



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
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



आजादी का
अमृत महोत्सव

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DIN NO. : 20221064SW0000000DDA

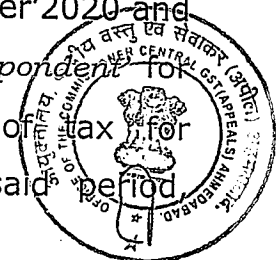
(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTD/36/2022 / 4001-22
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-001/131/2022-23 and 12.10.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	12.10.2022
(ङ)	Arising out of Order-In-Original No. WS0704/CGST/ASMT-13/2019-20 dated 16.02.2021 issued by The Superintendent, CGST, Range-IV, Division -VI I, Ahmedabad South Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Kunal Manubhai Desai, The Ab-bad People Emp CHS L Hariprasad nagar, Opp. Shreyansnath Soc., Paldi, Ahmedabad-380007

(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 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, Division - VII, Ahmedabad South Commissionerate (hereinafter referred as '*appellant*' / '*department*') has filed the appeal in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against the Order No. WS0704/CGST/ASMT-13/2019-20 dated 16.02.2021 (hereinafter referred as '*impugned order*') passed by the Superintendent, CGST, Range - IV, Division - VII, Ahmedabad South (hereinafter referred as '*adjudicating authority*') in the case of **M/s. Kunal Manubhai Desai**, The Ab-bad People Emp CHS L Hariprasad Nagar, Opp. Shreyansnath Soc., Paldi, Ahmedabad - 380007 (hereinafter referred as '**Respondent**').

2. Brief facts of the case are that the '*Respondent*' having GST Registration - GSTIN 24AJCPD5303J1ZQ is engaged in supply of Mineral or Chemical Fertilizers, nitrogenous or phosphatic and is paying tax @18% on the same. The '*Respondent*' did not file GSTR 3B returns for the period from March 2020 to December 2020; therefore, the *adjudicating authority* has issued notice under Form GSTR 3A for the said period. Thereafter, the *adjudicating authority* vide *impugned order* has confirmed the demand of tax of Rs.12,95,458/- CGST + Rs.12,95,458/- SGST under Section 62 of the CGST Act, 2017, and interest till the date of order of Rs.3,25,109/- under Section 50(1) of the Act *ibid* and penalty of Rs.50,000/- under Section 47 of the Act *ibid*. The *adjudicating authority* vide said order dated 16.02.2021 has confirmed the demand for the period from March'20 to December'20 on best judgement method as per Section 62 of the CGST Act, 2017. He has considered the average value and rate of tax of GSTR 3B returns filed by the respondent for January'2020 and February'2020 for arriving at assessable value and rate of tax for April'2020 to December'2020 and considered value and rate of GSTR 1 return filed by '*Respondent*' for March'20 for arriving at assessable value and rate of tax for March'2020. However, while calculating demand for said period



adjudicating authority has made mistake in arriving at correct demand of tax, which is mentioned as under :

	Period	Value	Correct demand should be @ 9% each			Demand as per Order		
			TAX			TAX		
			CGST	SGST	Total	CGST	SGST	Total
On the basis of GSTR-1 of March'20	March	9638775	867490	867490	1734980	867490	867490	1734980
Average of January & February 2020	April	5283628	475527	475527	951053	47552	47552	95104
	May	5283628	475527	475527	951053	47552	47552	95104
	June	5283628	475527	475527	951053	47552	47552	95104
	July	5283628	475527	475527	951053	47552	47552	95104
	August	5283628	475527	475527	951053	47552	47552	95104
	September	5283628	475527	475527	951053	47552	47552	95104
	October	5283628	475527	475527	951053	47552	47552	95104
	November	5283628	475527	475527	951053	47552	47552	95104
	December	5283628	475527	475527	951053	47552	47552	95104
	Total		57191427	5147228	5147228	10294457	1295458	1295458

In view of above, the *appellant/department* in the appeal memo has submitted that as per ASMT-13 Order the *adjudicating authority* has arrived at correct demand of CGST and SGST for the month of March'2020. However, from April'2020 onwards, the *adjudicating authority* has by mistake skipped last figure in both CGST and SGST tax figures, which resulted in less demand of Rs.77,03,541/- [Rs.1,02,94,457/- - Rs.25,90,916/-], which is required to be demanded and recovered along with interest and penalty.

3. Further, the *department* in the appeal memo has submitted that the impugned order has been examined by them and found that it is not proper and legal in view of following grounds :

- During review of said order, it is observed that the *adjudicating authority* has arrived at less tax demand of Rs.77,03,541/- [10294457 (-) 2590916] due to calculation error, as enumerated above, which is required to be recovered along with interest.
- Referred the Advisory No. 09/2020 dated 24.09.2020 issued by Additional Director General (Systems), Bengaluru.
- The demand order in form GST-DRC-07 has been reviewed online through AIO system and grounds of appeal has been uploaded in the AIO system for approval with the competent authority for filing of appeal before the appellate authority. At the present time, the functionality of filing of appeal (GST-APL-03) is not available online system therefore, the review order/grounds of appeal has been prepared offline.

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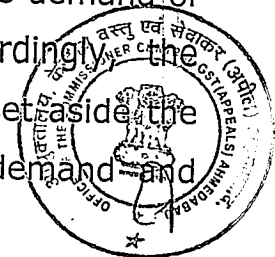
- For the reasons stated above, the Pr. Commissioner being competent authority under Section 107(2) of the CGST Act, 2017 is of the opinion that Order No. WS0704/CGST/ASMT-13/2019-20 dated 16.02.2021 (received on 13.04.21) (DRC-07) passed by Superintendent, AR-IV, Div. VII, CGST A'bad South in the case of M/s. Kunal Manubhai Desai is not proper and legal in respect of above facts and therefore, he has authorize the AC, CGST, Div. VII, A'bad South to file an appeal against said order before appellate authority, CGST, Ahmedabad praying for relief as herein below :

- o To set aside the Order WS0704/CGST/ASMT-13/2019-20 dated 16.02.2021 wherein erroneously demanded Rs.25,90,916/- instead of Rs.1,02,94,457/- under Section 62 of the CGST Act, 2017, which is required to be demanded and recovered along with interest and penalty.
- o to pass such an order directing the said original authority to demand and recover the tax short-demand of Rs.77,03,541/- [10294457 (-) 2590916] with interest and penalty. .
- o to pass any other order(s) as deemed fit in the interest of justice.

4. Personal Hearing in the matter was scheduled on 19.07.22 for which Shri Jigar Saraiya, Advocate as being authorized representative of 'Respondent' through an e-mail (heyadvocate@gmail.com) has requested for adjournment of PH. Thereafter, personal hearing through virtual mode held on 29.07.2022 wherein Sh. Jigar Saraiya, Advocate appeared on behalf of the 'Respondent' as authorized representative. During P.H. he has been given 07 (seven) working days period to submit written submission. However, the 'Respondent' has not submitted any written submission till date.

Discussion and Findings :

5(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Department' in the Appeal Memorandum. I find that the main issue involved in present appeal is that in the *impugned order* by mistake last figure in both CGST & SGST tax figure has been skipped which resulted into less demand of Tax of Rs.77,03,541/- [10294457 (-) 2590916]. Accordingly, the department has filed the present appeal with a prayer to set aside the *impugned order* and to direct the original authority to demand and



recover the tax short-demand of Rs.77,03,541/- [10294457 (-) 2590916] with interest and penalty.

5(ii). I find that in the present matter since the 'Respondent' has not filed returns, the *adjudicating authority* has passed the *impugned order* on best judgement method for the period March'2020 to Decemeber'2020 in terms of provisions of Section 62 of the CGST Act, 2017. I find that a mistake was done while calculating the demand of tax, which resulted into less demand of tax. Further, the *adjudicating authority* has confirmed the said demand of tax with interest; penalty was also imposed upon the Respondent.

5(iii). Further, I find that in the present matter as the 'Respondent' has not filed the GST Returns and in such situation relevant provisions for 'Assessment of non-filers of returns' are contained in Section 62 of the CGST Act, 2017. Therefore, I find it pertinent to refer Section 62 as under :

*** Section 62. Assessment of non-filers of returns.-**

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

In view of above provisions, I find that the *department* in the present appeal has submitted that a notice under Section 46 in the Form GSTR-3A was issued to the 'Respondent'. Thereafter the *adjudicating authority* has issued the Assessment Order under Section 62 under Form GST ASMT 13. Further, I find that according to above provisions in such situation where a registered person fails to furnish the return

under section 39 or 45 even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available. Accordingly, in the present matter the *adjudicating authority* has issued the *impugned order* considering the GSTR-1 of March'20 for calculating tax liability of March'2020 and considered the average of GSTR-3B of Jan'20 & Feb'20 for calculating tax liability for April'2020 to December'2020. The *adjudicating authority* has accordingly demanded and confirmed the demand of tax vide *impugned order*. However, I find that while calculating the tax liability by mistake last figure in both CGST & SGST tax figure has been skipped for the period April'20 to Dec.'20 which resulted into less demand of Tax of Rs.77,03,541/- [10294457 (-) 2590916].

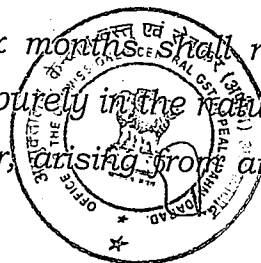
5(iv). Further, looking to the above facts and circumstances, I have referred the provisions of Section 161 of the CGST Act, 2017, the same is reproduced as under :

*** Section 161. Rectification of errors apparent on the face of record.-**

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:



Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

In view of above provisions, I find that the authority, who has passed or issued any decision or order or notice, may rectify any error which is apparent on the face of record in such decision or order or notice, either on its own motion or where such error is brought to its notice by any officer appointed or by the affected person within a period of three months. Further I find that such rectification shall not be done after a period of six months. However, I find that it is clearly mentioned in the aforesaid Section 161 of the CGST Act, 2017 that said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission. Here in the present matter while calculating the demand of tax the *adjudicating authority* has made mistake as skipped the last figure of Tax (CGST&SGST). Accordingly, the correct amount of tax has not been demanded & confirmed by the *adjudicating authority*. It is seen that the mistake so occurred in *impugned order* is in fact in nature of clerical / arithmetical.

In view of above, I am of the view that as the mistake was in fact clerical / arithmetical in nature, there is nothing wrong to rectify it in the light of provisions of Section 161 of the CGST Act, 2017. The *adjudicating authority* should have rectified it at the material time, however, looking to the facts of case it appears that same has been noticed by the *department* while reviewing the said order on 04.10.2021 i.e. after a period of more than six months from date of order.

5(v). Further, I find that as per Section 161 of the CGST Act, 2017 "*where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification*". Here in the present case the '*Respondent*' has attended the Personal Hearing held on 29.07.2022 and has submitted that they want to give written submission for which seven days period granted. However, the '*Respondent*' has not submitted any submission till date.

5(vi). In view of above facts, I find that the *adjudicating authority* has made clerical/arithmetical mistake in calculating the amount of Tax. Therefore, I find that the *adjudicating authority* has not calculated the correct amount of Tax. Accordingly, I find that due to

clerical/arithmetical error the *Adjudicating Authority* has demanded & confirmed less amount of tax i.e. Rs.25,90,916/- instead of Rs.1,02,94,457/- under Section 62 of the CGST Act, 2017 in impugned order issued in Form ASMT - 13 which is being challenged in the present appeal is found to be not proper and legal. Since, the mistake done in calculating the tax liability is in fact clerical / arithmetical in nature as discussed above, the *adjudicating authority* is empowered to rectify it in terms of Section 161 of the CGST Act, 2017. As per the said provision no such rectification shall be done after a period of six months from the date of issue of such decision or order. However, in the present matter said period of six months shall not apply as the rectification is purely in the nature of correction of a clerical or arithmetical error as discussed in foregoing paras.

6. In view of above discussions and as the *department* has filed present appeal to set aside the *impugned order* considering it being not proper, therefore said order requires to be set aside. Accordingly, the appeal filed by the '*Department*' is allowed and set aside the '*impugned order*' with a direction to the *adjudicating authority* to rectify the mistake/error in terms of provisions of Section 161 of the CGST Act, 2017. Further, in such situation of rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

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


The appeal filed by the '*Department*' stand disposed off in above terms.


12/10/22
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 12.10.2022



Attested

12-10-2022
(Dilip Jadav)
Superintendent. (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
The Assistant / Deputy Commissioner,
CGST, Division – VII, Ahmedabad South.

Appellant

M/s. Kunal Manubhai Desai,
The Ab-bad People Emp CHS L Hariprasad Nagar,
Opp. Shreyansnath Soc., Paldi, Ahmedabad – 380007

Respondent

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-V, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Superintendent, CGST, Range – IV, Division – VII, Ahmedabad South
- ✓ 7. Guard File.
8. P.A. File

