



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20240264SW0000212771

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/2924/2023 -APPEAL / 1258 - 43ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC- 135/2023-24**दिनांक Date : **30.01.2024** जारी करने की तारीख Date of Issue : 07.02.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. GST-06/D-VI/O&A/746/SAFFRON/ AM/2022-23 dt. 22/03/2023 issued by The Assistant Commissioner, CGST & CX, Division VI, Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant	Respondents
M/s Saffron Therapeutics Private Limited, 901, Times Square Arcade, Opp. Rambaug Near Ravija Plaza, Thaltej-Shilaji Road , Ahmeabad - 380059	The Assistant Commissioner, CGST & CX, Division VI, Ahmedabad North

(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. Saffron Therapeutics Pvt Ltd., 901, Times Square Arcade, Opp. Rambaugh, Near Havija Plaza, Thaltej-Shilaj Road, Thaltej, Ahmedabad (hereinafter referred to as "*the appellant*"), have filed appeal against Order-In-Original No.GST-06/D-VI/O&A/746/SAFFRON/AM/2022-23, dated 22.03.2023 (hereinafter referred to as the "*impugned order*") passed by the Assistant Commissioner, CGST &C.Ex., Division-VI, Ahmedabad-North Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. Facts of the case in brief, are that the appellant is engaged in the business of marketing of key therapeutics segments and are registered with GST registration No.24AAUCS7031C1ZD. Based on an information, DGCEI initiated an inquiry against the appellant and it was found out that the appellant had filed GSTR-1 & GSTR-3B from July'2017 to January, 2018 only and GSTR-1 for February'2018 & March'2018 and had not filed GSTR-3B for the month of February '2018 and March'2018. Further, they had not filed GSTR-1 (return for detail outward supplies) and GSTR-3B (return for payment of tax) from April'2018 to February'2019 and also had not discharged their GST liability for the said period. On initiation of inquiry by the DGCI, the appellant paid the GST of Rs. 1,10,92,561/- (IGST Rs.97,38,049/- + CGST Rs.6,77,256/- + SGST Rs.6,77,256/-) on the outward supplies value of Rs. 8,85,45,582/-.

3. Accordingly, show cause notice dated 30.06.2021 was issued to the appellant calling for reasons as to why:

(i) Recovery of GST of Rs.1,10,92,561/- (IGST Rs.97,38,049/- + CGST Rs.6,77,256/- + SGST Rs.6,77,256/-), not paid during the period from Feb'2018 to Feb.'2019 under Section 74 of CGST Act, 2017 read with SGST Act, 2017 and IGST Act, 2017 as applicable and since the said amount of GST of Rs.1,10,92,561/- (IGST Rs.97,38,049/- + CGST Rs.6,77,256/- + SGST Rs.6,77,256/-), has been paid by the Noticee, appropriation of the same against their liability to pay the GST;

(ii) Recovery of interest at applicable rate on the amount of GST shown at (i) above, under Section 50 of the CGST Act, 2017, read with SGST Act, 2017 and IGST Act, 2017 as applicable;

(iii) Imposition of penalty under Section 74, Section 122(1)(iii), Section 122(1)(iv), Section 122(1)(2)(b) and Section 125 of the CGST Act, 2017 read with SGST Act, 2017 and IGST Act, 2017 as applicable.

4. The adjudicating authority vide his impugned order (i) confirmed the demand and appropriated the GST amount paid against the liability by the appellant under Section 74 of the CGST Act, 2017 read with SGST and IGST Act, 2017. (ii) Confirmed and ordered to recover interest of Rs.21,85,215/- under Section 50 of the CGST, SGST and IGST Act, 2017 (iii) Imposed penalty of Rs. 1,10,92561/- (IGST Rs.97,38,049/- + CGST Rs. 6,77,256/- + SGST Rs.6,77,256/-) under Section 74 read with Section 122(1)(iii), Section 122(1)(iv),Section 122(1)(xvi),and Section 122(2)(b) of the CGST Act, 2017 alongwith the IGST Act and State Act.

5. Being aggrieved with the impugned order preferred appeal for the interest and penalty portion of the order before the appellate authority on 06.07.2023 on the following grounds;-

- i. That the interest will be levied on only cash component under provision of section 50 amended vide section 100 of the Finance Act, 2019 to charge interest on net case liability having retrospective effect wef 01.07.2017 which was clarified vide Notfn. No. CBIC/20/10/08-2019-GST, dated 18.09.2020;
- ii. Appellant has not suppressed or concealed any facts and furnished the all required documents before the Ld. Assistant Commissioner. There was bonafide reason for non filing of return and not discharging the tax liability.
- iii. Further vide notfn. No.76/2019-Central Tax the due date of filing of returns for the period July'2017 to November'2019 was extended till 10th January 2020. Hence the appellant has filed its return in time. So the question of levy of any penalty does not arise.
- iv. That they do not have any malafide intention to fraudulently evade payment of tax. The penal provisions being grave allegations against the appellant cannot be invoked in cases where there is no malafide



intention and due process of law has been followed but his bonafide reason. The appellant had already paid the tax and there was no intention of evasion of tax. Hence no tax or penalty could have levied under section 122 of the Act.

- v. The Asst. Commissioner passed the impugned order against the law, equity and justice without verification of facts and documents available on record and on presumption and surmises in order to raise high pitch demands. The adjudicating authority has erred in law and on levying penalty of Rs. 1,10,92,561/- under section 74 read with Section 122(1)(iii), Section 122(1)(iv), Section 122(1)(xvi), and Section 122(2)(b) of the CGST Act, 2017 alongwith the IGST Act and State Act.

PERSONAL HEARING

6. Personal Hearing in the matter was scheduled on 26.10.2023, 09.11.2023, 21.11.2023 and 30.11.2023, the appellant did not attend the personal hearing in spite opportunities given to them. However, the appellant forwarded copy of the NCLT order number C.P.(LB) No.2/7/NCLT/AHM/2023 dated 25.09.2023. As per National Company Law Tribunal, Ahmedabad (NCLT for the sake of brevity) vide its order under reference number C.P.(LB) No.2/7/NCLT/AHM/2023 dated 25.09.2023 against the appellant (Corporate Debtor) pursuant to which had appointed Shri Omkar Maloo, Insolvency Professional bearing registration No. IBBI/IPA/001/IP-P00435/2017-18/10758 was appointed as the Interim Resolution Professional (IRP) for the appellant and attached the copy of the said order.

7. As per the NCLT order one company by name M/s. Gusaiji Trading Private Ltd. had filed a representation against the appellant through its authorized representative under Section 7 of the Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against the appellant for defaulting an amount of Rs.3,20,71,902.80, and accordingly liquidation process has been initiated.

DISCUSSION & FINDINGS

8. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the *appellant* and documents available on record. At the outset, it is found that the *impugned order* was issued on 23.06.2023 and present appeal was filed on 13.09.2023 i.e. within the three months time limit as prescribed under Section 107 of the CGST Act, 2017.

9. In the instant case the issue is pertaining to non-filing of returns i.e., GSTR-1 and GSTR-3B for the period GSTR-1 for February'2018 & March'2018 and had not filed GSTR-3B for the month of February '2018 and March'2018. Further, they had not filed GSTR-1 (return for detail outward supplies) and GSTR-3B (return for payment of tax) both from April'2018 to February'2019 and also had not discharged their GST liability for the said period. It seems that the appellant had not intimated the department about the ongoing liquidation process. The appellant being Corporate Debtor, undergoing Corporate Insolvency Resolution process for which IT/RP appointed vide NCLT order dated 25.09.2023. Further, the NCLT vide its order dated 25.09.2023 liquidation of M/s. Saffron Therapeutics Private Ltd., allowed and Shri Omkar Maloo Chartered Accountant and Insolvency Professional has been appointed as liquidator as per Insolvency and Bankruptcy Code 2016. Now Shri Omkar Maloo, being authorized signatory of the firm has furnished copy of the NCLT order in response to the communication of personal hearing and intimated about the liquidation process.

10. I observe as per CBEC-Circular No.134/04/2020-GST dated 23.03.2020 issued under F.No.CBEC-20/16/12/2020-GST, certain clarifications were issued by the Board on issues under GST law for companies under Insolvency and Bankruptcy Code, 2016. As per IBC once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (CIRP) gets triggered and the management of such entity and its assets vest with an interim resolution professional. It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over, and an order is passed by the NCLT. The CBIC vide Notification No.11/2020-Central Tax dated 21.03.2020, has issued prescribing special procedure under Section 148 of the CGST, Act 2017 for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP which is reproduced below relating to present case.



S.No.	Issue	Clarification
1.	How are dues under GST for pre-CIRP period be dealt?	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be

		<p>treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT.</p> <p>Moreover, Section 14 of the IBC mandates the imposition of moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.</p>
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11. In view of the above clarifications issued by the Board, on going through the date of impugned order is 22.03.2023 and the date of NCLT order is 25.09.2023, it is observed that the adjudicating authority has passed the impugned order much before he became aware of the liquidation proceedings. Further neither the corporate debtor nor the Interim Resolution Professional/Resolution Professional appointed by NCLT had made any correspondence to the Department of such proceeding. Further, the appellant had filed appeal on 06.07.2023, that is much before the date of NCLT order, and no communication been made with the department, I proceed further to decide the subject case.

12. It is observe that the appellant has paid the GST amount based on an inquiry by the DGCEI, Rs.1,10,92,561/- (IGST Rs.97,38,049/- + CGST Rs.6,77,256/- + SGST Rs.6,77,256/-), and has appealed for waiving of interest and penalty aspect. However, as per Rule 59 of the CGST Rules, 2017 read with GGST Rules, 2017 (1) Every registered person, other than a person referred to in Section 14 of the IGST Act, 2017 required to furnish the details of outward supplies of goods or services or both under Section 37, shall furnish such details in Form GSTR-1 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner. (2) The details of outward supplies of goods or services or both furnish in Form GSTR-1 shall include that – invoice details of all inter-state and intra-state supplies made to the registered persons; and inter-state supplies with invoice value more than two and a half lakh rupees made to the unregistered persons; b. consolidated details of all and (c) debit and credit notes, if any, issued during

the month for invoices issued previously. In view of the above, had the DGCEI had not initiated inquiry on 12.03.2019, the appellant would have not paid the GST. The appellant contention and reference to Notification No. 74/2019-Central Tax is also cannot be accepted, as the said Notification waives the late fee for returns filed late and does not mention or waives due date for filing late returns and discharging GST. Accordingly, the adjudicating authority has appropriately confirmed the demand of Rs. 1,10,92,561/- and also appropriated the tax paid by the appellant correctly.

13. Now coming to the aspect of interest levied of Rs. 21,85,215/- under Section 50 of CGST Act, 2017, the appellant in their grounds of appeal have stated that interest will be levied on only cash component under provision of Section 50 amended vide Section 100 of the Finance Act, 2019 to charge interest on Net cash liability having retrospective effect w.e.f. 01.07.2017. However, where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period or for any other reason otherwise of belated return, the interest will be payable on the **total amount** of output tax liability. In the present case, the appellant's contentions cannot be accepted. If the appellant has not remitted the amount deducted as TDS to the government within the prescribed time limit, he is liable to pay interest under Section 50 in addition to the amount of tax deducted.

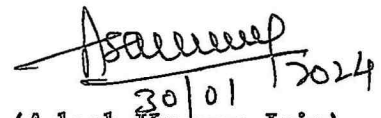
14. In respect of penalty imposed upon the appellant, they have contended that they have not suppressed or concealed any facts and furnished the all required documents before the adjudicating authority. As they were facing financial crunch, they had bonafide reason for non filing of return and not discharging the tax liability. However in the instant case it is observed that the appellant had not filed returns i.e, GSTR-1 and GSTR-3B for the period GSTR-1 for February'2018 & March'2018 and GSTR-3B for the month of February '2018 and March'2018. Further, they had not filed GSTR-1 (return for detail outward supplies) and GSTR-3B (return for payment of tax) both from April'2018 to February'2019 and also had not discharged their GST liability for the said period and had the DGCEI had not initiated inquiry on 12.03.2019, the appellant would have not paid the GST. Hence, the penalty imposed under Section 74 read with Section 122(1)(iii), Section 122(1)(iv), Section 122(1)(xvi), and Section 122(2)(b) of the CGST Act, 2017 alongwith the IGST Act and State Act by the adjudicating authority is legal and proper.



15. In view of the above discussions and findings, I do not find any inference to interfere in the impugned order passed by the adjudicating authority. Therefore, I uphold the impugned order and reject the appeal filed by the appellant.

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.

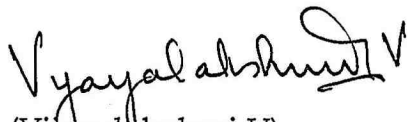


(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: .01.2024

Attested



(Vijayalakshmi V)

Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
M/s. Saffron Therapeutics Private Limited
901, Times Square Arcade, Opp. Rambaug
Near Ravija Plaza, Thaltej-Shilaj Road
Ahmedabad-380059
Gujarat

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 Dy/Asstt. Commissioner, CGST, Division-VI, Ahmedabad North
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

