produced summary of sales, GSTR1 and also, and matching the same with their Income Tax data for two financial years viz. FY 2017-18 and FY 2018-19.

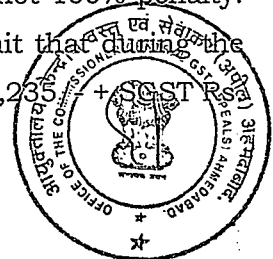
SUMMARY OF TWO FINANCIAL YEAR 2017-18 & 2018-19 :

Nature of Levy	Year 2017-18 (in Rs.)	Year 2018-19 (In Rs.)
CGST	2445208	2708620
SGST.	2445208	2708620
TOTAL	4890416	5417240



ACTUAL TAX LIABILITY AND EXCESS /SHORT PAID IN 2017-18 & 2018-19 COLLECTIVELY (in Rs.)					Short / Excess
	2017-18 Liability	2017-18 tax paid	2018-19 liability	2018-19 tax paid	
CGST	2445195	2445208	2708620	2708620	Excess paid Rs. 26/-
SGST	2445195	2445208	2708620	2708620	Excess paid Rs. 26/-
Total	4890390	4890416	5417240	5417240	Excess paid Rs. 52/-

- From the above table, it is submitted that above calculation was arrived at by keeping in view all taxable services rendered by the appellant during the completed FY 2017-18 & 2018-19 and same is found in agreement with appellant's Balance sheet.
- Imposition of Penalty: The adjudicating authority had erred in as much as they have imposed 100% penalty under the provisions of Section 74 of the CGST Act, 2017, however, such a proposal or imposition of penalty made is without the authority of law, since all invoices issued are not a case of suppression of the facts. There is nothing on record to prove that an invoice has been issued and the same has not been recorded in books of accounts, since the case has been made out of rough, rejected, duplicate, and discarded invoices and duplicate entries in Sales Register due to over-lapping of two part time workers. There has to be prima-facie material to indicate that there is an intention and active action to evade tax. Further, there has been a flaw in the SCN since certain tax has been paid during the course of investigation. Thus, in case, if the person is liable to tax short-paid / not paid and pays the same voluntarily during the course of investigation, the interest is recoverable and the proposal for penalty should have been restricted to 15% of the amount of tax already paid. In other words, the penalty ought to have restricted to 15% of such tax paid and not 100% penalty. Thus, O-I-O is unjust and illegal. In this regard, it is to submit that during the course of investigation a sum of Rs. 17,72,470/- (CGST Rs. 8,86,235/-) was paid by the appellant.



- General discipline for imposing penalty : In the instant case, the appellant has maintained the statutory records and books of accounts and there has been no fraud or wilful suppression. The rely upon the decision of the H'ble Supreme Court in the case of Hindustan Steel Ltd. Vs The State of Orissa [1969 SCC (2) 627].

4.2 Additional submissions: The appellant vide letter dated 23.12.2022 submitted their additional submission, wherein they produced (i) 85 bills / invoices amounting to Rs. 15,79,457/- which are not pertaining to the firm of the appellant i.e Mangal Murti Security Services, but finds a place in the sales register (ii) Ledger Accounts of their clients / customers. In this scenario, hte testimony and records of the service received can only substantiate the allegation made by the investigation. However, the investigation neither approached any service received nor confirmed the receipt from the service receiver nor examined the realization from the bank account of the appellant. The loose invoices and rough sales register has been taken into consideration without examining the correctness and authenticity of the same.

Personal Hearing:

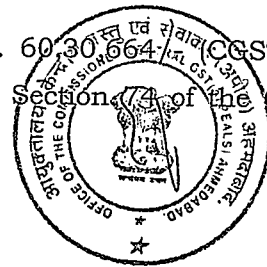
5. Personal hearing in the matter was fixed on 07.12.2022 and 16.12.2022, but no one appeared. Personal hearing was held on 23.12.2022, Mr. M K Kothari, attended personal hearing on behalf of the *appellant* as the authorised representative. They have given additional submission dated 23.12.2022 paging 1 to 138. They 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 additional submissions, 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.2,36,11,563/- suppressed by the appellant during the period from July-2017 to September-2018, by way of under-reporting and suppression of information 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. 60,30,15,332/- (CGST Rs. 30,15,332/- + SGST Rs. 30,15,332/-) confirmed under the Section 74 of the CGST



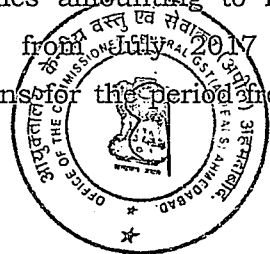
Act, 2017 alongwith interest leviable thereon under Section 50 of the CGST Act, 2017 is legally correct or otherwise?

(iii) Whether the penalty of Rs. 60,30,664/- (CGST Rs. 30,15,332/- + SGST Rs. 30,15,332/-) imposed upon the appellant under Section 74 of the CGST Act, 2017 read with the 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 M/s. Maruti Security Services, at 302,Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad : 380 009 by the Officers of DGGL, Ahmedabad Zonal Unit, Ahmedabad, the appellant had supplied "security / guarding services" to various clients during the period from July-2017 to September-2018 and such transactions / tax invoices were duly recorded in the party wise bill / sales registers maintained by them. There existed evidences of outward supplies which were not reported in the GSTR-1M returns filed by them for the period from July-2017 to September-2018. The appellant has suppressed the total value of outward supplies amounting to Rs. 2,36,11,563/- by way of under-reporting, non-disclosure / suppression of information in respect of outward supplies in the statutory GSTR-1M returns for July 2017 to September 2018.

7.1 Further, the statement of Shri Shrikant Rambhuwan Tiwari was recorded on 25.10.2018 under the CGST Act, 2017 wherein he had admitted the followings:

- (i) The appellant firm was a proprietorship firm; was engaged in the business of providing security / guarding services as they were not engaged in providing any other services;
- (ii) The appellant firm had discharged GST liability and filed all the returns viz. GSTR-3B and GSTR-1M up to the month of June-2018; they have not discharged GST liability from July 2018, onwards and the approximate liability comes to Rs. 17,21,562/- comprising of CGST Rs. 8,60,781/- and SGST Rs. 8,60,781/-;
- (iii) That the proprietor the appellant firm has admitted the short payment of GST liability on total suppressed value of outward supplies amounting to Rs. 2,36,11,563/- effected by them during the period from July 2017 to September 2018 and they failed to file GSTR-3B returns for the period from July-2018 to September-2018.

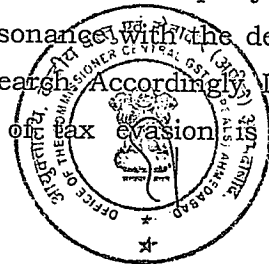


During the search, the officers of DGGI, Ahmedabad, have seized the appellant firm's records viz. Party wise Bill Register / Invoices / GSTR-1M/ GSTR-3B and GSTR-9 which shows that entire outward supplies made by the appellant during the period from July-2017 to Septemebr-2018 were taxable in nature and the appellant had charged and collected GST@18% from the service recipients on the tax invoices issued by them and the same were in the nature of intra-state supplies and no inter-state supplies noticed.

I find that the investigating agency DGGI, as per para 7.2.2 to 7.6.3 of the Show Cause Notice No. DGGI/AZU/35-15/2021-22 dated 31.05.2021 has compared and scrutinized the figures of returns filed by the appellant i.e. GSTR-1M, GSTR-3B and GSTR-9 for the period from July-17 to Sept-2018 with party wise bill / sales register. Vide which the investigation revealed and proved that the appellant had suppressed the actual turnover of Rs. 8,10,89,777/- in respect of outward supplies effected by them during the period from July-2017 to September- 2018 as the appellant have disclosed only a taxable turnover of Rs. 4,38,90,066/- in the GSTR-1M returns filed for the said period as against the billing amount of Rs. 8,10,89,777/- recorded in the party wise registers as maintained by them and further as per Para 10.2 of the Show Cause Notice dated 31.05.2021 the total value of outward supplies suppressed by the appellant during the aforesaid period derived at Rs. 2,36,11,563/-.

7.2 I find that the appellant had supplied "security / guarding services" to their various clients during the period July-2017 to September-2018 and such transactions / tax invoices were duly recorded in their party wise / sales registers maintained by them, which are statutory documents required to be kept and maintained as per Section 35 of the CGST Act, 2017, by the registered person. I also find that as per Party wise bill / Sales register and value declared in GSTR-1M returns, the appellant resorted to collect the GST@18% from the various clients but not discharged their tax liability, and also resorted to the suppression of the value of outward supplies made by them during the period from July-2017 to September-2018.

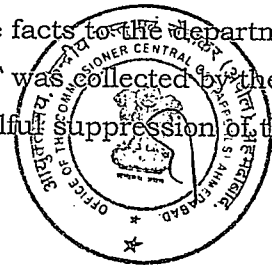
As regards the contention of the appellant that "*there are no corroborative evidences*", I find as per the facts mentioned at **Para 7.6 to 7.6.3** of the Show Cause Notice "impugned order" dated 31.05.2021 that the investigation was proved that in respect of the outward supplies made by the appellant and details mentioned in the party wise bill / sales register maintained by them are majorly in consonance with the details present in the available invoices seized during the course of search. Accordingly, I find that the version of the Proprietor regarding acceptance of tax evasion is also



corroborated by the details provided in Para-7.6 to 7.6.3 of the Show Cause Notice dated 31.05.2021 as well.

7.3 I also find that the statements of Shri Shrikant Rambhuwan Tiwari, Proprietor of the appellant firm, were recorded on 25.10.2018 and 28.05.2021, by the DGGI Officers, Ahmedabad, and as per Para-4 & Para-12 of the impugned order, wherein, he admitted the short payment of GST liability if any as calculated for under-reporting / total turnover of the firm as per the party wise bill / Sales register, in their GSTR-1M returns for the period July-2017 to Sept-2018, he further admitted such irregularities occurred in their office and he was not able to reconcile the records as well as not furnished any further submissions with regard to the suppression of the value of outward supplies made by the appellant firm during the period from July-2017 to September-2018. I also find that the proprietor of the appellant firm has neither attended personal hearings offered by the adjudicating authority nor I find that they have filed any affidavit to retract their aforesaid statements which were recorded by the DGGI officers on 25.10.2018 and 28.05.2021. 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. The above referred facts were detected only when the DGGI initiated the investigation against the appellant firm. It is settled law and well established by the various Courts that Tax liability is the civil obligation and onus on the registered person. The responsibility of the tax payer to voluntarily make information disclosure is much greater in a system of self-assessment. The intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour.

7.4 Further, I find that evaluation of tax behaviour of the appellant firm revealed their intent to evade payment of GST liability by resorting to suppression of information i.e. total turnover / total value of their outward supplied services by way of under-reporting and non-filing of GSTR-3B returns within the prescribed time limit. I find, the appellant being well aware of the unambiguous provisions of the CGST Act, 2017 and rules made thereunder, thus failed to disclose the facts to the department at any point of time, their actual taxable income on which GST was collected by them but not paid by them. The above act of omission had led to willful suppression of the fact



with intent to evade payment of GST liability. The evasion of the GST liability or the suppression of total turnover / total value of their outward supplied services by way of under-reporting and non-filing of GSTR-3B returns only came to the knowledge of the department when the specific investigation being carried out. Hence, I find that the extended period of limitation as envisaged under provisions of Section 74 of the CGST Act, 2017 read with Section 74 of GGST Act, 2017 and further read with the IGST Act, 2017 is invocable for demanding GST liability short-paid / not-paid by the appellant during the period from July-2017 to September-2018.

7.5 I also find that the investigation also revealed and proved in the impugned order that the appellant had suppressed the total value of their outward supplied services amounting to Rs. 2,36,11,563/- by way of under-reporting and suppression of the information in respect of such supplied services during the period from July-2017 to September-2018 and not-filing of GSTR-3B returns for the period from July-2018 to September-2018. Thus, the appellant had short-paid / not-paid GST liability amounting to Rs. 60,30,664/- (CGST Rs.30,15,332/- + SGST Rs.30,15,332/-) during the period from July-2017 to Sept-2018 and liable to be recovered from them with interest under section 50(1) of the CGST ACT, 2017 read with the GGST Act, 2017.

7.6 Further, I find that considering the facts of the present case and the evidences produced by the investigating agency, the case laws relied upon by the appellant as per Para 4.1 above would not be applicable in the present case. Hence, the contention of the appellant is not legally sustainable.

8. As regards the contention of the appellant as mentioned in Para -4.1 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 penalty equivalent to the tax specified in the notice.

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



Explanation 2. — For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

8.1 In the present case, I find that as per the statements recorded on 25.01.2018 & 28.05.2021 of Shri Shrikant Rambhuwan Tiwari, Proprietor of the appellant firm, he categorically admitted that they had been not declared total value of the taxable services supplied by them as per party wise bill/ sales registers maintained by them and suppressed the value of outward supplies amounting to Rs. 2,36,11,363/- effected by them during the period from July-2017 to September-2018 by way of under-reporting /non-disclosure in their GSTR-1M returns and non-filing of GSTR-3B returns and thus short-paid / not-paid GST liability amounting to Rs. 60,30,664/- (CGST Rs. 30,15,332/- + SGST Rs. 30,15,332/-). By doing so, the appellant have suppressed the facts and not declared information which the appellant is required to declare in their returns under the CGST Act, 2017 read with GGST Act, 2017 and rules made thereunder.

8.2 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 under-reporting / non-disclosure of information of total value of taxable value of services provided 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, the 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)(iii), (iv),and (xv) and (xvi) of CGST Act, 2017 read with Section 122(1)(iii), (iv),and (xv) and (xvi) of GGST Act, 2017 should not be imposed.

8.3 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.

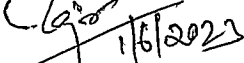
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

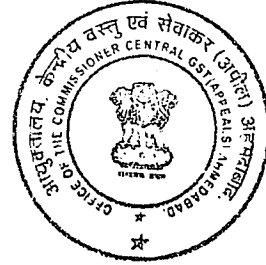


(Mihir Rayka)
Additional Commissioner (Appeals)
Date: .05.2023

Attested



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



By R.P.A.D.

To,

M/s. Maruti Security Services [GSTIN- 24AEDPT0749Q1ZY],
[Legal Name : Shrikant R Tiwari], 302, Narayan Complex,
Opp. Havmor, Navrangpura, Ahmedabad, Gujarat : 380 009

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.

