



सत्यमेव जयते

आयुक्तकार्यालय
Office of the Commissioner
केन्द्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/3096/2023 / 2816-2 \
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-148/2023-24 and 29.02.2024
(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	05.03.2024
(ङ)	Arising out of Order-In-Original No. GST-07/SUPDT/Range-II/BSB/23-24 dated 14.07.2023 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 Hitendrakumar Chamanlal Shah (Labdhi Traders) (GSTIN: 24ACVPS6558C1Z3) 8, Bansidhar Complex, Mandal Road, Viramgam, Ahmedabad, Gujarat-382150

(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 <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. LABDHI TRADERS having principal place of business situated at 8, Bausidhar Complex, Mandal Road, Viramgam, Ahmedabad, Gujarat-382150(GSTIN:24ACVPS6558C1Z3)(hereinafter referred to as the "Appellant") has filed appeal against OIO No.GST-07/SUPDT/RANG-II/BSB/23-24 dated 14.07.2023(herein after referred as the "impugned order") passed by the Superintendent CGST & C.Ex., AR-II,Division III, Ahmedabad-North Commissionerate, Ahmedabad(hereinafter referred to as the 'adjudicating authority').

2. Brief facts of the case are that the Appellant are engaged in trading of sunflower seed safflower or cotton seed oil and fractions thereof, whether or not refined, but not chemically modified sunflower seed or safflower oil. During the detailed scrutiny of the returns of the Appellant, covering the period from July 2017 to March 2018, it was observed that they had made Short payment of tax, difference in GSTR-1 and GSTR3-B returns to the extent of Rs.4,60,635 /- (Rs. - 6,51,380/- (IGST) +Rs.95,373/- (CGST)+ Rs.95,373/- (SGST). Consequently, after scrutiny of GST returns for the corresponding period, Form GST ASMT-10 dated 31.05.2022 was issued followed by DRC-01A dated 12.12.2022 to the Appellant. The Appellant did not respond to the said notice, however accepted their liability and accordingly they paid IGST liability of Rs.4,60,635/- deposited vide ARN No.AD240323000019T in the electronic credit ledger and subsequently debited the said tax vide DRC-03 dated 01.03.2023 by Debit entry No.DC2403230000118 dated 01.03.2023, however they did not pay the interest for the delay in paying IGST and not paid the penalty under Section 74(1)/73(1) of CGST/GGST Act 2017 read with Section 20 of the IGST Act, 2017 for the said short payment.

In view of above, appellant were issued Show Cause Notice dated 16.03.2023 to show cause as to why:-

"(i) The short payment to Rs.4,60,635/- (Rs.-6,51,380/- (IGST) + Rs 95,373/- GST + Rs.95,373/- (SGST)) should not be disallowed and recovered from the tax payer, under the provisions of CGST Act, 2017 and Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017. The taxpayer paid short

payment of GST liability of Rs.4,60,653/- vide ARN No.AD240323000019T & Debit entry No.DC2403230000118 dated 01.03.2023 should not be appropriated against the demand.

(ii) Interest should not be charged and recovered from them, under the provisions of Sections 50(1) of the CGST ACT, 2017 read with Sections 50 (1) of Gujarat GST Act, 2017 and read with the provisions of Section 20 of the IGST Act, 2017 for the proposed recovery herein above as discussed.

(iii) Penalty should not be imposed on them under the provisions of Section 74(l) 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 evaded tax herein above as discussed.'

3. The adjudicating authority vide the impugned order passed the following:

"(i) I confirm the short payment amounting to Rs.4,60,635/- IGST (Rs.95,373/- (CGST) + Rs.95373/- (SGST).I also order and recover the same from them under the provisions of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act 2017 read with the provisions of Section 20 of the IGST Act, 2017. As the taxpayer has paid GST liability of Rs.4,60,635/- vide ARN No.AD240323000019T & Debit entry No.DC2403230000118 dated 01.03.2023, is hereby appropriated against their Govt. outstanding liability.

(ii) I order that interest applicable rates recovered from them, under the provisions of Sections 50(1) of the CGST Act, 2017 read with proviso to Sections 50(1) of Gujarat GST Act, 2017 on the above demand at (i) above.

(iii) I impose penalty of Rs.4,60,653/- under the provisions of Sections 74(l)/ 74(1) of the CGST Act,2017 read with 122(1)(a) of CGST/ GGST Act 2017 & read with the provisions of Section 20 of the IGST Act.2017 on the evaded tax herein above as discussed."

4. Being aggrieved with the impugned order, the Appellant filed the present appeal on 11.10.2023 on the grounds that:

"1. The Learned Superintendent, Range - II, Div. - III, Ahmedabad North Commissionerate, Ahmedabad has erred in passing Order GST DRC-07, Dt.14/07/2023. The Learned Assessing Authority has Not properly consider the Fact of the Case, when Appellant has clarified the Discrepancy arised in Filing GSTR - 1, and GSTR-3 B - for the Month of July -- 2017 and August-2017 by producing Documents, Books of Accounts than he ought to have work as Qussi Judicial authority, because Appellant has proved that, due to New Act came in to Force From: 01/07/2017 Computer Operator has committed

Mistake at the time of Data preparation in GSTR - 1, for the Month of July-2017 and August-2017.

Ultimately, said Mistake Rectified in GSTR - 3 B, which are correct figures and Books of Accounts. Which are Not accepted by the Authority. Therefore, Demand of Tax - Rs.4,60,653/- raised as shortfall is against Principle of Natural Justice and Liable to be Set - aside.

2. To avoid further Litigation, in spite of No Shortfall Tax of Rs.4,60,653/- to Cooperate the Department Officer as well as Oral Instruction of Officer, Appellant has Paid Rs.4,60,653/- on Dt.01/03/2023 in DRC - 3 under protest, than also thereafter Order passed for Interest and Penalty.

3. It appears from facts of the Case, Appellant has Not made Short Payment / Shortfall but, some mistake done while filing GSTR- 1, for the Month of July-2017 and August 2017, which was rectified in GSTR - 3 B. Therefore, there is No intention to defraud the Government of Rs.4,60,650/- on Dt.01/03/2023. In such circumstances, 10% payment towards Pre-deposit not require, but Chalan is enclosed herewith of Rs.4,60,650/- paid on 01-03-2023.

4. When TAX it-self is Not Sustainable, therefore Subsequently Interest and Penalty - Demands are Liable to be Set - aside.

Even otherwise as regarding penalty, the action of the appellant is bonafied as there is no deliberate Defiance of Law. The action is not contumacious and therefore, the Authority is Not Justified in levying Penalty in View of the Principle Laid Down by the Apex Court in the Case of M/s. Hindustan Steel and Other Judgments.

M/s. Hindustan Steel Ltd.	025 STC 211.-S. C
M/s. Sanjiv Fabrics.	035 VT 001. -S. C.
M/s. Shree Krishna Electrical.	023 VST 249.-S. C.
M/s. Food Corpo. Of India.	045 VST 009. - Patna H. C."

The appellant has further prayed that the impugned order be set aside.

5. Personal Hearing:

Personal Hearing in the matter was held on 19.12.2023, wherein Shri D.S.Vakil, Advocate appeared in person on behalf of the 'Appellant' as Authorized Representative before the appellate authority. He submitted that by mistake data of JULY 2017 was copied and pasted for August-2017. The Ld. Adjudicating authority has demanded Tax based on GSTR-3B and GSTR-1 difference, but not considered the ITC of August-2017 and this mistake was

corrected in Annual Return i.e. GSTR-9 C. Details have been submitted as additional submissions. He further reiterated the written submissions and requested to allow appeal.

Additional Submissions:

The appellant has further submitted statement of Additional facts and Grounds, the brief of it as under:

Pursuant to completion of scrutiny of Returns for the period July-2017 to march-2018, ASMT-10 dated 31.05.2022 and DRC-01A dated 12.12.2022 were issued communicating the discrepancy noticed.

Month	As perGSTR-1	As per GSTR-3B	Shortfall/Excess
July-2017	2,59,117.55	2,59,118.00	0.45
August-2017	7,19,742.90	2,59,118.00	4,60,624.90

By considering above summary, Authority came to conclusion that, the Tax payer require to pay the Short payment of IGST of Rs.4,60,635/- along with interest and penalty.

In spite of Appellant has clarified that, due to Computer operator mistake above difference arised, which mistake rectify in GSTR-9, about mistake done in GSTR-3B, we produced the relevant documents at the time of hearing before the Assessing authority but the Assessing authority passed the Demand order asking for interest and penalty.

Further, the appellant has submitted details of Sales summary, GSTR-9 (Annual Return) details of Outward and inward supplies during the financial year, 2017-18 filed on 27.01.2020, Trading account 1.07.2017 to 31.03.2018, Purchase working summary July-17 to March-18, ITC working summary As per Books & GSTR-9 and as per GSTR-3B filed along with summary of cash ledger for the period 01.07.2017 to 30.04.2018.

6. Discussion and Findings:

6.1. 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 observe that the, appellantis mainly contesting with,that adjudicating authority has passed the impugned order under heavy pressure, that inspite of clarification of the matter that the mistake was on the part of their Computer Operator, that the figures of July-2017 data were copied and

pasted in August-2017 and the adjudicating authority based on such data in of GSTR-3B and GSTR-1 difference, demanded the tax without considering the ITC of August-2017 in spite of the fact that the said mistake was corrected by the appellant in GSTR-9C i.e. Annual Return.

6.2 So the issue to be decided in the present appeal is:

(i) Whether the order passed by the adjudicating authority is proper or otherwise?

6.3 At the foremost, I observed that in the instant case the "impugned order" is of dated 14.07.2023 and the present appeal is filed on 11.10.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. I observe that in the instant case the appeal has been filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.4 I observe that, the appellant has paid IGST liability of Rs.4,60,635/- vide debit entry dated 01.03.2023 in DRC-03 as per the GSTR ASMT-10 issued dated 31.05.2022 and DRC-01A dated 12.12.2022 for the difference in GSTR-1 and GSTR-3 B for the month of August-2017. The appellant has contested that the adjudicating authority has not considered the ITC available of August-2017 for the purpose of payment of differential amount of Tax (IGST) amounting to Rs.4,60,635/-.

6.5 In the matter, I also observe that the appellant has paid the differential amount of IGST as confirmed vide the impugned order, which as per the appellant, has arisen due to mistake on the part of the appellant's Computer operator who has pasted the data of July-17 in the month of August-2017 in the Return i.e. GSTR-3B, which can be seen from the returns of the said period, produced before me. I also observe that the appellant has contended that to avoid litigation, in spite of no shortfall of the said amount of IGST of Rs.4,60,635/-, to cooperate the Department Officer as well as oral instructions of the Officer, they have paid Rs.4,60,635/- on 01.03.2023 vide DRC-03 and thereafter also the order is passed for Interest and penalty vide the impugned order.

6.6 However, from the data of Sales for the whole FY 2017-18 as per Books of Accounts and that reflected in GSTR-9 produced by the appellant, it is observed that due to the wrong figures shown in the month of August-2017 in GSTR-3B than the actual figures, it is not forthcoming from GSTR-9 that the

difference of the tax confirmed of IGST of Rs.4,60,635/- has been paid and reflected in GSTR-9. The contention of the appellant that the ITC of August-17 has not been considered is not tenable as the same has not been shown as paid against the said differential tax liability. Therefore, I am of the view that the differential tax liability for the month of August-2017 arisen due to wrong pasting of sales figures of July-2017 in August-2017, is rightly paid by the appellant.

6.7 In this regard, I observe that there are no provisions for any oral instructions of any authority, directing any Taxpayer to pay the differential Tax. Also that oral instructions of any Officer, are not considered valid in the eyes of law. However, the Tax payer, as per the provisions of law should self access the tax liability and make payment accordingly.

6.8 Now since the tax liability due, has been accepted by the appellant and having been paid the said differential amount of IGST of Rs.4,60,635/-, as confirmed vide the impugned order, the interest, is also liable to be paid by the Appellant.

6.9 The judgment dated 08-04-2022 of the Hon'ble High Court of Madras in case of SRINIVASA STAMPINGS Versus SUPERINTENDENT OF GST & C. EX., HOSUR reported in 2022 (61) G.S.T.L. 411 (Mad.), regarding interest on belated payment of tax , it has been held that:

"16. Since tax was paid by the petitioner belatedly, petitioner is liable to interest during the period default. There was no excuse for not paying the tax in time from its electronic cash register. Nothing precluded the petitioner from discharging the tax liability from its electronic credit.

17. If there is a belated payment of tax declared in the returns filed, interest has to follow. The petitioner has to pay the interest on the belated payment of tax and as has been demanded. Even where there is a failure to file returns or circumstances specified under Sections 73 and 74 of CGST Act, 2017, interest has to be paid.

18. There is therefore no merits in the present writ petition. Therefore, this writ petition deserves to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

6.10 The above judgment of the Hon'ble High Court, is squarely applicable in the present case, as once the liability of Tax has been accepted and discharged, the interest is also required to be paid by the Appellant. Thus the interest is

payable under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.

6.11 As regards penalty imposed under section 73 (1) read with Section 122(1) (iii) read with Section 122(2)(a) of the CGST Act, 2017, I refer the said provisions which are as under:

'SECTION 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.

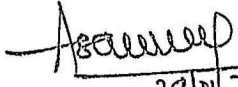
(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;


6.12 I observe that the short payment of Tax is clearly reflected in the Returns filed by the appellant. Therefore, from the above provisions, I am of the view that the penalty of Rupees tenthousand or 10% of the tax due, whichever is higher is required to be paid by the appellant. Thus in the present case 10% of Rs.4,60,635/- which is 46,064/-, is payable by the appellant.

7. In view of the above discussions, the impugned order passed by the adjudicating authority is upheld except the imposition of penalty. I reduce the penalty under Section 73(1) read with Section 122(2)(a) of the CGST Act, 2017 to @10% to Rs.46,064/- only as against penalty imposed of Rs.4,60,653/- by the adjudicating authority vide the impugned order.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeal filed by the appellant stands disposed of in above terms


(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

Date: 29.02.2024.

Attested

(S.D. Nawani)
Superintendent,
CGST & C.Ex.,
(Appeals), Ahmedabad

By R.P.A.D.

To:
M/s. LABDHI TRADERS
8, Bausidhar Complex, Mandal Road,
Viramgam, Ahmedabad, Gujarat-382150
(GSTIN:24CVPS6558C1Z3)



Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
3. The Pr./Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Dy./Assistant Commissioner, CGST & C.Ex., Division-III, Ahmedabad North Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
6. Guard File/ P.A. File.



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