



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलिफैक्स 07926305136



DIN- 20221164SW00003353D3

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/114/2022 -APPEAL /SH67-72

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-167/2022-23**
दिनांक Date : **28-11-2022** जारी करने की तारीख Date of Issue : **28-11-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **WS07/O&A/OIO-25/AC-RAG/2021-22 DT. 9.11.2021**
issued by Assistant Commissioner, CGST & CX, Division-VII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**M/s. Sakshi Buildcon ,314, Galaxy Mall, Opposite Nehrunagar,
ST Bus Stop, Nr. Bimanagar, Satellite, Ahmedabad-380015**

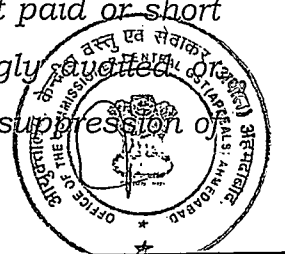
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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



authority vide impugned order confirmed the demand of Tax of Rs.23,27,207/- short paid during July'17 to March'18 and appropriated the same towards payment of same made by appellant under DRC-03 dated 31.03.2021. Further, the adjudicating authority had imposed penalty of Rs.23,27,207/- on the appellant under the provisions of Section 74(1) read with provisions of section 122(2)(b) of the CGST Act, 2017. Further, the adjudicating authority has also ordered for recovery of interest under Section 50(1) of the CGST Act, 2017 on the short payment of tax of Rs.23,27,207/-.

2(iii). Being aggrieved with the impugned order the appellant has filed the present appeal on dated 24.12.2021 on the following grounds :

- *The respondent authority has failed to appreciate the fact of the case that, the applicant has worked as a sub-contractor and provided the works contract service directly to the state government entity, and therefore imposed the rate of tax at the rate of 18% even though the final recipient of the service is the government entity.*
- *It is a transaction of work contract where property of goods passes directly to the employer and when we as a sub-contractor have transferred put our material and services for the execution civil work carried out for the authority of the government of Gujarat. The main contractor cannot take out our execution and cannot treat it separately. Thus, it cannot be said that at point of time, the property in the work job passes to the contractor where work is executed by the sub-contractors.*
- *Therefore, the entry of notification no. 11/2017 as well as 24/2017 where serial no. 3 for item no, VI stated that "Service provided to the central government/state government/union territory/the local authority or a governmental authority"*
- *Therefore it appears from the above entry the government not specified who is provided with the aforesaid services, therefore the aforesaid service may be supply by the sub-contractor or by the contractor. It is to be verify that who is the final recipient of the work contract as specified in the entry.*
- *Therefore, action of the respondent authority would not sustain and totally against the provisions of law and against the legal proposition of the law.*
- *The respondent authority has wrongly invoked the Section 74 of the CGST Act, 2017, as it can be invoked in the case tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of*



facts. But in the present case intention of the fraud has not been proved and contemplated by the authority in SCN or/and in final order. Therefore, imposition of penalty is not justified. Hence, penalty at the rate of 100% is not sustainable.

In view of above submissions the appellant makes prayer to set aside the impugned order and allow the appeal.

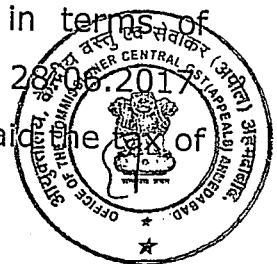
3. Personal Hearing in the matter was held on 20.10.2022. Sh. Chimanbhai Dhanjibhai Kathiriya, Advocate appeared on behalf of the 'Appellant' as authorized representative. He has been given 15 working days to submit additional information. Accordingly, the appellant has submitted the additional information/submission on dated 22.11.2022. The appellant in the additional submission has referred the case of

- (1) Shree Construction 2019
- (2) Shree Construction 2018
- (3) Core Construction
- (4) Mary Matha Construction Company
- (5) S. P. Singla Construction (P) Ltd.

The appellant has further submitted that these judgments are related to rate of tax applicable to the sub-contractor under GST Act. Accordingly, submitted the copies of said judgments and requested to consider the same.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records as well as submissions made by the 'Appellant' in the Appeals Memorandum. I find that a work contract order was awarded to M/s. Sarjan Construction Private Limited by Executive Engineer of Commissioner of Fisheries for up-gradation/renovation of the Veraval Fishery Harbour. In this regard, I find that the appellant namely M/s. Sakshi Buildcon is providing the work contract service as a sub-contractor to main contractor namely M/s. Sarjan Construction Private Limited. The said work contract service was supplied to the engineering office of the Commissioner of Fisheries. The appellant i.e. sub-contractor has paid Tax @12% (CGST & SGST 6% each) in terms of Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017. However, it was pointed out by the audit that the appellant was require to pay tax @18% in terms of Notification No. 11/2017-Central Tax (Rate) dated 20.09.2017. Accordingly, it was pointed out that the appellant has short paid the tax of



Rs.23,27,207/- (CGST-1163603 + SGST-1163603) for the month of October'2017. I find that the appellant has paid the said short paid tax under DRC-03 Debit Entry No. DI2403210318943 dated 31.03.2021.

4(ii). In view of above, I find that the appellant is mainly contending that they are eligible of the benefit of Notification No. 24/2017-Central Tax vide which the rate of Tax is prescribed as 12% (CGST + SGST). The relevant portion of notification is reproduced as under :

“(vi) Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

4(iii). Further, I find that in the appeal memorandum the appellant has submitted that they are providing works contract service as a sub-contractor to the main contractor and said work contract service is supplied to the engineering office of the Commissioner of Fisheries. Further, according to Appellant the said service would fall under Section 2(119) of the CGST Act, 2017 – *“2(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract”.*

Further, the appellant has referred the 25th Meeting of the GST Council held at New Delhi on 18.01.2018 and submitted in the appeal memo that the rate of tax applicable to main contractor would apply to sub-contractor also. Further, I find that the appellant has referred the Notification No. 01/2018-Central Tax (Rate) dated 25.01.2018 and submitted in the appeal memo that the services provided by the sub-contractor to the main contractor for Authority of State Government



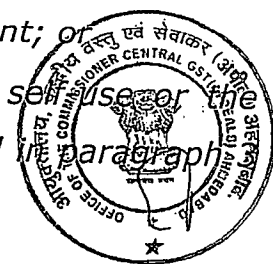
should charge only @12% and not @18%. The relevant portion of Notification No. 01/2018-Central Tax is reproduced as under :

Description of Service	Rate (per cent.)	Condition
(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be

4(iv). In view of foregoing, I find that the appellant is contending that they are eligible of concession rate of 12% in terms of Notification No. 24/2017-CT and in support of their claim they referred case laws through additional submission, wherein orders passed by the Appellate Authority for Advance Ruling as well as Authority for Advance Rulings. However, on going through the said case laws I don't find any case laws wherein eligibility of Notification No. 24/2017-CT (Rate) dated 21.09.2017 have been decided. Therefore, I am of the view that none of the case laws cited by appellant is applicable to the facts and circumstances of the present case.

4(v). Further, the appellant is also contending that the service provided by them is falling under Section 2(119) of the CGST Act, 2017 and as per Notification No. 1/2018-CT dated 25.01.2018 they are eligible for concession rate of tax 12%. In this regard, I find that the period involved is of October 2017 and the appellant is contending that they are eligible for benefit of concessional rate of tax of 12% in terms of Notification No. 24/2017-CT dated 21.09.2017. I find that by said notification the government has prescribed rate of 12 % in the matter of services provided to Government Authority by way of construction, erection, , or alteration of -

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- (c) a residential complex predominantly meant for use of their employees or other persons specified in paragraph of the Schedule III of the CGST Act, 2017.



However, I do not find any concrete submission/arguments of the appellant that the work contract service provided by them is squarely qualify/covered in any of the above (a), (b) or (c) as prescribed in Notification No. 24/2017-CT. In absence of any such evidence, documents, submissions, arguments to claim that the work contract service provided by them attracts tax @ 12% as per Notification No. 24/2017-CT is in fact incorrect. Therefore, I am completely agree with the view of department that the benefit of Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017 prescribes tax @12% (6% CGST + 6% SGST) only when supply is made to Government Authority and it should fall within the ambit of nature of services mentioned at (a), (b) and (c) thereof. Accordingly, I am of the view that the appellant is not eligible for concessional rate of tax of 12% as provided under Notification No. 24/2017-CT (Rate).

Further, in the Notification No. 01/2018-CT (Rate) dated 25.01.2018, nowhere it is mentioned that said notification is retrospectively effective. Hence, I am of the view that the benefit of said notification is available from the date of publication of said notification only i.e. 25.01.2018. Since, the issue involved in present appeal pertains to October 2017 therefore I find that the appellant is not eligible for benefit of said notification in the present matter.

4(vi). Further, I find that the adjudicating authority has imposed the equal amount of penalty of Rs.23,27,207/- on the appellant in the present matter in terms of Section 74(1) read with Section 122(2)(b) of the CGST Act, 2017. Accordingly, the relevant provisions are reproduced as under :

***Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.-**

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

***Section 122. Penalty for certain offences.-**

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-

(a) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;



(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

According to above provisions equal amount of penalty can be imposed in the matter when *any tax has not been paid or short-paid by/for reason of fraud or any willful misstatement or suppression of facts to evade tax.* Here in the present matter the appellant has paid the tax @12% as per Notification No. 24/2017-CT and department is of the view that appellant is liable to pay tax @18% in view as per Notification No. 11/2017-CT. I am of the view that before imposing equal amount of penalty as per provisions of aforesaid section it is important to prove that the tax has been short paid by reason of fraud or any willful misstatement or suppressed the material facts from the department to evade tax. However, in the present case the short payment of tax has been pointed out by audit, obviously, based on records maintained by the appellant. Therefore, it is not proper to allege that the appellant has short paid the tax by reason of fraud or suppressed the facts. Therefore, in absence of any such evidence of fraud, willful misstatement or suppression of facts imposition of equal amount of penalty under Section 74(1) read with Section 122(2)(b) of the CGST Act, 2017 is not justified. However, as the appellant has short paid the tax of Rs.23,27,207/- as pointed out by the audit, penalty under Section 122(2)(a) read with Section 73 of the CGST Act, 2017 is more justified.

Further, as the appellant has short paid the tax, they are liable to pay the same with interest under Section 50 of the CGST Act, 2017. The relevant portion of same is reproduced as under :

***Section 50. Interest on delayed payment of tax.-**

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

¹[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

In view of above, it is very much clear that short payment of tax pointed out by audit, is required to be paid with interest by the appellant.

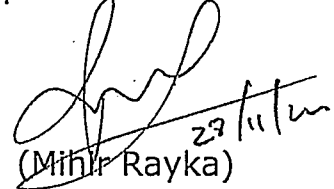


5. In view of above discussions, I do not find any justification in imposition of penalty equal to short paid tax amount. Further, I do not find any force in the contentions of the 'appellant' except imposition of penalty. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is legal and correct and as per the provisions of GST law except imposition of penalty.

6. Accordingly, I do not find any reason to interfere with the decision taken by the *adjudicating authority* vide "*impugned order*" except imposition of penalty. The penalty is reduced to Rs.2,32,721/- (10% of short paid tax Rs.23,27,207/-) in terms of provisions of Section 122(2)(a) read with Section 73 of the CGST Act, 2017. Accordingly, appeal is allowed to the extent of reduction of penalty only and rejects the appeal on all other grounds raised by appellant in the present appeal.

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

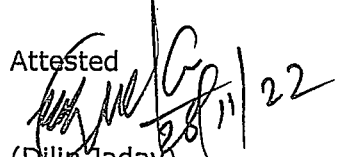
The appeal filed by the appellant stands disposed of in above terms.

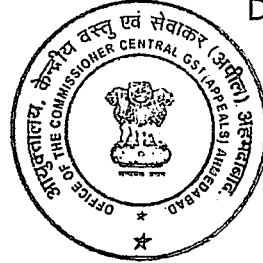

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 26.11.2022

Attested


(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
M/s. Sakshi Buildcon,
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Near Bimanagar, Satellite Road, Ahmedabad 380 015

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-VII, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File

