



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

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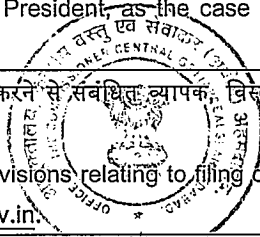


आज़ादी का
अमृत महोत्सव

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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTD/8/2023	11196-82
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-39/2023-24 and 31.07.2023	
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)	
(घ)	जारी करने की दिनांक / Date of issue	03.08.2023	
(ङ)	Arising out of Order No. 88/AC/DEMAND/22-23 dated 25.07.2022 issued by The Assistant Commissioner, CGST, Division – I, Ahmedabad North Commissionerate		
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant / Deputy Commissioner, CGST & C.Ex., Division – I, Ahmedabad North Commissionerate	
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Ranbanka Awaiting Pvt Ltd (GSTIN-24AAGCR8551A2ZK) 18, Shiv Shopping Centre, Airport Road, Hansol, Ahmedabad, Gujarat-380004	
(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:**

The Assistant Commissioner, CGST & C.Ex, Division-I, Ahmedabad North Commissionerate (herein after referred to as the "appellant" / "department") filed an appeal in terms of Review Order No. 21/2022-23 dated 13.12.2022 under Section 107(2) of the CGST Act, 2017 (hereinafter referred as "the Act") by the Reviewing Authority i.e the Commissioner, CGST & C.Ex., Ahmedabad North Commissionerate against Order-In-Original No. 88/AC/DEMAND/22-23 dated 25.07.2022 (herein after referred as the "impugned order") passed by the Assistant Commissioner, CGST, Division - I, Ahmedabad North Commissionerate (herein after referred to as the "adjudicating authority") in the case M/s. Ranbanka Aviation Private Limited, 18, Shiv Shopping Centre, Airport Road, Ahmedabad - 380 004 [GSTIN : 24AAGCR8551A2ZK] (hereinafter referred to as the "respondent") on account of non-filing of GSTR-1 and GSTR-3B returns and collected GST but not deposited to the govt. exchequer for the period from February 2019 to December 2019.

2. Brief facts of the case in the present appeal is that the "respondent" registered under [GSTIN: 24AAGCR8551A2ZK] is a Private Limited Company, are engaged in handling of various taxable services at various airports in India and also supplying equipments on rent to M/s. Spicejet Ltd., M/s. Turbo Mega Airways Pvt. Ltd., M/s. Cargo Service Centre (I) Pvt. Ltd., and similar companies.

The facts leading to this case are that the officers from the Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit [AZU], Ahmedabad (hereinafter referred to as 'DGGI') visited the business premises of the respondent on 18.01.2020 under authorization of Inspection. During the visit of officers of DGGI, it was noticed that

- (i) the appellant had supplied taxable service to their customers / clients for which they had collected GST from them for the period from Feb-2019 to Dec-2019. However, they has not deposited the said GST amount to government exchequer and also failed to file GSTR-1 for the period from September-2019 to December-2019 and GSTR-3B returns for the period from February-2019 to December-2019. The GST liability calculated on the basis of their books of account for the said period. Total amount of GST of Rs. 1,80,49,580/- was found as tax collected but not deposited to Govt. exchequer. During the investigation, the respondent had filed GSTR-3B returns and out of total liability of Rs. 1,80,49,580/-, they had discharged duty liability partially of Rs. 1,71,11,733/- (i.e Rs. 32,25,234/- through ITC and Rs. 1,38,86,499/- in cash);
- (ii) the respondent had not released total amount of Rs.20,48,541/- to their supplier of service within 180 days from the date of issuance of invoice and availed ITC of Rs. 2,06,859/- on the basis of these invoices during the period from February 2019 to December 2019;

- (iii) on comparing the GSTR-2A and GSTR-3B, it was observed that they had availed excess IT credit amounting to Rs. 1,99,223/- towards the eligible credit availed in the Credit Ledger (GSTR-2A).

The respondent has issued a Show Cause Cum Demand Notice F. No. DGGI/AZU/GR.C/36-55/2021-22 dated 07.07.2021 by invoking extended period of 5 years under Section 74 and Section 76 of the CGST Act, 2017 read with Section 74 & 76 of Gujarat GST Act, 2017 and IGST Act, 2017 (herein after referred to as "the GST Acts, 2017") for demanding GST Rs. 1,85,55,661/- (IGST - Rs.63,00,835/-, CGST Rs. 61,27,414/-, SGST Rs. 61,27,413/-) for the period from February 2019 to December 2019 along with interest under Section 50 of the Acts, 2017 and imposed penalty under Section 122(1) (iii), (iv), (xv) and 122(2)(b) of the Acts, 2017. Further, imposed penalty under Section 137 of the Acts, 2017 read with Section 20 of IGST Act, 2017.

2.1 *The Adjudicating Authority* vide Order-in-Original No. 88/AC/DEMAND/22-23 dated 25.07.2022 has:

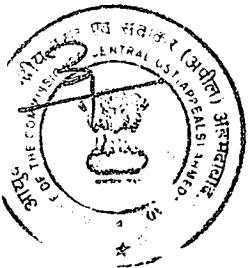
- (a) confirmed the demand of GST of Rs.1,80,49,581/- (IGST Rs.63,00,835/-, CGST Rs. 58,74,373/-, Gujarat GST Rs.58,74,373/-) for the period from February-2019 to December-2019 under Section 74(1) read with Section 76(1) of the GST Acts, 2017 and ordered for appropriation of the same against payment made;
- (b) confirmed the demand of GST amount Rs. 3,06,859/- (CGST Rs.1,53,429/- & Gujarat GST Rs.1,53,429/-) under Section 74(1) of the CGST / Gujarat GST Acts and ordered to recover the same with interest under Section 50 of the GST Acts, 2017 read with Section 20 of IGST Act, 2017.
- (c) Allow the ITC amounting to Rs. 1,99,223/- availed on the invoices of Airport Authority of India;
- (d) Confirm the demand of applicable interest @18% amounting to Rs.10,52,924/- and appropriated Rs. 9,94,566/- against their outstanding liability and order to recover remaining interest amounting to Rs. 58,358/- under Section 50 of the GST Acts, 2017;
- (e) Imposed penalty of Rs.79,15,575/- under Section 74 of the GST Acts, 2017 read with Section 122 of GST Acts, 2017;
- (f) Not proposed penalty under Section 76 & 112 of the GST Acts, 2017.

Further, it is pertinent to mention here that, being aggrieved with the Order-In-Original No. 88/AC/DEMAND/22-23 dated 25.07.2022 passed by the AC, CGST, Div-I, Ahmedabad North Commissionerate, the appellant has filed an appeal on 23.09.2022 before the appellate authority, which, subsequently decided vide Order In Appeal No. AHM-CGST-002-APP-ADC-126/2022-23 dated 27.12.2022 by the Additional Commissioner,

CGST Appeals, Ahmedabad under which the appellate authority hold that the payment of Rs. 1,80,49,581/- (CGST Rs. 58,74,373/-, SGST Rs. 58,74,373/-, IGST Rs. 63,00,835/-) alongwith interest of Rs. 9,94,566/- already paid on net tax liability. However, it is hold that invocation of Section 74 and Section 76 of the GST Acts, 2017 read with Section 20 of IGST Act, 2017 for recovery of tax and also imposition of penalty under Section 74 and 122 of the GST Acts, 2017 read with Section 20 of IGST Act, 2017 and demand of interest on gross GST liability under Section 50 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 & also the demand of Rs. 3,06,859/- alongwith interest, in the impugned order is not sustainable. The impugned order is modified and the appeal is allowed to the above extent.

The Order-In-Original No. 88/AC/DEMAND/22-23 dated 25.07.2022 has been reviewed by the Reviewing Authority i.e. the Commissioner, CGST, Ahmedabad North Commissionerate, vide Review Order No. 21/2022-23 dated 13.12.2022 and ordered that the said Order-In-Original is required to be reviewed and appealed against the following points:

1. The quantum of amount of penalty of Rs. 79,15,575/- imposed under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 towards confirmed demand of Rs. 1,80,49,580/- (amount of tax collected but not deposited to Govt. exchequer) does not appear proper.
 2. Non imposition of penalty against the confirmed demand of Rs. 3,06,859/- under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 as the same was not discussed in the OIO.
 3. Non imposition of penalty on Shri Marudhar Singh, Managing Director of the respondent firm under Section 137 of the Acts as the same was not discussed in the OIO.
3. Being aggrieved with the impugned order dated 25.07.2022 of the adjudicating authority, the appellant / department preferred an appeal on the following grounds that;
- > The impugned order passed by the adjudicating authority is not legal, correct and proper as the adjudicating authority has failed to imposed appropriate penalties in terms of provisions of Section 74, 76 and 137 of the CGST Act, 2017 read with relevant provisions of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017.
 - > (i) The adjudicating authority has confirmed that total demand amounting to Rs. 1,80,49,580/- (tax collected but not deposited to Govt. exchequer) for the period from Feb-2019 to Dec-2019 under the provisions of Section 74(1) read with Section 76(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017. The adj. authority has imposed penalty of Rs. 79,15,575/-, considering only the period from Sept-2019 to Dec-2019 under Section 74 of the GST Acts, 2017 read with Section 20 of IGST Act, 2017 read with Section 122 of the GST Acts, 2017 where even GSTR-1 returns were not filed by the respondent, thereby, considering it amounts to willful suppression of facts with deliberate intend to evade payment of GST and the income



of said period received towards making taxable supplies by the said tax payer came to knowledge of the DGGI only due to specific investigations carried out.

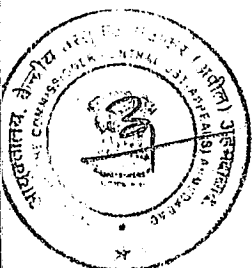
(ii) The adjudicating authority has failed to impose penalty for the period from **Feb-2019 to Aug-2019** where amount of tax collected but not deposited to Government Exchequer comes to Rs. 1,01,34,005/-. The adjudicating authority further failed to discuss the question of penalty for the period from **Feb-2019 to August-2019** where the respondent filed the GSTR-1 returns but failed to file the GSTR-3B returns and also failed to deposit the tax collected from their customers to Government exchequer.

(iii) As regards non-imposition of penalty under Section 76 & Section 122 of the GST Acts, 2017, the adjudicating authority has erred in examining the provisions of Section 75(13) of the CGST Act, 2017 to effect that once penalty under Section 73 or 74 is imposed, no other penalty for the same act of omission shall be imposed on the same person under the provisions of this Act. Accordingly, in nut-shell, separate penalty was not imposed under Section 76 & 122 of the GST Acts, 2017. On the other hand, the adjudicating authority has **neither** imposed any penalty towards various contraventions of provisions of GST Acts, 2017 relating to tax collected but not deposited to the govt. exchequer for the period from Feb-2109 to August-2019 under the provisions of Sec. 73 or Section 74 **nor** anywhere discussed about the non-imposition of penalty for the said period (i.e Feb-2019 to Aug-2019) in the impugned order.

(iv) The adjudicating authority has imposed penalty of Rs. 79,15,575/- under section 74 of the GST Acts, 2017 read with Sec. 122 of IGST Act, 2017 which appears for the period from **Sept-2019 to Dec-2019** only and failed to consider and impose penalty for rest of the period from Feb-2019 to August-2019 under section 76 of the GST Acts, 2017 read with Sec. 20 of the IGST Act, 2017.

(v) The adjudicating authority has failed to examine the facts that this was a case of tax collected but not deposited with the Govt. exchequer and there was a specific allegation in the SCN as the tax collected by not deposited to govt. exchequer by contravention of various provisions of the GST Acts, 2017 and the respondent had neither argued nor submitted any evidences to show that they had not collected the tax from their customers / clients towards the taxable outward supply for the said disputed period and in case of tax collected but not deposited to govt. exchequer, a separate penalty under Section 76 of the GST Acts, 2017 was also proposed in the SCN which would be correctly applicable for the period from Feb-2019 to August-2019 involving GST amounting to Rs. 1,01,34,005/- collected but not deposited the same to govt. exchequer.

(vi) In view of the Section 76(1) to Section 76(4), it appears that the provisions of Section 76 of the GST Acts, 2017 compacts with the demand of amount of tax collected but not deposited to govt. along with interest at the rate specified under Section 50 of the Act and also penalty equivalent to amount of tax demanded in



notice. Total amount of tax collected but not deposited to govt. exchequer for the period from February-2019 to August-2019 comes to Rs. 1,01,34,005/-, hence a penalty of Rs. 1,01,34,005/- (equivalent to tax amount) needs to be imposed under provisions of Section 76 of the GST Acts, 2017.

(vii) The quantum of penalty of Rs. 79,15,575/- imposed in the impugned order by the adjudicating authority under section 74 of the GST Acts, 2017 read with Section 122 of the GST Acts, 2017 needs to be modified to Rs. 1,80,49,580/- equivalent to tax demanded and appropriated in the impugned order (i.e equivalent to amount of tax collected but not deposited to govt. exchequer) and same will be divided into two parts as below :

1. Tax collected but not deposited to govt. exchequer involving tax amounting to Rs. 1,01,34,005/- for the period from Feb-2019 to August-2019 where the clause of suppression of facts not applied as GSTR-1 returns filed by the respondent before initiation of proceedings by the DGGI. Hence, a penalty to be imposed under the provisions of Sec. 76 of GST Acts, 2017 read with Section 122 of the GST Acts, 2017.
2. Tax collected but not deposited to govt. exchequer involving tax amount of Rs. 79,15,575/- for the period from Sept-2019 to Dec-2019 where the suppression of facts applied as even GSTR-1 returns were not filed by the respondent before initiation of proceedings by DGGI and penalty to be imposed under Section 74 of the GST Acts, 2017 read with Section 122 of the GST Acts, 2017.

As regards, non imposition of penalty against the confirmed demand of Rs. 3,06,859/-, the adjudicating authority failed to imposed penalty against the confirmed demand of GST amount of Rs. 3,06,859/- under Section 74 of the GST Acts, 2017.

- (i) The adjudicating authority has found and discussed that ITC amounting to Rs. 3,06,859/- ineligible on the ground that the amount of Rs. 20,48,541/- had not paid to their suppliers of service within 180 days from the date of issuance of invoice and the said ITC on these invoices resulted into violation of Rule 37 of CGST Rules, 2017 read with limit specified in the second proviso to sub-section (2) of Section 16, therefore, the ITC needs to be added to their output liability as per sub-rule(2) of the rule 37 ibid.
- (ii) The adj. authority failed to examine the legality of provisions of section 74 regards imposition of penalty that once the demand confirmed under provisions of Sec.74 under clause of suppression of facts, the penalty equivalent to tax demanded would be applicable under the provisions of Sec. 74 of the Act.

Thus, a penalty of Rs. 3,06,859/- equivalent to tax amount is required to be imposed u/s 74 of the GST Acts, 2017 read with Section 20 of IGST Act, 2017.

- As regards, penalty on Shri Marudhar Singh, Managing Director of the respondent firm, the adjudicating authority failed to impose penalty on Shri Marudhar Singh, MD of the respondent firm for indulging into offence of the nature as prescribed under Section 137 of the GST Acts, 2017 read with Sec. 20 of the IGST Act, 2017.
- (i) The adj. authority has not considered the facts that there was a clear charge / allegation in the SCN proposing to penalize Shri Marudhar Singh, MD. He was at the helm of affairs of his company when such acts of suppression of taxable turnover and short-payment / non-payment of GST liability and the contraventions had taken place. Further, in his statement he assumed responsibility for the non-payment / short-payment of GST. Statement was recorded on 27.07.2022 wherein, he confirmed the GST liability towards outward taxable supply wherein tax collected from customers / clients but not deposited to govt. exchequer. Thus, he had indulged himself into an offence of the nature which made him liable for penalty as prescribed under Section 137 of the GST Acts, 2017.
- (ii) Thus, an appropriate penalty needs to be imposed on Shri Marudhar Singh, MD under Sec. 137 of the GST Acts, 2017 read with section 20 of IGST Act, 2017

CROSS OBJECTION FILED BY RESPONDENT:

3. The respondent filed their cross objection vide letter dated 13th February 2023 wherein they stated that as the H'ble Appellate Authority has already decided the appeal filed by the respondent (i.e M/s. Ranbanka Aviation Private Limited) very judiciously vide Order-In-Appeal No. AHM-CGST-002-APP-ADC-126/22-23 DATED 27.12.2022 and held that the respondent is not liable to penalise under Section 73 or 74 of the CGST Act, 2017 read with Section 122 ibid, the present appeal filed by the department has become infructuous.

- The respondent further submitted that the H'ble Appellate Authority has observed that the Show Cause Notice proposed to recover the CGST, SGST and IGST not paid by the respondent for the period from February 2019 to December 2019. As the respondent had filed GSTR-1 for the period February 2019 to August 2019 and accounted details of taxable supply made for the period from February 2019 to December 2019 in their books of account, the Appellate Authority has using his judicious wisdom, held this is a just delayed payment of tax liability on the part of the respondent as no undeclared income or transaction was detected by the investigating agency as a result of their investigation. Further, the Appellate Authority, more appropriately and judiciously held that it is not a case for invoking the provisions of Section 74 and 76(2) of the GST Acts, 2017 for demanding the GST but on the contrary, it is a case of a just delayed payment of GST for which the GST Act has provided the provision for payment of interest under section 50 ibid and the demand was required to be confirmed under Section 73 of the GST Acts, 2017.

- The respondent submitted that the Appellate Authority has after considering the settled position of law has held that as the respondent has paid the tax and paid interest before issuance of the Show Cause Notice, therefore, as per the provisions contained under Section 73(8) of the GST Acts, 2017 no penalty is attracted and proceedings initiated in the Show Cause Notice is deemed to be closed. Further, it has been placed reliance on the CBIC's circular No. 76/50/2018-GST, dated 31.12.2018 wherein it is clarified that no penalty is imposable even under section 73 in such cases.
- The respondent further submitted that the Appellate Authority has judiciously held that there is no suppression or willful evasion of tax by the respondent, therefore, there arises no question of the director of the respondent being responsible for committing any offence under the CGST Act, 2017. As the matter held to be mere late payment of tax, the Appellate Authority has most judiciously refrained from imposing penalty on the respondent. When no penalty is imposed on the respondent, the question of imposing penalty on the Director of the company invoking provisions of Section 137 also does not arise. Therefore, the appeal filed by the department may be rejected.
- Thus, the appeal filed by the department against Order-In-Original No. 88/AC/DEMAND/22-23 dated 25.07.2022 is infructuous and do not have any legality and may be set aside.

4. The respondent filed their cross examination vide letter dated 30th June 2023 wherein they inter-alia contended that this issue has already been settled by the H'ble Additional Commissioner (Appeals) vide Order-In-Appeal No. AHM-CGST-002-APP-ADC-126/2022-23 dated 27.12.2022 hence the question of reviewing does not arise as the matter has already been decided by the Additional Commissioner (Appeals). In light of the above, the appeal filed by the department is not sustainable and may be dismissed.

PERSONAL HEARING:

5. Personal hearing in the matter was held on 30.06.2023, Sh. M H Raval, appeared on behalf of the respondent in the present appeal for cross examination as Authorized Representative. During the personal hearing, he re-iterated that the issue has already been settled by the H'ble Additional Commissioner (Appeals), Ahmedabad vide Order-In-Appeal No. AHM-CGST-002-APP-ADC-126/2022-23 dated 27.12.2022. Therefore, the departmental appeal is not sustainable and the same may be dismissed.

DISCUSSION AND FINDINGS:

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the "appellant" in their appeal memorandum and cross objections & submissions made by the respondent in the instant case and documents available on record.

7. I find that the present appeal is filed to set aside the impugned order passed by the Asst. Commr., CGST, Division-I, Ahmedabad to the extent to:

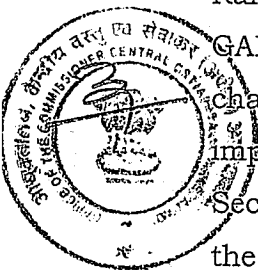
(i) Modify the penalty amount of Rs. 79,15,575/- (imposed in the OIO) to Rs. 1,80,49,581/- (i.e equivalent to amount of tax collected but not deposited to Govt. exchequer) in terms of provisions of Section 74 and Section 76 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017 and Section 122 of the CGST Act, 2017.

(ii) Imposition of penalty of Rs. 3,06,859/- equivalent to tax under the provisions of Section 74 of the GST Acts, 2017 and read with Section 20 of the IGST Act, 2017 which was left out in the OIO against the demand of Rs. 3,06,859/- confirmed under section-74 of the GST Acts, 2017.

(iii) Imposition of appropriate penalty on Shri Marudhar Singh, Managing Director of the respondent under section 137 of the GST Acts, 2017 read with Section 20 of the IGST Act, 2017.

7.1 However, I find that the impugned Order-In-Original dated 25.07.2022 passed by the Asst. Commr., CGST, Div-I, Ahmedabad North Comm'te against which the present appeal has been filed by the Department, was previously challenged by the respondent M/s. Ranbanka Aviation Private Limited, before this Appellate Authority vide their appeal No. GAPPL/ADC/GSTP/2702/2022-APPEAL. In the said appeal, the respondent mainly challenged /contested (i) the demand of Rs. 1,80,49,581/- alongwith interest and imposition of penalty under Section 74 and 122 of the CGST/GGST Act, 2017 read with Section 20 of the IGST Act, 2017 and (ii) denial of ITC credit of Rs. 3,06,859/- availed by the respondent. Thereafter, the then appellate authority has decided the matter by passing the Order-In-Appeal No. AGM-CGST-002-APP-ADC-126/2022-23 dated 27.12.2022, wherein, as per Para-14 of the OIA, it has been uphold the payment of Rs. 1,80,49,581/- (CGST Rs. 58,74,373/- + SGST Rs. 58,74,373/- + IGST Rs. 63,00,835/-) alongwith interest of Rs. 9,94,566/- which were already paid on net tax liability. The Appellate Authority had further hold that the invocation of Section 74 and Section 76 of the CGST / GGST Act, 2017 read with Section 20 of the IGST Act, 2017 for recovery of tax and also imposition of penalty under Section 74 and 122 of the CGST / GSST Act, 2017 read with Section 20 of the IGST Act, 2017 and demand of interest on gross GST liability under Section 50 of CGST / GGST Act, 2017 read with Section 20 of the IGST Act, 2017 and also the demand of Rs. 3,06,859/- alongwith interest, in the impugned order dated 25.07.2022, are not sustainable.

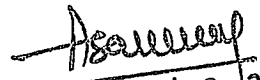
7.2 In view of the above, I find, the then Appellate Authority, has already decided that the penalty under Section 74, Section 76 and Section 122 of the CGST Act, 2017 / GGST Act, 2017 read with Section 20 of IGST Act, 2017 is not sustainable. Now, in the present appeal the Appellant Department is disputing to modify / enhance the penalty amount from Rs.79,15,575/- to Rs. 1,80,49,581/- under section 74 and 76. However, I am of the view that, since the then Appellate Authority has already decided that imposition of penalty



under Section 74 and Section 76 and Section 122 of the CGST / GGST Act, 2017 and Section 20 of IGST Act, 2017 and demand of Rs. 3,06,859/- alongwith interest are not sustainable, therefore, it is not appropriate to again deal with the same issue or interfere or change the decision already taken or already passed by the Appellate Authority. As regards the imposition of penalty under section 137 of the CGST Act, 2017, I am of the view that since no *mens rea* is upheld by the Appellate Authority, penalty under section 137 is not attracted.

8. In view of the above discussion and findings, I am of the considered view that the the contentions raised by the appellant department are not sustainable in law and judicial precedence in the matter as discussed above and the present appeal of the department is not maintainable and therefore I reject the appeal filed by the department without going again into merits or giving my findings on the issues raised by the department which have already been discussed and decided vide Order-In-Appeal No. AHM-CGST-002-APP-ADC-126/2022-23 dated 27.12.2022.

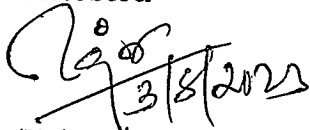
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
The appeal(s) filed by the appellant stand disposed of in above terms.


21/07/2023
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 31.07.2023

Attested



(Tejas J Mistry)
Superintendent,
Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To

The Assistant Commissioner,
Central Excise & CGST, Division - I,
Ahmedabad North Commissionerate.
Ground Floor, Jivabhai Mansion, Ashram Road,
Ahmedabad : 380 009.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Ahmedabad North Commissionerate
4. M/s. Ranbanka Aviation Pvt Ltd, 18, Shiv Shopping Centre, Airport Road, Hansol, Ahmedabad : 380 004.
6. The Additional Commissioner, Central Tax (System), A'bad North Comm'te.
7. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File/ P.A. File.

