



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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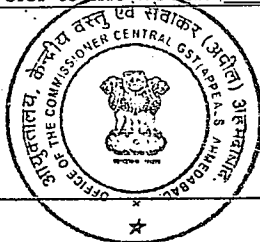


By Regd. Post

DIN NO.: 20230664SW000001590B

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2430/2022 / 1822-28
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-ADC-12/2023-24 and 31.05.2023
(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	01.06.2023
(ङ)	Arising out of Order-In-Original CGST/WT07/RAJ/05/2022-23 dated 12.04.2022 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 Galaxy Security and Manpower Services Pvt. Ltd. (GSTIN-24AACCG2057L1ZO) 302, Narayan Complex, Opp. Haymor, 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) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL

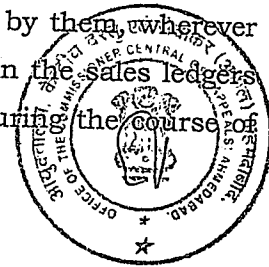
BRIEF FACTS OF THE CASE :

M/s. Galaxy Security and Menpower Services Pvt. Ltd., 302, Narayan Complex, Opp. Havmor, Navrangpura, Ahmedabad, Gujarat : 380 009 (hereinafter referred to as "*the appellant*"), holding GST Number 24AACCG2057L1ZO has filed appeal against Order-In-Original No. CGST/WT07/RAJ/05/2022-23, 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 supply of "security / guarding Services" and "fire and safety services" had supplied "security / guarding services" and "fire and safety 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 25.10.2018 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 tax during the Pre-GST period as well during the Post GST period. The present investigation covers the period falling under the GST regime, i.e from July-2017 to September-2018.

The appellant has supplied the "security / guarding Services" and "fire and safety services" to their customers /clients during the period from July-2017 to September-2018 for which they had issued tax invoices wherein they charged and collected GST@18% (CGST@9% + SGST@9%). Apart from the above, they had received certain income in the form of "renting income" and "maintenance income" from one of their clients namely M/s. Adani Gas Limited. The appellant has charged and collected GST@18% on the value of the aforesaid taxable supplied effected by them, wherever applicable. Such transactions / tax invoices were duly recorded in the sales ledgers maintained by them at their office premises which were seized during the course of such proceedings on 25.10.2018.



F.No. : GAPPL/ADC/GSTP/2430/2022-APPEAL

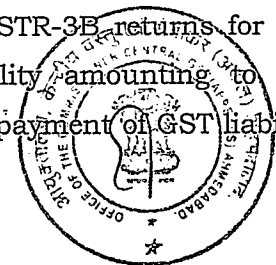
Further, investigation revealed that the appellant had failed to file the GSTR-1M returns for the period from Jun-2018 to September-2018 and also failed to file the GSTR-3B returns for the period from April-2018 to September-2018 within the prescribed due dates as mandated under GST Act, 2017 and rules thereunder. Investigation further revealed that the appellant had not only failed to file the statutory GSTR-1M/ GSTR-3B returns within the stipulated period but they had also resorted to suppression of the value of outward supplies made by them during the period from July-2017 to September-2018. Investigation further revealed that there existed evidences of outward supplies made by the appellant during the aforesaid period which were not reported upon in the GSTR-1M returns filed by them for the even period.

Further, the appellant had also failed to disclose information in respect of reimbursements received by them from their recipients in respect of expenses incurred by them during the course of supply of services and they had also failed to include the value of such reimbursement in the value of the taxable supply in the contravention of Section 15 of the CGST Act, 2017.

Thus, the appellant had suppressed a total value of Rs.2,26,20,750/- in respect of outward supplies made by them during the period from July-2017 to September-2018, by way of non-filing the statutory GSTR-1M for the period June-2018 to Sept-2018 and by resorting to suppression of certain outward supplies made by the appellant in the GSTR-1M filed for the aforesaid period. Post initiation of proceedings against the appellant, out of the total suppressed turnover of Rs. 2,26,20,750/-, they have disclosed details of turnover amounting to Rs. 2,09,73,514/- (Rs. 1,09,18,097/- in GSTR-1M for the period June-18 to Sept-2018 and Rs. 1,00,55,417/- in GSTR-1M filed for October-2018) in the GSTR-1M filed by the appellant.

Investigation further revealed that by resorting the above modus of non-filing of statutory GST returns, suppression of value of taxable outward supplies and non-disclosure of receipt of reimbursements, the appellant had short-paid / non-filing of statutory GST returns, the appellant had short-paid / not-paid GST liability amounting to Rs. 27,35,003/- [IGST Rs. 6,84,667/- + CGST Rs. 10,25,168/- + SGST Rs.10,25,168/-] during the period from July-2017 to Sept-2018.

Post initiation of proceedings, the appellant had filed the GSTR-3B returns for the period from April-18 to Sept-18 wherein total GST liability amounting to Rs. 17,55,902/- was paid by them. Additionally, they had made payment of GST liability

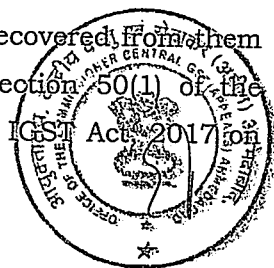


amounting to Rs. 5,45,485/- in respect of outward supplied made by them during the period Apr-2018 to Sept-2018 in the GSTR-3B returns filed for the month of October-2018. Thus, out of the total GST liability of Rs. 27,35,003/- short-paid / non-paid by them during the period from July-2017 to September-2018 they have paid total GST liability amounting to Rs. 23,01,387/- (Rs. 17,55,902/- plus Rs. 5,45,485/-) is required to be appropriated against the aforesaid GST liability short-paid / not-paid by the appellant, and is required to be recovered from the appellant under Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017 with interest under section 50(1) of the CGST Act, 2017 read with section 50(1) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017.

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 and further Section 20 of the IGST Act, 2017.

3.2 Accordingly, the appellant was issued Show Cause Notice vide F. No. DGGI/AZU/ Gr.A/ 12(4) 174/2019-20 dated 30.06.2021 by the Assistant Director, DGGI, Ahmedabad Zonal Unit, Ahmedabad as to why:-

- The GST liability of Rs. 27,35,003/- (IGST – Rs. 6,84,667/- + Rs. 10,25,168/- + Rs. 10,25,168/-) short-paid / not-paid for the period from July-2017 to September-2018 on account of supply of taxable services of “security / guarding” and “fire safety services” should not be recovered from them under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 further read with Section 20 of the IGST Act, 2017,
- and GST liability of Rs. 23,01,387/- (IGST Rs.7,16,839/- + CGST Rs. 7,92,274/- + SGST Rs. 7,92,273/-) paid during post initiation of proceedings for the period from July-2017 to September-2018 should not be appropriated against the GST liability of Rs. 27,35,003/-.
- Interest at applicable rates should not be demanded and recovered from them under section 50(1) of the CGST Act, 2017 read with Section 50(1) of the Gujarat GST Act, 2017 further read with Section 20 of the IGST Act, 2017 on the GST liability of Rs.27,35,003/-.
- Interest at applicable rates should not be demanded and recovered from them under section 50(1) of the CGST Act, 2017 read with Section 50(1) of the Gujarat GST Act, 2017 further read with Section 20 of the IGST Act, 2017 on



the GST liability of Rs, 49,64,257/- paid belatedly but prior to initiation of investigation;

- Penalty should not be imposed against them under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 further read with Section 20 of the IGST Act, 2017 for short-paid / not-paid of GST liability of Rs. 27,35,003/-;
- Penalty should not be imposed upon them under Section 122(1) (iii) & 122(1)(iv) of the CGST Act, 2017 & GGST Act, 2017 for collecting tax and not depositing to the government beyond a period of three months from the date on which such payment becomes due;
- Penalty should not be imposed upon them under Section 122(1) (xv) of the CGST Act, 2017 read with Section 122(1)(xv) of Gujarat GST Act, 2017 and further read with section 20 of the IGST 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 Section 122(2)(b) of Gujarat GST Act, 2017 and further read with section 20 of the IGST Act, 2017

3.3 The impugned Show Cause Notice dated 30.06.2021 has been adjudicated by the adjudicating authority vide the impugned order dated 12.04.2022. The adjudicating authority has passed the impugned order, which is briefly summarized as below:

- They ordered to confirm the GST demand amounting to Rs. 27,35,003/- (IGST – Rs. 6,84,667/- + Rs. 10,25,168/- + Rs. 10,25,168/-) 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” and “fire safety services” 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. 23,01,387/- (IGST Rs.7,16,839/- + CGST Rs. 7,92,274/- + SGST Rs. 7,92,273/-) paid during post initiation of proceedings for the period from July-2017 to September-2018 against the GST liability of Rs. 27,35,003/-.
- They ordered that the interest at applicable rates should be demanded and recovered from them under Section 50(1) of the CGST Act, 2017 & GGST Act, 2017 read with Section 20 of the IGST Act, 2017 on the GST liability of Rs. 27,35,003/-;



- They ordered that the interest at applicable rates should be demanded and recovered from them under Section 50(1) of the of the CGST Act, 2017 & GGST Act, 2017 read with Section 20 of the IGST Act, 2017
- They imposed equivalent penalty of Rs.27,35,003/- (IGST – Rs. 6,84,667/- + Rs. 10,25,168/- + Rs. 10,25,168/-) upon them under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 further read with Section 20 of the IGST Act, 2017 for short-payment / non-payment of GST liabilities of Rs.27,35,003/-;

4. Being aggrieved with the impugned order, the appellant preferred this appeal on 10.08.2022 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. The Director of the appellant company is just literate and 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. The compulsion under which the company underwent distress may be pardoned and not filing this first-stage appeal at a belated date.

- At the outset of the submission, it may be seen that the entire allegations made in the SCN were based on presumptions and assumptions. The demand was issued based upon various documents resumed from the appellant's premises 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. The appellant are a sector basically providing security service. This is a manpower driven matter and deficiency in a given service always forces the appellant to address the complaints and grievances of the service receivers. A given bill towards the service rendered is never final unless accepted by the service recipient. The general complaints and deficiencies are :

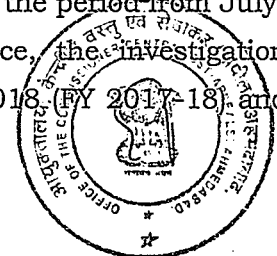
- 1) The guard was found sleeping;
- 2) The guard was untidy dress;
- 3) The guard reported late for duty;
- 4) The guard did not attend a given matter promptly;
- 5) Two guards on duty argued against each other;
- 6) The guard misbehaved;



7) The guard left early and variety of such issues.

Such occurrences force the appellant to compromise 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 times or say more than once, where the original bill was amended downwards. The accounting is being done by a part time casual employee and thus, there were inconsistencies in bills entered in Sales register, bill firstly prepared and bills finally submitted to service receivers. The investigation exploited these short comings to arrive at higher value and demand the tax accordingly. No evidence has been adduced that the incomplete, rough, amended invoices as resumed from the premises of the appellant were related to actual consideration charged from the service receiver. No inquiry is raised before the service receivers, and the bank account of the appellant has not been taken into consideration. Thus, it can be said that the demand is bald wherein no evidence is adduced like verbal, documentary or corroborative from service receivers or bank account and books of accounts. No efforts have been made to examine the veracity 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 and many a times, the bills needs to be amended downward owing to deficiencies. 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 show cause notice. Therefore, the entire SCN is based on assumption & presumption and the same is not tenable under the law in absence of corroborative evidence. Merely a piece of paper can hold no water, unless the same is supported with cogent evidence like books of account, testimony of service receivers etc.
- As per the Show Cause Notice, the instant demand relates to the period from July-2017 to September-2018 and for the sake of convenience, the investigation bifurcated into two periods viz. From July-2017 to March-2018 (FY 2017-18) and

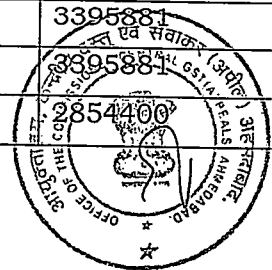


from April-2018 to September-2018 (FY 2018-19). The scrutiny of documents seized during the searches and subsequently submitted by them like Sales Invoices, (July 17 to Sept. 18; Sales).

- The allegation is made that certain reimbursement taken from the service receivers were required to suffer the levy of GST. In fact the reimbursement so taken was telephone expenses and conveyance charges. They were in form of pure agents and were recovered separately as prescribed for pure agent; they were for conveying by transport and telephone expenses of the fire fighters and other emergency teams to the place of incident. The sum so collected was paid to the concerned employees on actual basis and such expenses were incurred for and on behalf of the service receiver. In other words, these recoveries were of expenses made on behalf of the service received and recovery made was on actual basis and no profit was earned.
- In respect of the Educational Institute, the security was exempted and hence no GST was payable. Also in case of SEZ units, being export of service, necessary LUT was obtained and hence not required to pay any GST.
- In the case of year 2017-18, the Annual GSTR-9 was already on records and required to prepare a reconciliation of income. However, in the both the years i.e FY 2017-18 & FY 2018-19 under investigation only part of the year has been taken into consideration of investigation and in the bargain, the annual report and GSTR-9 have lost their relevance, hence the conclusion made by the investigations is in-accurate and faulty. The appellant produced summary of sales, GSTR-1 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 :

ACTUAL TAX PAID DURING THE YEAR 2017-18 & 2018-19 (IN RS.)					
	2017-18	BY	2017-18	2018-19	TOTAL
	DRC-03				
CGST	17328		1834645	1543908	3395881
SGST	17328		1834645	1543908	3395881
IGST	116769		1294967	1442664	2854400



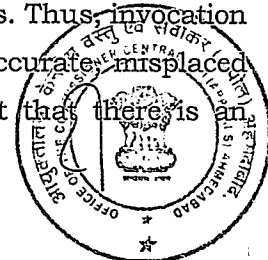
ACTUAL TAX LIABILITY AND EXCESS /SHORT PAID IN 2017-18 & 2018-19 COLLECTIVELY (in Rs.)					Short / Excess
	2017-18 Liability	2017-18 tax paid	2018-19 liability	2018-19 tax paid	
CGST	1849357	1851973	1377432	1543908	Excess paid Rs. 169092/-
SGST	1849357	1851973	1377432	1543908	Excess paid Rs. 169092/-
IGST	1411736	1411736	1481424	1481424	NIL
Total					Excess paid Rs. 3,38,184/-

- Further, the appellant shown some income in the FY 2018-19 as tabulated below :

EXPENSE REIMB. BOOKED IN SALES	Rs.		
1. Maintenance income on Rent	30738		
2. Municipal Tax reimbursement	124828		
3. Interest on IT refund	87900		
4. Discount	858		
5. Gopal fabrics credit balance discount	30680	2761.2	2761.2

From the above, Sr. No. 3 IT refund & 4 discount given has no relevance to GST; Sr no. 5 credit balance discount given as reflected in books of accounts, has suffered levy of GST as shown in the year 2018-19. Sr No.2 relates to reimbursement of municipal tax paid, which shall not attract GST.

- It is further submitted that the adjudicating authority has travelled beyond the scope of the SCN, wherein the SCN the IGST demand was Rs. 6,84,667/-, however, IGST appropriated was Rs.7,16,839/-. So as against the IGST demand of Rs. 6,84,667/-, a sum of IGST Rs. 7,16,839/- cannot be appropriated. By doing so, the adjudicating authority has travelled beyond the scope of SCN and such appropriation is unjust and illegal.
- Imposition of Penalty: The adjudicating authority had erred in as much as they have proposed for 100% penalty under the provisions of Section 74 of the CGST Act, 2017 read with similar provisions of SGST Act. However, such a proposal made is without the authority of law, since all invoices issued are accounted for in books of accounts and returns and also in GSTR-9 and it is not a case of suppression of 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. Thus, invocation of provisions of Section 74 for the imposition of penalty is inaccurate, misplaced and unjust. There has to be prima-facie material to suggest that there is an intention and active action to evade tax payment.



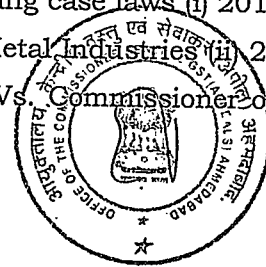
Further, there has been a flaw in the SCN since certain tax has been paid during the course of investigation. Thus, in case, if the person is liable voluntarily pays the amount tax, the interest is recoverable and the proposal for penalty should have been restricted to 15% of the amount of tax already paid. In other words, the penalty ought to have restricted to 15% of such tax paid and not 100%. 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. 23,01,387/- (Rs. 17,55,902/- + Rs. 5,45,485/-) 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. They rely upon the decision of the Hon'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 30.12.2022 submitted their additional submission, wherein they produced (i) ledgers showing charges so collected from M/s. Adani Gas Ltd and paid to appellant's team (expenditure by the appellant) (ii) LUT letter issued by the department to the appellant (iii) Invoices issued to the educational institution (iv) screen shots of GST portal, wherein a sum of Rs. 1,51,425/- was paid voluntarily on 25.01.2020 and Rs. 38,760/- was paid voluntarily on 20.08.2020. They further, contended that in OIO, the IGST appropriated was more than the IGST tax demanded and confirmed and therefore excess IGST appropriated and IGST paid and reflected may be ordered to be refunded.

They further submitted that in the entire investigation, no evidence has been adduced from the service / supply receivers and various records found was summarized and highest amount derived was taken to issued the instant demand. The amended, duplicate, changed, cancelled invoices have been taken into consideration to inflate and arrive at the highest value of services of rendition. Also, the service receivers are also corporate entities and housing societies, who would not make any payment in cash. In the matter they placed their reliance on the following case laws (i) 2019 (366) ELT 1019 (Del) Commr of GST Delhi (East) Vs, Ashutosh Metal Industries (ii) 2017 (5) GSTL 327 (Tri.-Del) Varsed Detective & Security Pvt. Ltd Vs. Commissioner of C.Ex, Jaipur.



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 asked for 5 working days to submit additional submission, which was granted to them. They have nothing more to add to their written submission till date.

Discussion and findings:

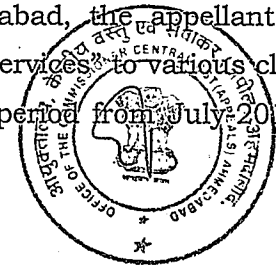
6. I have carefully gone through the facts of the case available on record and grounds of appeal in the Appeal Memorandum as well as the additional submissions, the oral submissions made by the appellant at the time of hearing. The issues to be decided in the present appeal are

(i) Whether the amount of Rs.2,26,20,750/- suppressed by the appellant during the period from July-2017 to September-2018, by way of non-filing of the statutory GSTR-1M returns for the period Jun-2018 to September-2018 and by resorting to suppression of certain out ward supplies for providing taxable supplies / services on which GST liability Rs. 27,35,003/- should be demanded and recovered under Section 74(1) of the CGST Act, 2017 read with the GGST Act, 2017 and section 20 of IGST Act, 2017, is legally correct or otherwise?

(ii) Whether the demand of GST liability amounting to Rs. 27,35,003/- (IGST - Rs. 6,84,667/- + CGST Rs. 10,25,168/- + SGST Rs. 10,25,168/-) confirmed under the Section 74(1) of the CGST Act, 2017 alongwith interest leviable thereon under Section 50 of the CGST Act, 2017 read with GGST Act, 2017 further read with Section 20 of IGST Act, 2017 is legally correct or otherwise?

(iii) Whether the penalty of Rs. 27,35,003/- (IGST - Rs. 6,84,667/- + CGST Rs. 10,25,168/- + SGST Rs. 10,25,168/-) imposed upon the appellant under Section 74 of the CGST Act, 2017 read with the GGST Act, 2017 further read with Section 20 of IGST 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. Galaxy Security and Menpower Services Private Limited, at 302,Narayan Complex, Opp. Havmor Restaurant, Navrangpura, Ahmedabad : 380 009 by the Officers of DGCI, Ahmedabad Zonal Unit, Ahmedabad, the appellant had supplied "security / guarding services" and "fire and safety services" to various clients having registered GSTIN - 24AACCG2057L1ZO during the period from July 2017 to



September-2018, the appellant had suppressed their actual turnover and had indulged into evasion of tax during the Pre-GST and Post-GST period. It is also observed that the appellant had not filed the statutory GSTR-1M returns for the period from Jun-2018 to Sept-2018 and they had also not filed the GSTR-3B returns for the period from April-2018 to September-2018 and thus the present investigation covers the GST regime i.e from July-2017 to September-2018 and the period has been bifurcated into two period viz. From July-2017 to March-2018 (FY 2017-18) and from April-2018 to September-2018 (FY 2018-19) by the investigation agency.

Further, the scrutiny of the documents seized by DGGI on 25.10.2018 during the search and subsequent submitted by the appellant on 24.12.2019 which revealed that the appellant were engaged in the supply of "security / guarding services" and "fire and safety services" to various clients during the period from July-2017 to Sept-2018 and which happened to be the major source of revenue for the appellant and they had also received minor income from activities such as "renting and maintenance income" from one of the service recipient M/s. Adani Gas Limited, as the appellant charged and collected GST@18% from them on the value of the taxable supplies effected by them, wherever applicable. Such transactions / tax invoices were duly recorded in the sales ledgers maintained by them at their premises.

Scrutiny of the documents/ statutory records also revealed that the appellant had effected both taxable as well as exempted / zero-rated supplies during the period from Jul-2017 to September-2018. While the appellant had claimed exemption in respect of outward supplies provided to "Educational Institutes", the zero-rated supplies were provided to "SEZ Units", they had charged and collected GST @18% on the tax-invoices issued by them during the aforesaid period, wherever applicable.

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

- (i) The appellant is a private limited company and holding GSTIN 24AACCG2057L1ZO and he is the Managing Director and the other Director is his sister-in-law namely Smt. Sheela Shivanand Tiwari.
- (ii) The appellant is engaged in the business of providing security and detective agency services and fire & safety services and as they were not engaged in providing any other services;



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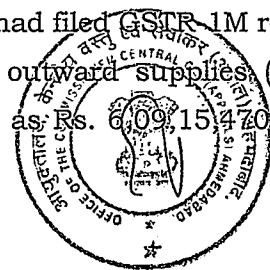
- (iii) The appellant had provided services to SEZ units namely M/s. Adani Ports and Special Economic Zone Limited, M/s. Adani Mundra SEZ Infrastructure and M/s. Adani International Container Limited which are exempted;
- (iv) The appellant firm had discharged GST liability and filed all the returns viz. GSTR-3B and GSTR-1M up to the month of March-2018; they have not discharged GST liability from April 2018 and that the approximate liability comes to Rs. 23,50,034/- comprising of CGST Rs. 8,55,464/- + SGST Rs. 8,55,464/- and IGST Rs. 6,39,156/-;
- (v) That he has admitted the short payment of GST liability on behalf of his company and being the Director of the company he takes responsibility for the non-payment / short-payment of GST.

During the search, the officers of DGGI, Ahmedabad, have seized the appellant's records viz. Sales ledgers / 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. Further, the appellant vide their submission dated 19.12.2019 had submitted the following documents to the Investigating Agency i.e DGGI, Ahmedabad.

- (1) Sales Invoices for services provided during the period from July-2017 to September-2018;
- (2) Sales Ledgers for the period from July-2017 to September -2018;
- (3) Form 26AS for FY 2018-19;
- (4) Copy of Letter of Undertaking (LUT)

7.2 I find that the investigating agency DGGI, as per **para 7.2, 7.3 & 7.4** of the Show Cause Notice NO. DGGI/AZU/Gr.A/12(4) 174/2019-20 dated 30.6.2021 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-18 with sales ledgers invoices and sales invoices.

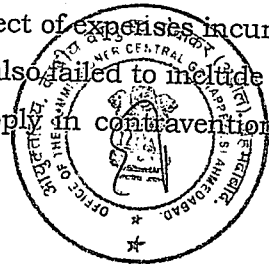
Vide which the investigation revealed that the appellant had filed GSTR-1M returns for the period July-2017 to Sept-2018 for total value of outward supplies (taxable + exempted / zero-rated) & credit notes worked out to be as Rs. 6,09,15,440/- (as per Table-V of the SCN).



In view of the investigation, I also find that the investigating agency DGGI has established that the appellant had suppressed a total value of outward supplies amounting to Rs. 2,26,20,750/- for the period from Jul-17 to Sept-18 by resorting to suppression of certain outward supplies made by them in the GSTR-1M returns filed by them. Further, the appellant had stated in his recorded statement dated 25.10.2018 that they had neither discharged the GST liability for the period April-2018 to September-2018 nor had they filed GSTR-3B returns for the even period. Post initiation of proceedings against them, out of the total suppressed turnover of Rs. 2,26,20,750/-, they have disclosed details of turnover amounting to Rs. 2,09,73,514/- (Rs. 1,09,18,097/- in GSTR-1M returns filed for the June-2018 to Sept-18 and Rs. 1,00,55,417/- in GSTR-1M return filed for Oct-2018).

Vide which the investigation revealed that the appellant had paid GST liability of Rs. 49,64,257/- prior to initiation of proceedings against them on 25.10.2018 whereas they had made payment of GST liability Rs. 17,55,902/- post initiation of proceedings and filed GSTR-3B returns for the period from July-2017 to September-2018 belatedly. However, no interest liability had been paid by them despite such delayed filing of GSTR-3B returns and late payment of GST liability. Investigation also revealed and proved that even the GST liability amounting to Rs. 67,20,159/- (Rs. 49,64,257/- + Rs. 17,55,902/-) paid by the appellant in GSTR-3B for the period Jul-17 to Sept-18 was not the true GST liability which is required to be paid and that they had indulged into suppression of taxable turnover and short-payment / non-payment of GST as elaborated in the impugned SCN dated 30.06.2021.

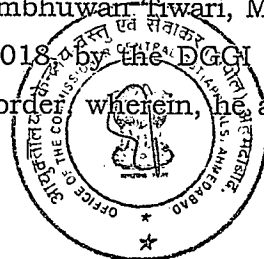
7.3 I find that the appellant had supplied "security / guarding services" to their various clients during the period July-2017 to September-2018 and such transactions / tax invoices were duly recorded in their sales ledgers maintained by them, which are statutory documents required to be kept and maintained as per Section 35 of the CGST Act, 2017, by the registered person. Investigation revealed that there existed evidence of outward supplies made by the appellant during the period July-2017 to Sept-2018 which were not reported in the GSTR-1M filed by them for the even period as well as the appellant had also failed to disclose information in respect of reimbursements received by them from their recipients in respect of expenses incurred by them during the course of supply of services and they had also failed to include the value of such reimbursement in the value of the taxable supply in contravention of Section 15 of the CGST Act, 2017.



7.4 I also find that the investigation revealed that by resorting to the modus adopted by the appellant of non-filing of statutory GST returns, suppression of value of taxable outward supplies and non-disclosure of receipt of reimbursement, the appellant had short-paid / not-paid GST liability amounting to Rs. 27,35,003/- (IGST : Rs. 6,84,667/- + CGST Rs. 10,25,168/- + SGST Rs. 10,25,168/-) during the period from July-2017 to September-2018. Further, the appellant had filed GSTR-3B returns for the period April-18 to Sept-2018 wherein total GST liability amounting to Rs. 17,55,902/- was paid by them. Additionally, they had made payment of GST liability amounting to Rs. 5,45,485/- in respect of outward supplied made by them during the period from April-2018 to Sept-2018 in the GSTR-3B filed for the month of October-2018. The GST liability amounting to Rs. 23,01,387/- (Rs. 17,55,902/- plus Rs. 5,45,485/-) has been paid by them, which is further corroborated from the statement of Shri Shrikant Rambhuvan Tiwari, Managing Director of the appellant company.

7.5 As regards the contention of the appellant that "there are no corroborative evidences", I find as per the facts mentioned at **Para 7.2 to 7.4** of the Show Cause Notice dated 30.06.2021 that the investigation was proved that in respect of the outward supplies made by the appellant and details mentioned in the sales ledgers maintained by them are majorly in consonance with the details present in the available sales invoices / sales ledgers seized during the course of search. Accordingly, I find that the version of the Managing Director regarding acceptance of tax evasion is also corroborated by the details provided in Para-7.1 to 7.6 of the Show Cause Notice dated 30.06.2021 as well. I also find that the scrutiny of sales ledgers seized on 25.10.2018 revealed that apart from supplying security / guarding services which happened to be major source of revenue for the appellant, they had also received minor income from activities such as renting and maintenance on which they had charged and collected GST @18% from the service recipient M/s. Adani Gas Limited. The investigating agency DGGI revealed from the scrutiny of documents / statutory records that the appellant had effected both taxable as well as exempted / zero-rated supplies during the period from Jul-17 to Sept-18. While the appellant had claimed exemption in respect of outward supplies provided to "Educational Institutes", the zero-rated supplies were provided to "SEZ Units". Further, the appellant had charged and collected GST@18% on the tax invoices issued by them during the aforesaid period, wherever applicable.

7.3 I also find that the statement of Shri Shrikant Rambhuvan Tiwari, Managing Director of the appellant firm, were recorded on 25.10.2018 by the DGGI Officers, Ahmedabad, and as per Para-8,9 & 10 of the impugned order, wherein, he admitted

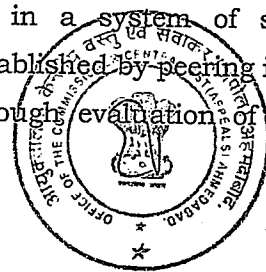


the short payment of GST liability if any as calculated for under-reporting / total turnover of the firm as per the Sales ledgers, in their GSTR-1M returns for the period July-2017 to Sept-2018, I also find that the appellant has neither attended personal hearings offered by the adjudicating authority nor I find that they have filed any affidavit to retract their aforesaid statement which were recorded by the DGGI officers on 25.10.2018. 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 Managing Director of the appellant company 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.

I further find that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of the CGST Act, 2017 read with Section 59 of GGST Act, 2017 further read with IGST Act, 2017. In this scheme of self-assessment, the department comes to know about the supplies made and the GST liability paid by a taxpayer only during the scrutiny of the statutory returns filed by the registered tax payers. Therefore, it places greater onus on the tax payer to comply with higher standards of disclosure of information in statutory returns. Further the "suppression" has been well defined under Section 74 of the CGST Act, 2017 read with the GGST Act, 2017 and further read with IGST Act, 2017, which is reproduced as under:

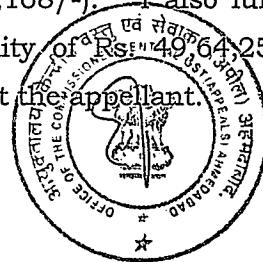
Explanation 2. — For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish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

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 suppressed the information and non-filing of GSTR-1M and 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 the appellant 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 wilful 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 suppressed the information and non-filing of GSTR-1M & 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 failed to discharge the applicable GST on the outward taxable supplies made by them (as recorded in their sales ledgers) during the period from July-2017 to September 2018. Accordingly, GST liability of Rs. 27,35,003/- (IGST : Rs. 6,84,667/- + CGST Rs. 10,25,168/- + SGST Rs. 10,25,168/-) evaded by the appellant during the period from July-2017 to September-2018, on their outward taxable supplies, is liable to be recovered by invoking extended period under Section 74 of the CGST Act, 2017 read with Section 74 of the GGST Act, 2017 further read with Section 20 of the IGST Act, 2017. Further, the appellant is also liable to pay interest in accordance with Section 50 of the CGST Act, 2017 read with Section 50 of GGST Act, 2017 further read with Section 20 of the IGST Act, 2017 on the evaded GST liability of Rs. 27,35,003/-. The GST liability amounting to Rs. 23,01,387/- (IGST Rs. 6,84,667/-; to that extent only, CGST Rs.7,16,839/-, SGST Rs. 7,16,839/-) paid post initiation of search proceedings for the period July-2017 to Sept-2018 by the appellant is also ordered to be appropriated against GST liability of Rs. 27,35,003/- (IGST Rs.6,84,667/-, CGST Rs. 10,25,168/-, SGST Rs. 10,25,168/-). I also further find that the appellant had not paid interest of GST liability of Rs. 49,64,257/- paid belatedly but prior to initiation of the investigation against the appellant.



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 in their appeal memorandum and additional submission as per **Para 4.1** above would not be applicable in the present case. Hence, the contention of the appellant is not legally sustainable.

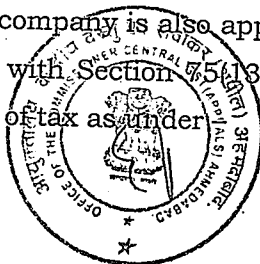
8. As regards the contention of the appellant as mentioned in Para -4.1 above, in respect of the penalty imposed under Section 74 of the CGST read with the GGST Act, 2017, the relevant provision of the Section 74 of the act is reproduced below:

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 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.

8.1 As per the facts available on record, it is categorically admitted in the present case that the Managing Director of the appellant company had resorted to suppression of taxable value by non-disclosure of information of total value of taxable value of services provided which was not 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 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 Managing Director of the appellant company is also apparent. 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



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"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 further read with Section 20 of IGST Act, 2017, is not imposable. Therefore, I uphold that the penalty under Section 122(1)(iii), (iv), (xv) and 122(2)(b) of CGST Act, 2017 read with Section 122(1)(iii),(iv),(xv) and (xv) & 122(2)(b) of GGST Act, 2017 further read with Section 20 of IGST Act, 2017, should not be imposed.

9. 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.

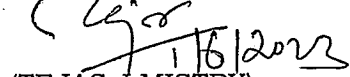
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


31/05/23

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

Attested


16/05/2023
(TEJAS J MISTRY)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,

M/s. Galaxy Security and Menpower Services Pvt. Ltd. [GSTIN-24AACCG2057L1ZO]
[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.

