



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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**By Regd. Post**

DIN NO.: 20231264SW000061616D

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2826/2023 / 9638 - 4H
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-114/2023-24 and 15.12.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	18.12.2023
(ङ)	Arising out of Order-In-Original No. CGST/WT0703/UK/02/2023-24. dated 24.05.2023 passed by The Superintendent, CGST, Range-III, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Satyamev Eminence (GSTIN: 24ADBFS9141G2Z4), B-501, Satyamev Complex, Opposite New High Court, S.G. Highway, Ahmedabad, Gujarat-380060

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



**ORDER-IN-APPEAL**

**BRIEF FACTS OF THE CASE :**

M/s. Satyamev Eminence, B-501, Satyamev Complex, Opposite New High Court, S.G.Highway, Ahmedabad, Gujarat : 380 060 (hereinafter referred to as "*the appellant*"), holding GST Number 24ADBFS9141G2Z4 has filed appeal against Order-In-Original No. CGST/WT0703/UK/02/2023-24, dated 24.05.2023 (hereinafter referred to as the "*impugned order*") passed by the Superintendent, CGST & C. Ex., Range-III, Division-VII, Ahmedabad-North Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. The facts leading to this case are that the appellant is engaged in construction services in respect to commercial and Industrial Buildings, Works Contract Services falling under HSN Code 00440410 and 00440290. During course of audit and reconciliation of Financial Accounts of the appellant GST returns filed by the appellant for the financial year 2017-18 and 2019-20, it is observed that the some flats that were booked under Service Tax Era (Earlier Law), was cancelled under after implementation of GST and Service Tax paid on such cancelled flats was adjusted against GST liability and the said adjustment resulted into short payment of GST.

3. Accordingly, the appellant was issued Show Cause Notice No. 155/2021-22 dated 29.03.2023 by the Superintendent, AP-46, Circle-VII, Audit, Ahmedabad. The Show Cause Notice has been adjudicated by the adjudicating authority vide the impugned order dated 24.05.2023. The adjudicating authority has passed the impugned order and confirm the SCN, on the following grounds;-

- That some flats that were booked under Service Tax Era (Earlier Law), was cancelled under after implementation of GST and Service Tax paid on such cancelled flats was adjusted against GST liability and the said adjustment resulted into short payment of GST;
- That transition of service tax paid prior to GST regime is governed in accordance with provisions contained in Section 140 of the CGST Act, 2017;
- That there is not provision under CGST Act, 2017 in respect of adjustment/transition of excess service tax paid on such cancelled flats cannot be adjusted against the consequent liability under GST;
- That by way of suppression of taxable supply the notice evaded GST amounting to Rs. 624526/- during financial year 2017-18 and financial





advance received in Service tax but while doing cancellation the same is being adjusted against the GST taxability. The details of the same is as follows.

Particulars	Advance refunded/ Adjusted	Tax amount
Shop No. 4 & 5	1100000	132000
Shop No. 6	4500000	540000

Here in case of Shop No.4 & 5, the client had booked shop No. 4 in service tax era. Then after he had also purchased shop no.5. While doing the sale agreement for shop no. 4 & 5. The advances received in Shop No.4 has been shifted to ledger named shop No. 4 &5 to knock of all advances against the sale agreement. Therefore, it reflects as in the debit side of Shop No.4 and credit side of Shop No.5.

that the service tax liability had been discharged as and when the advance received. The list of the advances received against shop No. 4 & 5 with the copy of the sale agreement are attached;

- In case of Shop No.6, it is correctly pointed out by respected officials that. the advance received in service tax Era which is refunded in the month of Jan-20 & Feb-20 amounting to Rs. 45,00,000 had been adjusted against the taxable value derived for GST payment.
- that the appellant has already discharged the liability on the taxable value Rs. 13,00,000 i.e. Rs. 1,56,000 in July -20. The calculation of July-20 is as follows:-

Particular	Amount
Advance received during July-20 as per Books	3,17,94,700
Less: Advance refunded to be adjusted	13,00,000
Net taxable Value as per Books	3,04,94,700
GST liability on the taxable value as per books	36,59,364
GST liability paid as per GSTR-3B	38,15,364
Excess Liability paid	1,56,000

With reference to the same submitted copy of GSTR-3B and GSTR-1 for July-20.

In respect of the balance amount that is Rs. 32,00,000, the appellant is paying the tax amount with interest applicable on the same.



- *that the intention of the appellant has not to evade the-tax or suppress any facts from your good self because the intention of the appellant is very clear to cooperate in your audit. Here, after the audit conducted by your good self the appellant had paid the tax liability as well as interest is also being paid through DRC-03;*
- *the well settled law as regards to the invocation of penal provisions under Section 74 of the GST Act, it is manifest that until and unless there is wilful or deliberate or intentional evasion of any tax or attempt to evade any tax is established, there cannot be any punishment under the provisions of the Section 74 of the CGST Act Mere omissions or Bonafede error cannot be construed as an offence.*

**Personal Hearing:**

5. Personal hearing in the matter was fixed on 17.10.2023 and 01.11.2023, Ms. Nisha Vora, C.A., attended personal hearing on behalf of the *appellant* as the authorised representative. During the personal hearing she has stated taht no P.H. was granted and order has been issued without granting P.H. All dues have already been paid except penalty imposed. She further reiterated the written submissions and requested to allow appeal. She further submitted that penalty under Section 74 is not liable as there is no wilful mis-statement or suppression of fact exist.

**Discussion and findings:**

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2017-18 and 2019-20.

7(i). In the instant case, the demand has been raised for the FY 2017-18 and 2019-20 based on reconciliation on the Financial Records and GST returns filed by the appellant. In respect of reconciliation for the financial year 2017-18, the appellant has stated that they had already paid Rs. 24,196/- through DRC-03 dated 01.02.2020, that had not been considered while doing reconciliation of Income at the time of Service Tax Audit.



7(ii). Further, in respect of reconciliation for the financial year 2019-20, the appellant has stated that the difference is arising due to following two advance received in Service tax but while doing cancellation the same is being adjusted against the GST taxability. The details of the same is as follows.

Particulars	Advance refunded/Adjusted	Tax amount
Shop No. 4 & 5	1100000	132000
Shop No. 6	4500000	540000

The appellant further stated that in case of Shop No.4 & 5, the client had booked shop No. 4 in service tax era. Then after he had also purchased shop no.5. While doing the sale agreement for shop no. 4 & 5, the advances received in Shop No.4 has been shifted to ledger named shop No. 4 &5 to knock of all advances against the sale agreement. Therefore, it reflects as in the debit side of Shop No.4 ledger and credit side of Shop No. 4 & 5 ledger. The appellant further stated that the service tax liability had been discharged as and when the advance received in respect of advance of Rs. 11,00,000/-.

Further in case of Shop No.6, it is observed that the appellant had received advance amounting to Rs. 45,00,000/- in service tax Era which is refunded in the month of Jan-20 & Feb-20 and accordingly adjusted against the taxable value i.e Rs. 5,40,000/- (i.e. 12% of Rs. 45,00,000/-) derived for GST payment. Further appellant in appeal memorandum stated that the appellant has voluntarily discharged the liability on the taxable value Rs. 13,00,000/- i.e. Rs. 1,56,000 (against taxable value of Rs. 5,40,000/-) in July -20 through GSTR-3B. In respect of the balance amount that is Rs. 32,00,000/- the appellant stated that they had paid the tax amount i.e. Rs. 3,84,000/- (Rs. 5,40,000/- minus Rs. 1,56,000/-) with interest applicable vide DRC-03 dated 06.09.2023. However, it is observed that the balance taxable amount i.e. Rs. 3,84,000/- has been paid the appellant after issue of Show Cause Notice and impugned order.

8(i). However, it is observed that the appellant cannot seek to establish their points without submitting such evidences before the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents. In view of the above the adjudicating authority was required to give adequate and ample opportunity to the appellant thereafter, the impugned order was required to be passed, specifically in the circumstances of the case.



3(ii). Considering the facts of the case as discussed herein above and in the interest of natural justice, it is required to verify the facts by the adjudicating authority as regards the claim of the appellant on the basis of the documents submitted by them along with appeal memorandum.

9. In view of the above, I allow the appeal of the "Appellant" with a direction to submit all the relevant documents/submission before the adjudicating authority for verification of the facts, who shall verify the facts as directed above and pass order accordingly.

अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

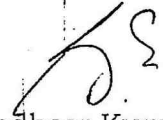
The appeal filed by the appellant stands disposed of in above terms.

  
15/12/2023  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 15.12.2023

Attested.

  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.  
M/s. Satyamev Eminence,  
B-501, Satyamev Complex,  
Opposite New High Court,  
S.G.Highway, Ahmedabad,  
Gujarat : 380 060.



Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad North.
4. The Deputy/Asstt. Commssioner, Range-III, CGST, Division- VII, Ahmedabad North Commissionerate.
5. The Superintendent, Range-III, CGST, Division- VII, Ahmedabad North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File.



