



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



By Regd. Post

DIN NO.: 20231264SW000000BC52

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/3090/2023 / 54-6u
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-115/2023-24 and 19.12.2023
(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	27.12.2023
(ङ)	Arising out of Order-In-Original No. GST-06/Supdt./Range-II/BSB/23-24 dated 04.07.2023 passed by The Superintendent, CGST, Range-II, Division-III, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s NTT India Solutions Private Limited (GSTIN: 24AACCN1792K1ZB), F2-F3, Shakti Arcade, First Floor, Vithalpur Char Rasta, Vithalpur, Mandal, Ahmedabad-382210

(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 अपीलार्थी 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 information relating to filing of appeal to the appellate authority, the appellant may refer to www.cbic.gov.in .



ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE :

M/s. NTT India Solutions Private Limited, F2-F3, Shakti Arcade, First Floor, Vithalpur Char Rasta, Vithalpur, Mandal, Ahmedabad-382210, (hereinafter referred to as "the appellant"), holding GSTIN 24AACCN1792K1ZB has filed appeal against Order-In-Original No. GST-06/Supdt./Range-II/BSB/23-24 dated 04.07.2023 (hereinafter referred to as the "impugned order") passed by the Superintendent, CGST & C.Ex., Range-II, Division-III, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2(i). The facts of this case are that the Appellant is engaged in the service of sale office, leasing business etc. The scrutiny of the financial returns of the said taxpayer covering the period from July 2017 to March 2018 was conducted under Section 61 of CGST Act 2017. During the scrutiny of GSTR-3B returns and GSTR-1 returns filed by the appellant for the period FY 2017-18 it is observed that the appellant had made Short payment of tax (Difference in GSTR-1 and GSTR3-B returns i.e. Rs.9,84,629/-). Further, the taxpayer had declared the correct figures of outward supplies in the GSTR-1, while filing of GSTR 3B to the month of December-2019.

It is noticed that the appellant prepared the said GSTR-3B, did not add the figures of outward supplies affected by the tax invoice raised in the Month of Sep-2017 for Rs.59,45,069/- and nil return was filed during the month i.e. September-2017. Thereafter on reconciliation of data by the appellant, they added the figure of Rs. 59,45,069/- in outward supplies in the month of December 2019 and paid the tax through GSTR 3B in the month of December-2019 and also paid interest of CGST of Rs.2,17,159, SGST Rs.2,17,159/- on said short payment through debited in cash ledger for the period from 01.04.2018 to 31.03.2019 vide entry reference no.DC240 1200462094 dated 28.01.2020. Pursuant to completion of scrutiny, the discrepancies noticed were communicated in Form GST ASMT 10 dated 12.08.2022 and followed by issuance of show cause notice in Form DRC-01-A dated 12.12.2022.

3. Therefore, Show Cause Notice was issued on 22.03.2023 and proposed to demand and recover short payment of tax amounting to Rs.9,84,629/- ,under the provisions of Sections 74(1) of the COST Act,2017 read with Sections 74(1)



F.No. : GAPPL/ADC/GSTP/3090/2023-APPEAL

of Gujarat GST Act,2017 & read with the provisions of Section 20 of the IGST Act,2017; Interest under Sections 50(1) of the CGST Act,2017 read with Sections 74(1) of Gujarat GST Act,2017 & read with the provisions of Section 20 of the IGST Act,2017 on the proposed recovery and Penalty of Sections 74(1) of the CGST Act,2017 read with Sections 74(I) of Gujarat GST Act,2017 & read with the provisions of Section 20 of the IGST Act.2017 on the evaded tax.

4. Further, the Adjudicating Authority vide Order-In-Original No. GST-06/Supdt./Range-II/BSB/23-24 dated 04.07.2023 has pass the following order:

- (i) I order to recover the short payment amounting to **Rs.9,84,629/-** (Rs. 1498919/- (IGST) + Rs -1241774/- (CGST) + Rs. -1241774/- (SGST))(Rupees Nine lakhs Eighty Four Thousand Six Hundred Twenty Nine Only) should not be disallowed and recovered from the tax payer, under the provisions of Sections. 74(1) of the CGST Act,2017 read with Sections 74(1) of Gujarat OST Act,20 17 & read with the provisions of Section 20 of the IGST Act,2017; I order to adjust the said amount of Rs.984629/- against the proposed demand; as shown in their GSTR 3B return for the month of December 2019, I order to appropriate the said amount of **Rs.984629/- against the proposed demand;**
- (ii) I order to charge and recover interest from the taxpayer, under the provisions of Sections 50(1) of the CGST Act,2017 read with Sections 74(1) of Gujarat GST Act, 2017 & read with the provisions of Section 20 of the IGST Act, 2017 on the proposed recovery herein above; as discussed in para. As the taxpayer have paid an interest of CGST of Rs.2,17,159/- and SGST Rs.2,17,159/- through debited entry in cash ledger for the period from 01.04.2018 to 31.03.2019 vide entry reference no. DC2401200462094 dated 28.01.2020. I order to appropriate the said amount paid by the taxpayer against the proposed recovery of interest.
- (iii) I imposing the penalty@ 15% of confirmed demand under the provisions of Section 74(5) of the CGST Act, 2017 read with Sections 74(5) of Gujarat GST Act, 2017 & read with the provisions of Section 20 of the IGST Act, 2017.



F.No. : GAPPL/ADC/GSTP/3090/2023-APPEAL

5. Being aggrieved with the impugned order dated 04.07.2023, in respect of imposing of penalty @ 15% i.e Rs. 1,47,694/- of confirmed demand i.e of Rs. 9,84,629/-, the appellant filed the present appeal on 04.10.2023 on the following grounds:-

- Due to mental tension the accountant of the company of appellant who was filing the GSTR-1 and GSTR 3B made some clerical mistakes while filing the said returns;
- That as soon as the aforesaid error came to the knowledge of appellant, the appellant immediately deposited the balance tax Rs 1,070,112.42/- and declared the said balance figures of outward supplies Rs. 5,945,069/- in the GSTR-3B related to the month of Dec-2019 subsequently as per law and filed the said Form GSTR3B;
- That later on at the time of filing the GSTR-9 and GSTR-9C the appellant had rectified the aforesaid figures and had reported the correct figures in said GSTR-9 and GSTR-9C related to the assessment year 2017-2018, which were filed on 28-01-2020, which was well within time;
- That the appellant have deposited the aforesaid balance tax in own on 20-01-2020, much prior to the date of issuing the said notice by proper officer. Under aforesaid circumstances there is no logic on part of learned proper officer to issue the said notice under section-74 of the SGST/CGST Act;
- That there was no mensrea on part of appellant in such case the learned proper officer should have applied the provision of section-75(...) of the SGST/CGST Act and should have passed order under section-73 of the SGST/CGST Act instead of passing the said order under section-74 of the SGST/CGST Act.
- That since the learned proper officer has not raised any demand of tax or interest as such it is clear that the learned proper officer was convinced that neither the appellant has evaded or short deposited any tax nor any ITC has been wrongly claimed;
- That in view of the aforesaid facts and legal provisions the learned proper officer could not impose the aforesaid penalty on appellant;



- That while in said matter as soon as the mistake came to the knowledge of appellant, the appellant deposited the due tax and interest in own. Secondly there is no revenue loss. Thirdly it is apparently the minor mistake on part of appellant, no mensrea is involved;
- That without prejudice aforesaid contention the further submission of appellant is that in case the learned proper officer was of view that some action to be taken in said matter under such circumstances at the most the learned proper officer could think of issuing the notice under section 73 of the SGST Act, as it was clear from the facts of our case that we had no malafide intention behind it;
- That the learned proper officer have mentioned in said notice that prior to this somehow notice the learned proper officer have issued Form GST- ASMT-10 dated 12.08.2022 and DRC-01A dated 12.12.2022 but the appellant had checked it from GST website, no notice prior to this notice has been issued by the learned proper officer. It seems that somehow the learned proper officer have mentioned in this notice about issuing the earlier notices;
- That while in the matter of appellant somehow it escaped the attention of the learned proper office to monitor the GSTR-1, GSTR-3B, GSTR-9, GSTR-9C etc. of appellant related to the assessment year 2017-2018 and onwards, in reasonable time;



PERSONAL HEARING:

6. Personal hearing in this case was held on 01.11.2023. Mr. Dhaval Shah, C.A., appeared in person, on behalf of the appellant as authorised representative. During the personal hearing he submitted that the SCN was issued on 22.03.2023. ASTM 10 was issued on 12.08.2022 and DRC-01 was issued on 12.12.2022 (both the notices not received, neither online nor physically). Directly they have received the SCN, thus technically the SCN is not legal and proper. Further all the dues have been paid in GSTR 3B of December 2019 and interest has been paid on 28.10.2020, much before the SCN. All these dues have been paid at the time of Reconciliation/Annual Return. Therefore the SCN and penalty should not have been issued/levied.

There is o suppression of fact or wilful mis-statement etc is proved. In view of above the appeal may be allowed.

DISCUSSION AND FINDINGS:-

7. I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal as well as at the time of personal hearing and find that the appellant is mainly contesting for is not to be levy penalty of Rs. 1,47,694/- under section 74(5) of CGST/SGST Act, 2017. Further it is observed that the appellant has accepted and paid all the other dues. So the question to be answered in the present appeal is penalty of Rs. 1,47,694/- imposed by the Adjudicating Authority is legal and proper or otherwise?

8. In the instant case, neither the demand notice nor the impugned order has brought out any non declaration or any additional information on record to allege suppression of facts. During the scrutiny of GSTR-1 and GSTR-3B returns filed by the appellant for the period FY 2017-18 it is observed that the appellant had declared the correct figures of outward supplies in the GSTR-1. Thereafter on reconciliation of data by the appellant, they had voluntarily paid the liability in through GSTR-3B in the month of December-2019 and also paid interest of CGST of Rs.2,17,159, SGST Rs.2,17,159/- on short payment through debited in cash ledger for the period from 01.04.2018 to 31.03.2019 vide entry reference no.DC2401200462094 dated 28.01.2020. However the appellant were required to discharged the GST liability in their GSTR-3B Return in the month of September 2017, but failed to do so. Therefore, it is observe that there is no evidence exist to invoke the provisions of fraud or willful misstatement or suppression of fact. As to allege suppression, there should be non-declaration of facts or information in the return. The term 'suppression' in the explanation is defined as under:

"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 there under, or failure to furnish any information on being asked for, in writing, by the proper officer.

It is observed that the appellant has declared their tax liability in GSTR-1 in the month of September 2017 and before issue of Show Cause Notice the appellant voluntarily discharged the tax liability in the month of December



2019 through GSTR-3B return. Further at the time of filing the GSTR-9 and GSTR-9C the appellant had rectified the aforesaid figures and had reported the correct figures in said GSTR-9 and GSTR-9C related to the assessment year 2017-2018, which were filed on 28-01-2020, which was well within time. In view of the above it is observed that in the instant case, no evidence exist about any wilful-misstatement or suppression of facts to evade tax as per Section 74 of CGST Act, 2017.

9(i). Considering the above facts, in terms of Section 74 of the CGST Act, 2017, the proper officer should re-adjudge the Show Cause Notice by deeming the notice have been issued under Section 73 in accordance with the provisions of sub-section (2) of Section 75 of the said Act. Relevant provision of Section 75(2) is reproduced below:-

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

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

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

9(iii). Thus, in terms of Section 75(2) of the CGST Act, 2017 and CBIC's above clarification, the impugned order confirming the penalty of GST amounting to Rs. 1,47,694/- to be recovered from the appellant under the



F.No. : GAPPL/ADC/GSTP/3090/2023-APPEAL

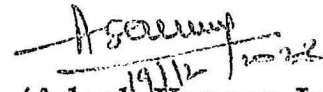
provisions of Section 74(5) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017, needs to be re-determined by the proper officer by deeming, as if the SCN has been issued under Section 73 of the Act and imposition of penalty needs to be adjudged in terms of Section 73 of the GST Act, 2017.

9(iv). Further it has been observed that in the Show Cause Notice, the proper officer has proposed penalty under 74(1) of the CGST Act, 2017 and Section 20 of the IGST Act 2017 for non-payment of GST amount of Rs. 9,84,629/- and the adjudicating authority has imposed the penalty @ 15% of confirmed demand under the provisions of Section 74(5) of the CGST Act 2017 needs to be re-determined by the proper officer by deeming, as if the SCN has been issued under Section 73(1) of the CGST Act 2017 in respect of imposition of penalty.

10. In view of the above discussion and findings, the impugned O-I-O sent back to the adjudicating authority to re-adjudge the Show Cause Notice, under provision of Section 73 of CGST Act, 2017 in respect of imposition of penalty. Accordingly, I allow the appeal of the "Appellant" to that extent only.

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

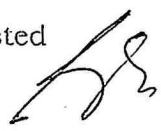
The appeal filed by the appellant stands disposed of in above terms.


(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 19.12.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)
By R.P.A.D.

M/s. NTT India Solutions Private Limited,
F2-F3, Shakti Arcade, First Floor,
Vithalpur Char Rasta, Vithalpur,
Mandal, Ahmedabad-382210.

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 Deputy/ Assistant Commissioner, CGST & C. Ex, Division-III Ahmedabad-North.
5. The Superintendent, CGST & C. Ex, Range-II, Division-III Ahmedabad-North
6. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
7. Guard File/ P.A. File.

