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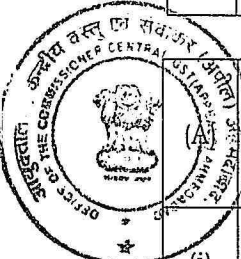
आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/3497/2023 / 3615 - 20
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-160/2023-24 and 28.03.2024
(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	28.03.2024
(ङ)	Arising out of Order-In-Original No. 10/AC/D/2023-24/FRC dated 25.07.2023 passed by The Assistant Commissioner, CGST, Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s KMM Foods Pvt Ltd (GSTIN: 24AADCK1260A1ZB) 33-34, Radhey Industrial Estate, Tajpur, Changodar, Ahmedabad-382213



	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.	
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -	
(i)	(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 KMM Foods Pvt Ltd(GSTIN-24AADCK1260A1ZB) having principal place of business at 33-34, Radhey Industrial Estate, Tajpur, Changodar, Ahmedabad-382213 (hereinafter referred to as the "Appellant") has filed appeal Against OIO No.10/AC/D/2023-24/FRC dated 25.07.2023 issued by the Assistant Commissioner, CGST & C.Ex., Division IV, Ahmedabad-North Commissionerate, Ahmedabad (herein after referred as the "impugned order").

2. Brief facts of the case are that the Appellant registered under GSTIN-24AADCK1260A1ZB is engaged in providing manufacturing services on raw material including packaging supplied by manufacturer M/s Parle Products Limited. During the course of audit of records of the appellant, conducted by the Department for the period July 2017 to March 2019, various objections were raised. The appellant did not agree on some of the paras. One of the paras of disagreement on which the appeal has been filed by the appellant is Revenue para 1 : Under valuation of supplies by non-inclusion of cost of job-worker's liabilities borne by the Principal Manufacturer, resulting into short payment of GST". The appellant has been manufacturing the goods i.e. biscuits with brand "PARLE". The appellant had entered into an agreement dated 19.07.2010 and as per the agreement, the principal manufacturer i.e. M/s Parle Products P.Ltd., have supplied the raw material and packing materials to the appellant. As per the agreement, the appellant was entitled for only conversion charge. The appellant has been raising invoices for job work and paying tax under service code 998816, on the value of job charges. On the basis of audit objections raised, the appellant was issued Show Cause Notice No. 108/2021-22 dated 14.02.2022, as to why:

(i) Tax amounting to Rs. 18,68,628/- [CGST Rs. 9,34,814/- and SGST Rs. 9,34,814/-] (Rupees Eighteen Lakhs Sixty Nine Thousand Six Hundred Twenty Eight Only),w.r.t. Revenue Para-1, should not be demanded and recovered from them, under the provisions of Sections 74(1) of the Act;

(ii)....(iii)(iv)(v).....

(vi) interest at applicable rate should not be charged & recovered from them under Section 50(1) of the Act, on the demands at (i) and (iv) above;

(vii) penalty under Sec.74(1) of the Act read with the provisions of Sections 122(2)(b) of the Act should not be imposed on them in respect of the demands at (i), (iv) and (v) above.”

3. The Adjudicating authority vide the impugned order dated 25.07.2023 among other demands, confirmed and ordered to recover the tax amounting to Rs.18,69,628/- (CGST Rs. 9,34,814/- and SGST Rs. 9,34,814/-), interest at applicable rate under Section 50 of the CGST/SGST Act, 2017 and penalty of Rs.18,69,628/- (CGST Rs. 9,34,814/- and SGST Rs. 9,34,814/-) under section 74(1)read with Section 122(2)(b)of CGST Act, 2017, in respect of Under valuation of supplies by non-inclusion of cost of job-worker’s liabilities borne by the Principal Manufacturer, resulting into short payment of GST”

4. The appellant filed the present appeal on 31.10.2023 for demand confirmed of Rs.18,69,628/- (CGST Rs. 9,34,814/- and SGST Rs. 9,34,814/-), along with interest and penalty vide impugned order dated 25.07.2023 on the grounds that:

“A.1 On the facts and circumstances of the case and considering legal provisions of CGST Act, the impugned order is bad in law and requires to be quashed and is liable to be set aside.

The impugned order is a non-speaking order and is passed in gross violation of principles of natural justice. The Ld. Assistant Commissioner has confirmed the liability of tax, interest and penalty without considering the submissions of the Appellants.

B.1 The Appellant submit that the impugned order is a non-speaking order. The Ld. Assistant Commissioner has confirmed the demand of tax, interest and equivalent penalty of tax under various section without appreciating the submissions of the Appellant and without providing any reasons for not considering the said submissions.

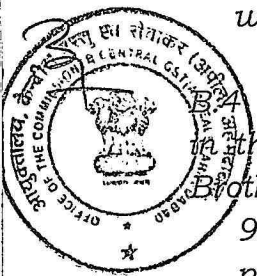
B.2 The Appellant submit that the submissions made by them have been blatantly ignored in the impugned order by the Ld. Assistant Commissioner without affording any reasons.

B.3 In the case of Cyril Lasardo (Dead) v. Juliana Maria Lasardo – 2004 (7) SCC 431 at Para 11, 12, the Honble Apex Court has held as under:

11. Reasons introduce clarity in an order. On plainest reading and consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amendable to further avenue of challenge. The

absence of reasons has rendered the High Court's judgment not sustainable.

12. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v Crabtree* it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons atleast sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi judicial performance."



Similar views were expressed in the decision of the Hon'ble Supreme Court in the case of *Asst. Commissioner, Commercial Tax Department v. Shukla & Brothers* reported at 2010 (254) ELT 6(SC) wherein the Court observed as under:

9. In our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher court, providing of reasons can never be dispensed with. The doctrine of *audi alteram partem* has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has never been uniformly applied by courts in India and abroad."

(Emphasis supplied)

B.5 The Ld. Assistant Commissioner has summarily confirmed the demand of tax, interest and penalty under various sections without appreciating the submissions of the Appellant. Thus, the impugned order is a non-speaking order and has been passed in gross violation of principles of equity, fair play and natural justice. The impugned order is liable to be set aside on this ground alone.

Liability to pay GST only on consideration received from principal namely M/s Parle Products Limited

C.1 The Appellant submit that, they have entered in to job work agreement with Parle Products Ltd and as per rate decided in agreement, including

escalation granted in rate, appellant is preparing its monthly job work service invoices with GST.

In the impugned order, there is liability on value of free supply namely electricity provided by principal namely M/s Parle Products P Ltd. to appellant.

We invite your attention to section 2(68) which define job work and section2(31) which defines consideration.

Section 2(68)

section2(31)

...

Meaning thereby appeal is liable to pay GST on charges received from its principal as agreed upon.

C.2 The appellant states that, as per tri-party agreement dated 20.08.2012 between Adam Gas Ltd., KMM foods Ltd and Parle Products PLtd., Adani Gas Ltd has to bill to Parle Products P Ltd and not to KMM Foods Ltd., and payment is also made by Parle to Adani for gas consumption charges.

C.3 Our consideration is decided as per the contract entered in to with Parle Products P Ltd., and we have issued them monthly job work charges invoice as per job work done by us.

*C.4 We invite your attention to Section 15 which deals with Value of supply.
Section 15*

As per section 15(1), appellant is liable to pay GST on value which is a need between principal and job worker and KMM being job worker and both are not related party so amount decided as per agreement is sole consideration on which appellant is liable to pay GST.

In our case Section 15 (2)(b) is also not applicable as in our case it is not a case where appellant is liable to pay anything and paid by recipient of services, in our case whatever amount is decided as job work charges on that value appellant has paid GST.

Whole issue crop up due to mistake on part of appellant in showing value of gas charges in annual return as non GST supply column which they were not required to show.

C.5 Similar views were expressed in the order of the Advance Ruling Authority, Gujarat in case Inox Air Products (P.) Ltd reported in 2018] 94 taxmann.com 144 (AAR-GUJARAT) copy of order is attached as Annexure.

...


...

No suppression since the demand is based on the return as well as on the basis of books of account which are public document.

D.1 The Appellants submit that the impugned order alleged that the Appellants have suppressed the true taxable value with the mala fide intention to evade the payment of GST. However, it is pertinent to note that the Ld. Assistant Commissioner in the impugned order has erroneously arrived at the aforesaid conclusion without stating any reasons. Nowhere in the present SCN nor in the impugned order, reasons have been specified that the Appellants have suppressed the fact. Merely on bonafide mistake in mentioning value of gas in non GST supply column of GSTR 9 does not mean that the Appellants have suppressed the true taxable value.

D.2 Further, it is pertinent to note that the demand raised in the show cause notice, which was confirmed in the impugned order, is based on the audit done by Audit team after verification of our books of account which is a public document and it is trite law that if the information is available in the public document, then the allegation of suppression cannot be sustained.

D.3 Reliance can be placed on the case of *M/s Swarn Cars Pvt. Ltd. v.C.C.E., Kanpur 2020 (2) TMI 222* wherein the tribunal has held that



“On perusal of above reproduced part of said show cause notice it is very clear that the allegation is to the effect that appellant had suppressed value and such suppression was allegedly as compared to the entries in the balance sheet. This Tribunal has repeatedly held that if the information is available in the balance sheet which is a public document then allegations of suppression cannot sustain. We note that the appellant had filed ST-3 Return and the allegation is on the basis of information available in the public document i.e. balance sheet. Therefore, we hold that suppression is not established. We, therefore, hold that the extended period was not available to the Revenue. We, therefore, hold that the impugned order is not sustainable. We set aside the same and allow the appeal.”

D.4 Further, the Appellants submit that it is well settled law that the burden of proof is on the Department to establish an act of suppression or mis-declaration with an intent to evade payment of tax. In this connection, the Appellants wish to place reliance on the following decisions:

.....

There was no suppression of facts or any ill-intention on the appellant's part for evading any tax and the tax legally due and payable for all the business transactions involved in the present case has been actually paid also, leaving no short levy or short payment of tax. Full and truthful details of the appellant business transactions have been recorded not only in the audited books of accounts including balance sheet and ledger, but such details have also been disclosed while filing Returns in Form GSTR-1 and thus there was no suppression of facts or non-disclosure of any relevant details on the appellant part.

D.5 Moreover, in order to allege suppression, there must be a positive act on the part of the Appellant to withhold or hide the facts from the Department with a view to evade payment of tax. Mere mistake in disclosing value in non GST supply is not enough to allege that the Appellant are guilty of suppression. In this regard, reliance is placed on the following judgments:

- (i) Padmini Products v. CCE 1989 (43) ELT 195 (SC)
- (ii) CCE v. Chemphar Drugs & Liniments 1989 (40) ELT 276(SC)
- (iii) GopalZardaUdyog v. CCE 2005 (188) ELT 251 (SC)

D.6 The Appellant submit that they have already provided copy of agreement with principal namely Parley products Ltd and as per consideration fixed with Parley they have paid GST, so question of any suppression does not arise. Therefore, merely not agreeing to value of consideration does not mean supersession- The Appellants have all along acted honestly in a bonafide manner.

Section 74 of the CGST Act, 2017 will not be applicable in the present case

D.7 Section 74 of the CGST Act, 2017

D.8 The Appellant submit that the plain reading of the provisions shows that Section 74 of the CGST Act 2017 shall be applicable in cases where the tax was not paid for any reason other than fraud, suppression or misrepresentation. Since there is no suppression on the part of the Appellants therefore, the demand confirmed under Section 74 is not maintainable and liable to be set aside on this ground alone.

D.9 Further, the Appellant submit that in the present case the tax was already paid by the Appellant long with return as per job work charges agreement and issue is only related to gas charges directly paid by Parle to Adani and not considered in job work charges.

The aforesaid fact clarifies that there is no suppression by the Appellant. Therefore, the demand raised of Rs. 18, 69,628/- under Section 74 shall be liable to set aside on this ground alone.

Without prejudice, the whole issue shall fall under Section 73 (5) of the CGST Act, 2017

D.10 The Appellant submit the before service of show cause notice, the Appellant had already paid the amount of tax along with interest via DRC 03 for various audit para and demand which is paid after show cause is also on basis of audit done by department. So demand created in audit para for certain bonafide errors or omission does not automatically falls in to section 74, but will covered under section 73. Therefore, the impugned order confirming the demand against the Appellant u/s 74 shall be liable to be set aside on this ground alone.

D.11 Section 73 of the CGST Act, 2017 read as

...

D.12 Section 73 (5) read with Section 73 (6) of the CGST Act, 2017, it has been clarified that the proper officer shall not service any notice if the tax/ITC was already paid by the register person. Since, the GST was already paid by the Appellant in the present matter, therefore, the impugned order confirming the demand raised in the SCN is not maintainable and liable to be set aside on this ground alone.

Section 122 (2) (b) is not applicable in the present case

E.1 Section 122(2) (b) read as under:.....

As appellant has filed GSTR 1 and disclosed its liability and also paid tax with applicable interest and demand as per GST audit report before issuance of show cause notice, there is no case of fraud or any willful misstatement or suppression of facts to evade tax, and therefore this section will not be applicable. Hence, the penalty levied and demand raised under Section 122 (2) (b) is incorrect, unlawful and not enforceable. Therefore, the demand being wrongly raised is liable to be squashed and dropped.

Section 126 will be applicable in the present case

E.2 The Appellant submit that Section 126 of the CGST Act, 2017 is squarely applicable in the present case which states that no officer shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence. Since, the Appellant has made a mistake in mentioning value of gas charges in non GST supply column which has been clarified during course of audit and appellant has paid all tax liability on job work charges. Hence, the penalty u/s 74 and 122 can-not be imposed on the Appellant.

Therefore, the impugned order confirming the penalty under Section 74 read with Section 122(2) (b) of the CGST Act, 2017 is not maintainable and liable to be set aside on this ground alone.

Without prejudice, the maximum penalty under Section 122 of the CGST Act, 2017 shall be Rs. 10,000/-

E.3 Without prejudice, the Appellants submit that if the taxable person commits any offence specified under Section 122 of the CGST Act, 2017 then he shall be held liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded by him. Since, the Appellants had not evaded any tax therefore, the maximum penalty which shall be leviable to the Appellants shall be Rs. 10,000/-. Therefore, the impugned order shall be liable to be set aside on this ground alone.”

5. Personal Hearing:

Personal Hearing in the matter was held on 12.12.2023, wherein Shri Priyam Shah, Chartered Accountant appeared in person on behalf of the ‘Appellant’ as Authorized Representative before the appellate authority. He

submitted that only audit point No.1 is in dispute. In case of all other points, tax has already been paid. As regards the GST on adding supply of Gas by Principal i.e. Parle, the same cannot form (to be added) in value of Job Charges. In this regard, he relied upon Inox Air Products (Pvt.) Ltd., AAR Gujarat has taken the similar view. He further reiterated the written submissions and requested to allow appeal.

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 and observe that the, appellant is mainly contesting with, that the impugned order is passed in gross violation of principles of natural justice. The adjudicating authority has confirmed the liability of tax, interest and penalty without considering the submissions of the appellant. Also that as per Section 15(1), appellant is liable to pay GST on value which is agreed between Principal and Job worker and the appellant being the job worker, both are not related party, therefore the amount decided as per agreement is sole consideration on which appellant is liable to pay GST.

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

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 25.07.2023 and as per the appellant, they have received the same on 03.08.2023, the present appeal is filed on 31.10.2023. 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 had entered into an agreement dated 19.07.2010 and as per the agreement, the principal manufacturer i.e. M/s Parle Products P.Ltd., have supplied the raw material and packing materials to the appellant. As per the agreement, the appellant was entitled for only conversion charge. The appellant has been raising invoices for job work and paying tax under service code 998816, on the value of job charges. Further, the appellant has submitted that as per tri-party agreement dated 20.08.2012

between M/s Adani Gas Ltd., the appellant and M/s Parle Products P.Ltd., M/s Adani Gas Ltd. has to bill to Parle Products P Ltd. and not to KMM Foods Ltd. (appellant) and payment is also made by Parle Products P.Ltd to M/s Adani Gas Ltd. for gas consumption charges.

6.5 The contention of the appellant that the impugned order is a non-speaking order and that the Ld. Assistant Commissioner has confirmed the demand of tax, interest and equivalent penalty of tax under various section without appreciating the submissions of the Appellant and without providing any reasons for not considering the said submissions.

6.6 From the impugned order, I observe that the appellant has submitted their written reply vide letter dated 30.09.2022 that, they requested personal hearing in the matter and that M/s Adani Gas Ltd. have issued invoices in the name of M/s Parle Products Pvt. Ltd. mentioning the name of M/s KMM Foods P. Ltd. (appellant) because of the premises used for, belongs to the appellant, that invoices contain the GST No. & VAT/TIN No. of M/s Parle Products P.ltd. It has further been observed that the appellant has submitted their written reply on 13.07.2023 reiterating the same facts which they have already submitted on 30.09.2022.

6.7 It is observed that the adjudicating authority by following the principles of natural justice, granted PH to the appellant. Shri Gajendra Mulani, advocate appeared for personal hearing on 17.05.2023 and submitted that on the issue of non-inclusion of job charge they would re-verify the issue and submit the details. Further, a personal hearing was provided on 11.07.2023 which was attended by the same advocate. Regarding this issue, he submitted that they have shown the amount in their P&L account by mistake. He submitted that purchase of gas from M/s Adani Gas Limited was entirely done by M/s Parle Products Ltd. And they have no role to play in such purchase.

6.8 The relevant portion of reply submitted vide their letter dated 30.09.2022 in the matter, by appellant is as under:

“Objections against which M/s KMM Foods Private Limited wish for personal hearing.

Objection No.1 under valuation of supplies by non-inclusion of cost of job worker's liabilities borne by the Principal Manufacturer resulting into short payment of GST”.

It is also observed that, the above same reply was earlier submitted by the appellant on 03.08.2022.

6.9 From the above, I observe that the adjudicating authority has taken on record the reply submitted by the appellant and also granted personal hearings following the principles of natural justice. As regards the contention of the appellant that the adjudicating authority has confirmed the demand of tax, interest and equivalent penalty of tax under various sections without appreciating the submissions of the appellant, I observe that there are no submissions filed except the reply that they wish for personal hearing. The personal hearing has already been granted by the adjudicating authority twice as can be seen from para 11 of the impugned order. Therefore, the contention of the appellant does not hold good.

6.10 As regards contention of the appellant regarding the order passed by the adjudicating authority is non-speaking order, I observe that the adjudicating authority has confirmed the demand due to non inclusion of charges on natural Gas incurred by the Principal, which has been utilized by the job worker i.e. the appellant who was in fact liable to pay charges on natural gas. Therefore such charges were required to be added in the transaction value of job work as per Section 15 of the CGST Act, 2017 {Section 15(2) (b)}. Further, the appellant booked income under the P&L account during the FY 2017-18 and 2018-19 as "Processing Gas Charge Income". The adjudicating authority further found that the job charges earlier were higher but w.e.from 01.07.2010, the same were reduced after deducting an amount for natural gas used as fuel. Thus the authority has found that the appellant has not been including the charges of natural gas under job work charge. Therefore, it has been held that the appellant is required to add the charges of natural gas on job work charge and to pay the tax accordingly.

6.11 To decide the issue , I refer the following :

"Section 2 Definitions.-

(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;"

*** Section 15. Value of Taxable Supply.-**

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

(a)

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

6.12 I observe that the appellant is contesting that whatever amount is decided as job work charges on that value appellant has paid GST, which is rightly paid by them. However, it is observed that as per tri-party agreement dated 20.08.2012 between M/s Adani Gas Ltd., the appellant and M/s Parle Products Ltd., M/s Adani Gas Ltd. has been raising natural gas invoices in the name of Appellant A/c Parle Products Ltd. and M/s Parle Products Ltd. has been making direct payment of natural gas bills to M/s Adani Gas Ltd. on behalf of the appellant. During the year 2017-18 and 2018-19, the natural gas charges of Rs.1,10,27,101/- and Rs. 1,74,33,350/- paid by M/s Parle Products Ltd. on behalf of the appellant have been recorded by the appellant as "Processing Gas Charges Income" in their financial records for the relevant periods which is over and above the processing charges billed and collected by the appellant as per their Agreement for processing/job work with M/s Parle Products Ltd., on which no GST has been paid by the appellant.

6.13 As per Section 2(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person, further as per Section 15(2)(b) of the CGST Act, 2017, the value of supply shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

6.14 In the present case, the appellant has undertaken the process of manufacturing the goods i.e. Biscuits belonging to M/s Parle Products Ltd. for which natural gas has been used as fuel, the expenses of which are borne by the Principal M/s Parle Products Ltd. on behalf of the appellant. As per the above provisions, any liabilities of the job worker borne by the Principal on his behalf would have to be included as part of the transaction value. Thus the

value of services, in terms of the said provisions would include not only the service/processing charges but also the expenses borne by the Principal on behalf of the job worker supplier for supplying the job work services.

6.15 From the discussions above, it is clearly evident that during the period 2017-18 and 2018-19, M/s Parle Products Ltd. (Principal) has borne the expenses of natural Gas charges on behalf of the appellant (job worker) and the amount that the supplier (appellant) is liable to pay in relation to the supply has been incurred by the recipient (M/s Parle Products Ltd.). Further, the "Processing Gas Charge Income" has been shown in their Books of accounts as well as GSTR-9. As the appellant has not included the charges of natural Gas under job work charge, the taxable value has been reduced to that effect resulting in short payment of GST.

6.16 In view of the foregoing, I am of the view that the natural Gas used in manufacturing of biscuits should be part of the value of job charges raised by the appellant. The Gas consumption by the appellant in providing manufacturing services to M/s Parle Products Pvt. Ltd., the charges of which are borne by the Principal on behalf of the appellant and paid by the Principal to the supplier i.e. M/s Adani Gas Ltd., should form the component to be added in the value of job charges, along with the other charges incurred by the appellant. Therefore, I am of the view that GST is required to be paid on the total cost including Gas consumption charges by the appellant. Thus tax amounting to Rs.18,69,628/- (CGST Rs. 9,34,814/- and SGST Rs. 9,34,814/-) along with interest under Section 50(1) of the CGST/GGST Act, 2017 is liable to be recovered from the appellant.

6.17 The following FAQ supports the above view.

FREQUENTLY ASKED QUESTIONS (FAQs) ON GOODS AND SERVICES TAX (GST) 3rd Edition: 15th December, 2018

9. Job Work

Q 29. Whether the value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services?

Ans. Section 15 of the CGST Act lays down the principles for determining the value of any supply under GST. Importantly, clause (b) of sub-section (2) of section 15 of the CGST Act provides that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply. Accordingly, the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

6.18 Further the order of the Advance Ruling Authority, Gujarat in case Inox Air Products (P.) Ltd reported in 2018] 94 taxmann.com 144 (AAR-GUJARAT), quoted by the appellant, cannot be made applicable in the present case as the same is binding only to the Taxpayer/assessee in whose name the same is passed.

6.19 As regards demand confirmed and ordered to be recovered under Section 74 (1) of the CGST Act, 2017, I observe that the appellant has wrongly reported their GSTR-9-Table 5F - NON-GST Outward Supply (includes 'no supply') the value of Rs.1,10,27,101/- and Rs.1,74,33,350/- "Processing Gas Charge Income" during the year 2017-18 and 2018-19 respectively, to evade tax. Further, the appellant has failed to self assess the tax liability in terms of Rule 59 of the CGST Rules, 2017 and failed to file correct taxable value in the Returns with an intention to evade tax.

6.20 It is observed that the appellant has deliberately not included the Gas consumption charges in the value of processing charges with intent to evade tax. Therefore, I am of the view that demand confirmed for Under Valuation of supplies by non-inclusion of cost of job-worker's liabilities borne by the Principal Manufacturer, resulting into short payment of GST of Rs.18,69,628/- (CGST Rs. 9,34,814/- and SGST Rs. 9,34,814/-) is recoverable under Section 74 (1) of the CGST/GGST Act, 2017.

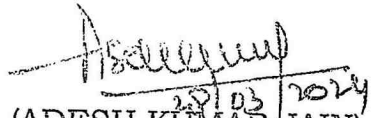
6.21 As regards interest confirmed and ordered to be recovered under Section 50 of the CGST Act, 2017, I observe that the same is recoverable under Section 50(1) of the CGST/GGST Act, 2017 on the GST of Rs.18,69,628/- (CGST Rs.9,34,814/- and SGST Rs.9,34,814/-) not paid by the appellant. Therefore the order passed by the adjudicating authority for recovery of interest is proper and legal.

6.22 Further, it is also observed that penalty has been imposed under Section 74 of the CGST/GGST Act, 2017, read with Section 122(2)(b) of the CGST/GGST Act. As the appellant has misstated the vital facts in their GSTR-9 under the wrong head with an intention to evade the tax, I am of the view that the penalty has been rightly imposed by the adjudicating authority.

7. In view of the above discussions and findings, I do not find any infirmity in the order passed by the adjudicating authority. Therefore the impugned order is upheld.

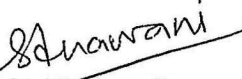
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


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

Date: .03.2024.

Attested


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

By R.P.A.D.

To:
M/s KMM Foods Pvt Ltd.,
33-34, Radhey Industrial Estate, Tajpur,
Changodar, Ahmedabad-382213.
(GSTIN-24AADCK1260A1ZB)



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-IV, Ahmedabad North Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
6. Guard File/ P.A. File.



