



सत्यमेव जयते

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

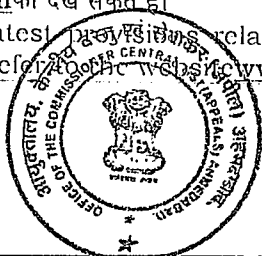


By Regd. Post

DIN NO.: 20231064SW000000ECEA

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2283/2023 / 6856 - 62
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-61/2023-24 and 29.09.2023
(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	03.10.2023
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/1065/2022-23 dated 29.03.2023 passed by The Assistant Commissioner, CGST, Division-VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Dipakkumar Amrutlal Patel (GSTIN: 24AAIFD1982G1Z1), 304, Banker House, Opp. Golden Triangle, Nr. Sardar Patel Stadium, Navrangpur, Ahmedabad-380014

- (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
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.
उच्च अपील्य 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।
- (C) For elaborate, detailed and latest instructions relating to filing of appeal to the appellate authority, the appellant may refer to www.cbic.gov.in.



ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE :

M/s. Dipak kumar Amrutlal Patel, 304, Banker House, Opp. Golden Triangle, Nr. Sardar Patel Stadium, Navrangpura, Ahmedabad, (hereinafter referred to as "the appellant"), holding GSTIN 24AAIFD1982G1ZI has filed appeal against Order-In-Original No. CGST/WT07/HG/1065/2022-23, dated 29.03.2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad-North Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2(i). The facts of this case are that the Appellant are engaged in mining quarrying of Granite stones falling under chapter No. 25 of Central Excise Tariff Act, 1975. During the inspection of the premises of M/s West India Granite, another firm i.e. M/s Dipakkumar Amrutlal Patel, having GST Registration no. 24AAIFD1982G1ZI was noticed operational. During the inspection of records of M/s Dipakkumar Amrutlal Patel it was noticed that M/s Dipakkumar Amrutlal Patel have not filed their GSTR 3B returns from October'2017 onwards and also have not paid the GST liability amounting to Rs. 87.21 Lakhs on the same.

2(ii). Shri Samir Amrutlal Patel, accountant and authorized signatory of M/s. Dipakkumar Amrutlal Patel, informed that the Company was in operation since the year 2011 & was registered under VAT before July 2017. Further he informed that they have not filed GSTR 3B and have not discharged their GST liability from October 2017 onwards due to financial crunch but they have filed GSTR-1 till July 2018. Various records were examined physically as well as the ones maintained in tally software installed in office computer form July 2017 to Feb 2019, and it came to notice of the officers that the appellant were collecting IGST, CGST and SGST from their clients/ customers but the same was not being deposited to the Government exchequer during the period from October'2017 to February 2019 by way of not filing the GSTR-3B returns for



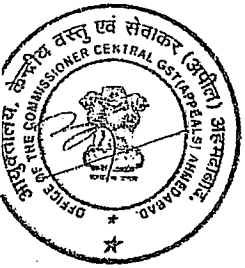
F.No. : GAPPL/ADC/GSTP/2283/2023-APPEAL

the aforementioned period. Further based on the documents examined the GST liability against their supply of finished goods was computed to the tune of Rs. 87,21,956.

3. Therefore, a Show Cause Notice F. No.V/18-40/Dipak/Gr.III/Prev./2018-19/2021-22 dated 31.03.2023. Further, the Adjudicating Authority vide Order-in-Original No. CGST/WT07/HG/1065/2022-23, dated 29.03.2023 has:

For Oct 17 to July 18:

- (i) Uphold the demand as of GST amounting to Rs. 5140104/- for the months Oct 17 to July 18; Further, the GST amount of Rs. 5140099/- already paid by noticee during investigation, needs to be appropriated against their outstanding GST liability for the period Oct 17 to July 18 as the same is paid by filing of GSTR 3 B returns for concerned months;
- (ii) Confirmed the Interest of Rs. 672085/- for the period Oct 17 to July 18 and order to adjust and appropriate interest amount of 850418/- for the months Oct 17 to July 18 already deposited by the notice on 29.03.2023 vide DRC -03 with entry no. DC24032303076 17/DC2403230307590 against the total interest liability.



For Aug-18 to Feb-19:

- (iii) Confirmed the Demand of the GST amount of Rs. 35,81,882/- (IGST Rs. 1250566/- ; CGST Rs. 1165658/- + SGST Rs. 1165658/-) under Section 74(1) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 for Aug-18 to Feb-19 and order to adjust and appropriate the amount of GST Rs. 35,80,537/- already paid by M/s. Dipakkumar Amrutlal Patel for Aug-18 to Feb-19.

(iv) Interest as applicable on the amount paid by debiting electronic cash ledger on amount of GST of on Rs. 29,65,423 for Aug-18 to Feb-19 as confirmed should be recovered from them under the provisions of Section 50 of the CGST Act 2017 read with Section 50 of Gujarat GST Act, 2017 & Section 20 of IGST Act, 2017, as amended . Interest amount of 850418/- already deposited by the notice on 29.03.2023 vide DRC -03 with entry no. DC2403230307617/DC2403230307590 out of which amount of Rs. 672085/- is appropriated against interest for the period oct-17 to July 18, and remaining amount of Rs. 178333/- should be appropriated against the interest liability for the period Aug-18 to Feb-19.



(v) **Impose a penalty of Rs. 3581882/- (IGST Rs. 1250566/- ; CGST Rs. 1165658/- + SGST Rs. 1165658/-)under Section 74(1) of the CGST Act 2017 read with Section 74(1) of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017.**

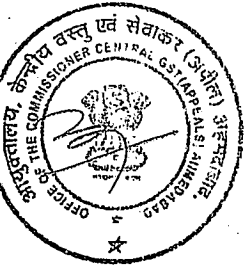
4. Being aggrieved, the appellant filed the present appeal on 28.06.2023 on the following grounds:-

(a) The appellant is accepting the interest liability imposed amounting to Rs. 2,67,131/- under section 50 on the liability paid through electronic cash ledger for late filing of GSTR-3B and agree to pay in due course of appeal.

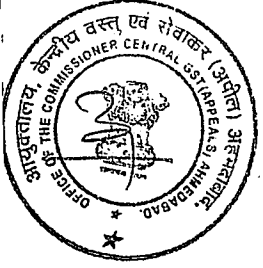
(b) In respect of denial to accept the penalty imposed under section 74(1) of CGST Act,2017 read with the section 74(1) of Gujarat State Act,2017 read with Section 20 of IGST Act,2017 amounting to Rs. 3,58,882/- (IGST Rs. 1250566/-; CGST Rs. 165658/- + SGST Rs. 1165658/-) on following grounds.

- They had already paid the tax liability after filing GSTR-3B from Aug-18 to Feb-19 with the late fees applicable.

- that the intention of the appellant has not to evade the tax or suppress any facts from your good self because the intention of the appellant is very clear to cooperate in your investigation. Therefore, the appellant has already submitted all the documents related to sales as well as tally data during the investigation. The copy of the sales summary during Aug-18 to Feb-19 is already submitted during the investigation as well as during the show cause notice proceeding.
- the appellant had paid the tax liability as well as interest is also being paid through DRC-03. Therefore, the intention of the appellant is very clear and not to suppress any facts. They submitted that for imposing penalty, there should be an intention to evade payment of GST on the part of the appellant supported by documentary evidence.
- The phrase "intention to evade tax, either by way of fraud or through willful misstatement or through suppression of facts" iii Section 74 of the Act assumes abundant importance. When the law requires an intention to evade payment of tax, then it is not mere failure to pay tax. It must be something more. The word "evade" in the context means defeating the provisions of la of paying tax. It is made more stringent by use of the word "intent", The taxpayer must deliberately avoid the payment of tax which is payable in accordance with law.
- The appellant has prepared proper accounting records as well as collect the tax from the recipient of the goods by issuing the tax invoice. That they followed proper procedure for supplying of the goods as specified in Act as well as in the rules. Also, whenever the officers had visited the premises the appellant provides all the details and accepted the liability determined by them and also filed the GST returns and paid the liability afterwards before issuance of the show cause notice. Therefore, the intention of the appellant is not to evade tax.
- The well settled law as regards to the invocation of penal provisions under Section 74 of the GST Act, it is manifest that until and unless there is wilful or deliberate or intentional evasion of any tax or attempt to evade any tax is established, there cannot be any punishment under the provisions of the Section 74 of the CGST Act. Mere omissions or Bonafide error cannot be construed as an offence.



- The only reason for late payment of tax was non receipt of collection from the customer. As the payments were stuck the appellant was facing cash crunch and therefore the GST returns was not filed within due date. The intention of the appellant was not to evade the tax payment. They were facing genuine liquidity issues because of non-payment from the customers. Later on, when the amount was released by the customers, the tax payment for the same has been done by the appellant.
- The appellant also taking reference of the following case laws to support the above-mentioned discussion:
 - (i) M/S. SHRI NANDHI DHALL MILLS INDIA PRIVATE LIMITED VERSUS SENIOR INTELLIGENCE OFFICER, DIRECTORATE GENERAL OF GOODS AND SERVICE TAX, DIRECTORATE GENERAL-SOUTH ZONE, GRIEVANCE OFFICER, DIRECTORATE GENERAL OF GOODS AND SERVICE TAX- 2021 (4) TMI 366 - MADRAS HIGH COURT
 - (iii) THE UNION OF INDIA REP. BY THE SECRETARY DEPARTMENT OF REVENUE MINISTRY OF FINANCE, DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE NEW DELHI, SENIOR INTELLIGENCE OFFICER DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE HYDERABAD ZONAL UNIT, DEPUTY DIRECTOR DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE HYDERABAD, ADDITIONAL DIRECTOR DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE HYDERABAD PRINCIPAL ADDITIONAL DIRECTORATE GENERAL DIRIECTORATIE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE HYDERABAD VERSUS M/S. BUNDL TECHNOLOGIES PRIVATE LIMITED, THE STATE OF KARNATAKA, COMMISSIONER OF STATIE TAX GOODS AND SERVICE TAX BENGALURU - 2022 (3) TNI 625 - KARNATAKA HIGH COURT
- The appellant prays that the appellant is not to be levied penalty under section 74(1) and the proceedings need to be remand back to the lower jurisdiction.



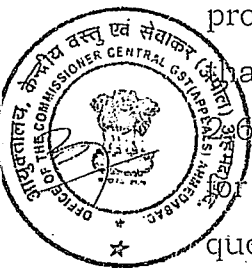
PERSONAL HEARING:

5. Personal hearing in this case was held on 29.08.2023. Smt. Nisha Vora, C.A. and Shri Arjun Akruwala, C.A., appeared in person, on behalf of the appellant as authorised representatives. During the personal hearing they submitted that the adjudicating authority has imposed the penalty under Section 74. Since all dues alongwith interest has already been paid before issue of SCN, no suppression of facts is proved. Further she reiterated the written submission and requested to set aside the OIO to the extent of penalty under section 74.

DISCUSSION AND FINDINGS:-

6. 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 find that the appellant is mainly contesting for is not to be levied penalty of Rs. 35,81,882/- under section 74(1) and the proceedings need to be remand back to the lower jurisdiction. Further I find that the appellant has accepted the interest liability imposed amounting to Rs. 2,67,131/- under section 50 on the liability paid through electronic cash ledger for late filing of GSTR-3B and agree to pay in due course of appeal. So the question to be answered in the present appeal is penalty of Rs. 35,81,882/- can be recovered or otherwise?


7. I find that in the instant case, neither the demand notice nor the impugned order has brought out any non declaration or any additional information on record to allege suppression of facts, which the appellant were required to declare in their GSTR- Return, but failed to declare. Further I find that the appellant had submitted all the documents related to sales as well as tally data during the investigation. The copy of the sales summary during Aug-18 to Feb-19 had also submitted during the investigation as well as during the show cause notice proceeding. Therefore, I find that the issue cannot be ground to invoke the provisions of fraud or willful misstatement or suppression of fact. As to allege suppression, there should be non-declaration of facts or information in the return. The term 'suppression' in the explanation is defined as under:



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

8(i). Considering the above facts, I find that the demand should have been raised under Section 73(1) of the CGST Act, 2017. I, therefore, in terms of Section 75(2) of the CGST Act, 2017, hold that the proper officer shall re-determine the tax payable by the appellant by deeming the notice have been issued under Section 73(1) in accordance with the provisions of sub-section (2) of Section 75 of the said Act and within the time limit specified under Section 75(3). Relevant provision of Section 75(2) is reproduced below:-

"SECTION 75. General provisions relating to determination of tax.



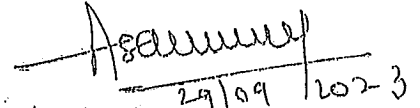
Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73."

8(ii). This provision was further clarified by the CBIC vide Circular No.185/17/2022-GST dated 27.12.2022, wherein it was stated that where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act, for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act.

8(iii). Thus, in terms of Section 75(2) of the CGST Act, 2017 and CBIC's above clarification, the impugned order confirming the demand of GST amounting to Rs.35,81,882/- has been demanded to be recovered from the appellant under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 for August 2018 to February 2019, needs to be re-determined by the proper officer by deeming, as if the SCN has been issued under Section 73(1) of the Act and imposition of penalty also needs to be adjudged in terms of Section 73 of the GST Act, 2017.

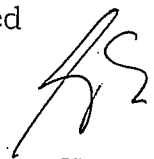
9. In view of the above discussion and findings, the impugned O-I-O is set aside and sent back to the adjudicating authority for re-determination of tax, interest and penalty, as above.

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.


29/09/2023
(Adesh Kumar Jain)

Joint Commissioner (Appeals)
Date: 29.09.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

M/s. Dipak kumar Amrutlal Patel,
304, Banker House, Opp. Golden Triangle,
Nr. Sardar Patel Stadium, Navrangpura,
Ahmedabad

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Additional Commissioner, CGST & C.Ex., Ahmedabad-North
5. The Deputy/ Assistant Commissioner, CGST & C. Ex, Division-VII Ahmedabad-North.
6. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
7. Guard File/ P.A. File.

