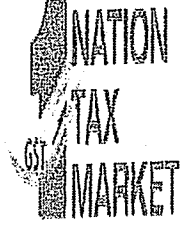




सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद 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.: 20231064SW0000777C79

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2280/2023 / 167u - 80
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-74/2023-24 and 27.10.2023
(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	30.10.2023
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/1045/22-23 dated 28.03.2023 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 Maruti Stone (GSTIN: 24ABCFM1517B1Z6), 304, Banker House, Opp. Golden Triangle, Nr. Sardar Patel Stadium, Navrangpura, Ahmedabad

(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 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 पर जाकर 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 .



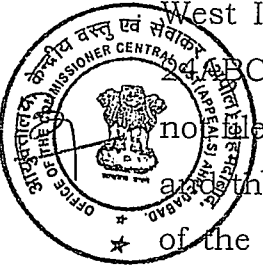
ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE :

M/s. Maruti Stone, 304, Banker House, Opp. Golden Triangle, Nr. Sardar Patel Stadium, Navrangpura, Ahmedabad, (hereinafter referred to as "the appellant"), holding GSTIN 24ABCFM1517B1Z6 has filed appeal against Order-In-Original No. CGST/WT07/HG/1045/2022-23, dated 28.03.2023 (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 the business of cutting and polishing of Granite stones falling under chapter No. 25 of Central Excise Tariff Act, 1975 and having GST Registration no. 24ABCFM1511B1Z6. The officers from the Anti-Evasion, CGST, Ahmedabad North Commissionerate visited the premises of M/s. West India Granite, situated at 304, Banker House, Opp. Golden Triangle, Nr. Sardar Patel Stadium, Navrangpura, Ahmedabad having GSTIN 24AABFW7109B1ZL on 05.02.2019. During the inspection of the above mentioned premises of M/s. West India Granite another firm i.e. M/s. Maruti Stone, having GST GSTIN 24ABCFM1517B1Z6 was noticed operational and it was found that they have not filed their GSTR 3B returns for the period from July 2018 to February 2019 and thereby failed to deposit the tax collected to the government. On initiation of the inquiry the appellant has filed the required GST returns and has paid Rs. 35,31,320/- (IGST Rs. 21,05,364/- ; CGST Rs. 7,06,103/- ; SGST Rs. 7,06,103/-) and same facts are corroborated in the statement dated 25.04.2019 of Shri Jaydev Ambalal Patel, Partner M/s. Maruti Stone.

3. Therefore, the Anti-Evasion has issued Show Cause Notice F. No. V/18-42/Maruti/Gr.III/Prev./2018-19 dated 31.03.2023 and proposed to demand and recover GST of Rs. 35,31,320/- (IGST Rs. 21,05,364/- ; CGST Rs. 7,06,103/- ; SGST Rs. 7,06,103/-) under Section 74(1) of Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017 / GGST Act, 2017' and collectively as the 'GST Acts, 2017') and section 20 of IGST Act,2017; to demand interest on aforesaid amount of GST of Rs. 3531320/-



(1GST Rs. 21,05,364/- ; CGST Rs. 7,00,103/-; SGST Rs. 7,06,1.03/-) under Section 50 of the GST Acts, 2017; and to impose penalty under Section 74(1) , 122(1)(iii) & (iv) and 122(2)(b) read with section 122 of GGST, 2017 of the CGST Acts, 2017.

4. Further, *the Adjudicating Authority* vide Order-in-Original No. CGST/WT07/HG/1045/2022-23, dated 28.03.2023 has:

For July 18 to Feb 18:

(i) Uphold the demand as of GST amounting to Rs. 26,16,618/- under Section 73 of the CGST, 2017 in lieu of the self-assessed returns for period from July 18 to Dec 18 as per Section 39 read with Section 37 of the CGST Act, 2017; Further, the GST amount of Rs. 26,16,618/- already paid by noticee under GSTR 3B in the month of March 2019 (before the issue of SCN dated 31.03.2022), needs to be appropriated against GST liability for the period July 2018 to Dec 2018.

(ii) Confirm the demand of GST of Rs. 6,19,841/- (IGST Rs. 458299/-; CGST Rs. 80771/- + SGST Rs. 80771/-) under Section 74(1) of the COST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 & Section 20 of the IGST Act, 2017 for Jan 2019 and also appropriate the same as per payment of tax made under the GSTR3B for the month Jan 2019, paid in the month of March 2019 (before the issue of SCN dated 31.03.2022).

(iii) **Impose penalty of Rs. 6,19,841/- (Rupees Six Lakh Nineteen Thousand Eight Hundred Forty One Only) under Section 74(1) of the COST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 & Section 20 of the IGST Act, 2017 for the month Jan 2019.** However, in view of Section 74 (11) of the of the CGST Act 2017 read with relevant provisions of Gujarat GST Act, 2017 and IGST Act, 2017 if the amount of Goods and Service Tax confirmed and interest thereon is paid within a period of thirty days from the date of receipt of this order, the penalty shall be fifty percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

(iv) Confirm the interest amount of Rs. 92000/- under Section 50 of the CGST Act, 2017 read with Section 50 of the CGST Act & Section 20 of the IGST Act, 2017 on the GST amount of Rs. 2141657/- paid by debiting electronic Cash

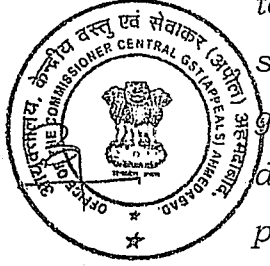


ledger and appropriate the same as per payment of interest made by the noticee of Rs. 92000.

(v) Impose a penalty of Rs. 25,000/- under Section 125 of the CGST/GGST Act, 2017.

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

- *The Appellant is in 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. 619841/-; the appellant had already paid the tax liability after filing GSTR-3B with the late fees applicable;*
- *that the intention of the noticee has not to evade the tax or suppress any facts from your good self because the intention of the noticee is very clear to cooperate in your investigation. Therefore, the appellant is already submitting all the documents related to sales as well as tally data to your god self. The copy of the sales summary for Jan-19 is already submitted during the investigation as well as during the show cause notice proceeding;*
- *The phrase "intention to evade tax, either by way of fraud or through willful misstatement or through suppression of facts" in 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 law 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 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 willful 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 Bonafede 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 noticee.

- the appellant is referring section 73(8) of CGST Act, 2017. As per section 73(8), Where any person chargeable with tax under subsection (1) or subsection (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

- The noticee is 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;

(ii) 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 OIF 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 DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE HYDERABAD VERSUS MN/S. BUNDL TECHNOLOGIES PRIVATE LIMITED, THE STATE OF KARNATAKA, COMMISSIONER OF STATE TAX GOODS AND SERVICE TAX BENGALURU - 2022 (3) TMI 625 -KARNATAKA HIGH COURT;

- In view of the above submissions and cited case law, 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:

6. 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 this is a case of late filing of GSTR-3B returns, but done after the search was initiated. Since they have paid all dues alongwith interest before issue of SCN therefore no mensea of malafide intention proved on record thus penalty under Section 74 is not imposable. She further reiterated the written submissions and requested to drop the penalties imposed.

DISCUSSION AND FINDINGS:-

7. 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 levy penalty of Rs. 6,19,841/- under section 74(1) and penalty of Rs. 25,000/- under Section 125 of CGST/SGST Act, 2017 and the proceedings need to be remand back to the lower jurisdiction. Further I find that the appellant has accepted and paid all the other dues. So the question to be answered in the present appeal is penalty of Rs. 6,19,841/- and Rs. 25,000/- imposed by the Adjudicating Authority is legal and proper or otherwise?

8. 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-3B 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 for January 19 had also submitted during the investigation as well as during the show cause notice proceeding. Therefore, I observe that there is no evidence exist 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.

It is observed that the GSTR-3B return is filed after 24 days from due date on which penalty is imposed under Section 74. In my opinion it is not justifiable, as no evidence exist about any wilful-misstatement or suppression of facts to evade tax as per Section 74 of CGST Act, 2017.

9(i). Considering the above facts, in terms of Section 75(2) of the CGST Act, 2017, the proper officer should re-adjudge the Show Cause Notice by deeming the notice have been issued under Section 73 in accordance with the provisions of sub-section (2) of Section 75 of the said Act. Relevant provision of Section 75(2) is reproduced below:-

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

(2) 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."



9(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.

9(iii). Thus, in terms of Section 75(2) of the CGST Act, 2017 and CBIC's above clarification, the impugned order confirming the penalty of GST amounting to Rs. 6,19,841/- 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 January 2019, needs to be re-determined by the proper officer by deeming, as if the SCN has been issued under Section 73 of the Act and imposition of penalty needs to be adjudged in terms of Section 73 of the GST Act, 2017.

9(iv). Further it has been observed that in the Show Cause Notice, the proper officer has proposed penalty under 74(1) of the CGST Act, 2017 and Section 20 of the IGST Act 2017 for non-payment of GST amount of Rs. 35,17,570/-. Further the adjudicating authority has dropped the penalty on the demand of GST amounting to Rs. 26,16,618/-. In view of the above it is observed that since the appellant had delayed in filing their GSTR-3B returns upto 204 days for the period of July 2018 to December 2018, penalty under Section 73(11) is also imposable on the demand of GST amounting to Rs. 26,16,618/- apart from penalty of GST amounting to Rs. 6,19,841/- under Section 73 of the CGST Act, 2017 which is also required to be adjudged by the Adjudicating Authority.



10. Further, as per Section 75(13) of the CGST Act, 2017 read with Section 75(13) of GGST Act, 2017 - General provisions relating to determination of tax as under -

“Section 75(13) :- Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provisions of this Act-“.

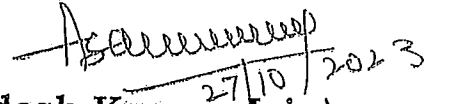
Also the penalty imposed under Section 125 of the CGST/SGST Act, 2017, is not maintainable as no penalty is proposed under Section 125 in Show Cause Notice. Therefore, in view of above, the penalty posed by the Adjudicating Authority is not legal and proper, thus set aside.

F.No.: GAPPL/ADC/GSTP/2280/2023-APPEAL

11. In view of the above discussion and findings, the impugned O-I-O is set aside and sent back to the adjudicating authority to re-adjudge the Show Cause Notice, under provision of Section 73 of CGST Act, 2017.

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


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


(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 27.10.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

M/s. Maruti Stone,
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.



