



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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DIN- 202301645W000111319

रजिस्टर्ड अक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2862/2022 -APPEAL

12310-15

ख अपील क्रम संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-217/2022-23

दिनांक Date : 30-01-2023 जारी करने की तारीख Date of issue : 31-01-2023

श्री मिहिर रायका_अवर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. 02/CGST/WS08/AC/KSZ/2022-23 DT. 14.07.2022 issued by The Assistant Commissioner, CGST & CX, Division-VIII, Ahmedabad South

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

M/s. Active Automobile, Plot No. 398/1, Next to Sarkhej Bavla Flyover, Fatehwadi, Ahmedabad-382210

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> 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, अपीलकर्ता 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 :**

M/s. Active Automobile, Plot No. 398/1, Next to Sarkhej Bavla Flyover, Fatehwadi, Ahmedabad 382 210 (hereinafter referred as 'Appellant') has filed the present appeal on 14.10.2022 under Rule 108(1) of the CGST Rules, 2017 against the Order-in-Original No. 02/CGST/WS08/AC/KSZ/2022-23 dated 14.07.2022 (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST, Division - VIII, Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

2. Briefly stated the fact of the case is that the 'Appellant' registered under GSTIN 24AARFA7890B1ZB is engaged in supply of motor cars, supply of spare parts of motor cars and service of motor cars. An inquiry was initiated by the DGGI, Ahmedabad Zonal Unit against the Appellant in connection with non filing of GST Returns for the period from August 2019 to January 2020 and for non-payment of GST to Government exchequer during this period. Accordingly, the principal place of business of Appellant was visited by the DGGI on 05.03.2020 and it was noticed that the appellant had collected IGST, CGST, GGST and Cess from their clients/customers but had not deposited the same to the Government exchequer during the period from August 2019 to January 2020 and had also not filed GSTR-1M and GSTR-3B Returns. During inspection of their records the appellant has accepted vide letter dated 05.03.2020 that they have not filed the GSTR-3B and GSTR-1M Returns of aforesaid period. On scrutiny of documents submitted by the Appellant the DGGI has worked out the GST liability Rs.1,10,25,488/- as detailed below :

[Details of sales from Aug. 2019 to Jan. 2020 as per GSTR-1M filed by the Appellant after initiation of inquiry]

Period	Taxable Val	IGST	CGST	GGST	Cess	Total GST Payable
Aug. 19 to Jan. 20	3,96,81,147	96,977	50,68,607	50,68,607	7,89,296	1,10,25,488

The appellant filed GST Returns after initiation of inquiry and paid Rs.1,09,90,255/- towards their GST liability of Rs.1,10,25,488/-, thus there was short payment of Rs.35,233/-. As against the liability of CGST Rs.50,68,607/- & GGST Rs.50,68,607/- the appellant has paid Rs.50,50,990/- towards CGST and Rs.50,50,990/- towards GGST. Accordingly, a SCN was issued to the Appellant under F. No. DGGI/AZU/Gr.-E/12(4)33/2020-21 dated 31.08.2021 alleging that the



appellant had not discharged their liability of GST and had not filed GSTR-1 and GSTR-3B returns for the period from August, 2019 to January, 2020; that the appellant had collected GST amount from their clients but did not deposit the same to Government exchequer during the period from August, 2019 to January, 2020; and that the appellant had discharged their GST liability for the said period and filed all pending GST Returns for August, 2019 to January, 2020 after initiation of Inquiry. The said Show Cause Notice proposed to demand and recover GST of Rs.1,10,25,489/- (Rs. 50,68,607/- CGST + Rs. 50,68,607/- GGST + Rs.98,977/- IGST + Rs.7,89,298/- Cess) under Section 74(1) & 76(1) of the CGST Act, 2017 and Gujarat GST Act, 2017 read with Section 20 of the IGST Act, read with Section 11 of the GST(CS) Act, 2017 ; to appropriate the GST of Rs.1,09,90,255/- (Rs.50,50,990/- CGST + Rs. 50,50,990/- GGST + Rs.98,977/- IGST + Rs.7,89,298/- Cess) paid by the appellant; to demand interest on aforesaid amount of GST of Rs.1,10,25,489/- (Rs. 50,68,607/- CGST + Rs. 50,68,607/- GGST + Rs.98,977/- IGST + Rs.7,89,298/- Cess) under Section 50 of the GST Acts, 2017; to appropriate interest of Rs.9,52,798/- already paid by the appellant against the liability of interest; and to impose penalty under Section 74, 76, 122(1)(iii) and 122(2)(b) of the CGST Act, 2017 and GGST Act, 2017 and under Section 20 of the IGST Act, 2017 as well as under Section 11 of the GST (CS) Act, 2017.

3. The Adjudicating Authority vide Order-in-Original No. 02/CGST/WS08/AC/KSZ/2022-23 dated 14.07.2022: -

- (a) confirmed the demand of GST of Rs.1,10,25,489/- (Rs. 50,68,607/- CGST + Rs. 50,68,607/- GGST + Rs.98,977/- IGST + Rs.7,89,298/- Cess) for the period from August, 2019 to January, 2020 under Section 74(1) of the CGST Act, 2017 & GGST Act, 2017 and ordered for appropriation of Rs.1,09,90,255/- (Rs.50,50,990/- CGST + Rs. 50,50,990/- GGST + Rs.98,977/- IGST + Rs.7,89,298/- Cess) against the payment so made;
- (b) confirmed the demand of interest amounting to Rs.10,40,463/- and appropriated Rs.9,52,798/- against the payment so made and ordered to recover remaining amount of Interest of Rs.87,665/- (Rs. 12369 + CGST 37336 + SGST 32225 + Cess 5735) under Section 50 of the CGST Act, 2017 & GGST Act, 2017, Section 20 of the IGST Act, 2017 and Section 11 of the GST(CS) Act, 2017;



- (c) Imposed penalty of **Rs. 50,68,607/-** under Section 74 (1) of the CGST Act, 2017 & **Rs.50,68,607/-** under Section 74(1) of the GGST Act ; **Rs.98,977/-** under Section 20 of the IGST Act, 2017 read with Section 74 of the CGST Act, 2017 ; and **Rs.7,89,298/-** under Section 11 of the GST(CS) Act, 2017 read with Section 74 of the CGST Act, 2017.

4. Being aggrieved with the Impugned order the appellant has filed the present appeal on 14.10.2022, wherein the appellant has *inter-alia* contended on the following grounds:-

- (a) Being the registered person under GST, the appellant was filing their GSTR-1 and GSTR-3B regularly, however, due to financial problems the GSTR-1 & GSTR-3B for the period from August 2019 to January 2020 could not be filed in time.
- (b) The competent authority initiated action u/s 67 of the CGST Act, 2017 instead of proceeding u/s. 46 of the CGST Act, 2017 "Notice to return defaulters".
- (c) Based on books of accounts maintained by the appellant and as submitted before the authorities on same date of inspection for the months in dispute, the officers have affirmed month wise tax liability which was existing in books of accounts remained unpaid to the extent of Rs.1,09,90,255/- however figures as appeared in books of accounts for the month of Jan-2020 was taken without proper verification by authorities on higher side and final liability was worked out to the tune of Rs.1,10,25,488/- which includes CGST+SGST+IGST+Cess.
- (d) For the month of Jan-2020 authorities erred in calculating the unpaid liability and for the purpose of calculating higher amount of unpaid tax from GSTR-1 just took figures of B2B of taxable value of Rs.708138/- and B2C Rs.2170301/- totaling taxable value of Rs.2878440/- and intentionally ignored the figure as shown under table 10 of GSTR-1 "Amended B2C (Others)".
- 10-Amended B2C (Others)

No. of Records	Total Invoice Value	Total taxable value	Total Integrated Tax	Total Central Tax	Total State/UT Tax	Total Cess
3	96849365.44	72867183.43	0	10024080.43	10024080.43	3974041.15

Net impact of this amendment resulting pending tax payable as nil and there is no shortfall in discharging the tax liability.

- (e) The appellant also calculated their Interest liability on GST Paid in Cash as per Section 50 of the CGST Act, 2017 to the tune of Rs.9,52,798/- which paid and appropriated as per impugned order.



- (f) In spite of total dues in form of tax along with interest was discharged before issuance of SCN in Form DRC-01A, the appellant was served with SCN in the Form GST DRC-01A dated 19.07.2021 to which the appellant replied in Part-B to GST-DRC-01A vide their letter dated 30.07.2021 acknowledged on 02.08.2021, wherein it was inter-alia submitted that before the commencement of proceedings under Section 73(5)/74(5) initiated vide SCN issued in the Form GST-DRC-01A dated 19.07.2021, they had already filed GSTR-1 and GSTR-3B for the period August 2019 to January 2020 and have discharged total tax liability along with applicable Interest on net tax discharged through cash which the appellant has paid for delay occurred in payment of tax.
- (g) However, instead of concluding the proceedings under Section 73(5), the DGGI has issued SCN u/s. 74 to the appellant demanded tax of Rs.1,10,25,488/- besides proposing penalties equivalent to the tax amount and interest
- (h) The appellant would like to state that the alleged SCN and impugned order are based on erroneous figures and without proper verification of the records as there is no short payment of GST of Rs.35,233/- vis-à-vis interest of Rs.87,665/-

As in relation to short payment of GST of Rs.35233/-, it is submitted that alleged short payment arrived as taxable value is considered summing up B2B & B2C figures only of Rs.708138/- & Rs.2170301/- respectively and ignoring amendments done in B2C, the table is reproduced as below,

Liability as per GSTR 1 (Abstract of GSTR-1)

Particulars	Taxable Value	IGST	CGST	SGST	Cess
B2B	708138	0	77645	77645	0
B2C	2170301	0	303842	303842	44504
B2C Amendment Value Reduced for April-20, May-20 & June-20	-147417	0	-18002	-18002	0
Total Liability as per GSTR 1	2731023	0	385481	385481	44504

Total amendment carried out during the month of Jan'2020 was of Rs.175152/- from B2C to B2B and accordingly as this figure was added to B2B, the same value could have been reduced from B2C, instead of only Rs.147417/- was deducted, resulting in excess declaration of taxable value of Rs.27735 and this error was corrected while filing annual return GSTR-9/9C for FY2019-2020.



As in relation to short payment of interest of Rs.87665/-, it is submitted that alleged short payment of interest was not quantified at

- the time of issuance of alleged SCN however, the same was worked out at the time of issuance of impugned order, the working of interest which forms part of impugned order is based on total gross liability. Interest has to be calculated on net cash basis only and not on gross liability. Now, it is settled by Finance Act, 2021 which has amended Section 50 of the CGST Act, 2017 was made effective from retrospectively from 01.07.2017, the interest has to be calculated on liability paid on net cash basis only and not on gross liability.*
- (i) *Belated filing of GSTR-1 and GSTR-3B is no offence and is permissible under the Act and suppression cannot be charged. Referred Section 47 of the CGST Act, 2017, CBIC's Circular No. 129/48/2019-GST dated 24.12.2019, Circular No. 76/50/2018-GST dated 31.12.2018.*

PERSONAL HEARING :-

5. Personal Hearing in the matter was held on 20.12.2022, wherein Mr. Pravin Dhandharla, Chartered Accountant was appeared on behalf of the appellant as authorize representative. During PH he has stated that they have nothing more to add to their written submissions till date.

DISCUSSION AND FINDINGS:-

6. I have carefully gone through the facts of the case available on records and submissions made by the *appellant* in the appeal memo as well as during the course of personal hearing.
7. The appellant is not disputing the payment of the GST made by them for the period from August 2019 to January 2020 along with interest already paid on net tax liability basis. However, the appellant is mainly contending the confirmation of demand of GST of Rs.35,234/- (CGST 17617 + SGST 17617) under Section 74. As against the confirmation of demand of CGST Rs.50,68,607/- & GGST Rs.50,68,607/- the appellant is of the view that they have correctly worked out and paid CGST Rs.50,50,990/- & GGST Rs.50,50,990/- in terms of amendment at table 10 of GSTR-1 of January 2020. The appellant has also mainly challenged the imposition of penalty under Section 74 of the CGST Act, 2017 & GGST Act, 2017 (herein after referred to as the '*CGST Act, 2017 / GGST Act, 2017*' collectively as the '*GST Acts, 2017*'); Section 20 of the IGST Act & Section 11 of GST (CS) Act read with Section 74 of the CGST Act, 2017.

8. The impugned order has been passed by taking into consideration the allegation in the show cause notice of evasion of tax by the appellant, which they allegedly collected but not deposited to the Government exchequer.

9.1 The appellant has contended that the present case is not pertaining to non-payment or short payment of GST but it only pertains to delayed payment of GST, which was paid by the Appellant on its own, therefore Section 74 of the GST Acts, 2017 is not applicable.

9.2 For sake of elucidation, the meaning of expression 'suppression' given in Explanation 2 of Section 74 of the GST Acts, 2017 is reproduced 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 thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

9.3 The first part of the Explanation 2 of Section 74 of the GST Acts, 2017 refers to 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 the Act or the rules made thereunder. This part pertains to non-declaration of facts or information in return etc. furnished under the GST Acts, 2017 or rules made thereunder. There is no allegation in the show cause notice or findings in the impugned order that the appellant has not declared facts or information in the returns etc. furnished under the GST Acts, 2017. In fact, the present case pertains to non-furnishing of returns rather than non-declaration of facts or information in returns furnished. It is on record that the enquiry against the appellant was initiated for non-filing of GSTR-1 M and GSTR3B for the period from August 2019 to January 2020 and for non-payment of GST to Government exchequer during that period. Once the returns were furnished on self-assessment basis, no discrepancy or short payment / non payment of tax has been noticed by the department. On the contrary, the liability has been considered in the show cause notice as well as in the impugned order what has been self-assessed and already paid by the appellant except Rs.35,234/- (CGST 17617 + GGST 17617).



9.4 The second part of the Explanation 2 of Section 74 of the GST Acts, 2017 refers to failure to furnish any information on being asked for, in writing, by the proper officer. In the present case, the appellant, vide letter dated 05.03.2020 had provided the required documents (Copy of Sales register, purchase register, Electronic Cash & Credit Ledger etc.) from August, 2019 to January 2020 to the officers at the time of the visit of officer of DGGI to the appellant's premises on 05.03.2020. The appellant had paid GST and furnished Form GSTR-3B from August, 2019 to January, 2020 on 07.03.2020, 31.03.2020, 02.06.2020, 23.07.2020, 17.09.2020 & 23.09.2020.

9.5 It is also not disputed that all the supplies were made by the appellant under cover of invoices, wherein self-assessed GST payable was shown; all such invoices were duly accounted for in the books of accounts maintained by the appellant; the details of such invoices were reflected in the registers provided vide letter dated 05.03.2020 to the officers of DGGI / department.

9.6 Therefore, taking all these peculiar facts of the case into consideration, I am of the view that the present one is not a case of 'suppression of facts' much less 'to evade tax', therefore invocation of Section 74 of the GST Acts, 2017 for confirmation of demand of GST already paid through returns for August, 2019 to January, 2020 filed by the appellant, is not found justifiable and sustainable.

10.1 I further find that at the operative portion of the impugned order (Para 27.4 of the impugned order), the adjudicating authority has ordered that - *"I refrain from imposing penalty separately by virtue of Section 76, 122(1)(iii) and 122(2)(b) of CGST Act, 2017."*

10.2 In view of this clear findings by the adjudicating authority in the impugned order, I hold that the allegation of collection of tax by the appellant and not depositing the same to the Government Exchequer cannot be sustained.

10.3 I further find that the Central Board of Indirect Taxes & Customs (CBIC), vide Circular No. 76/50/2018-GST, dated 30.12.2018, has already clarified the issue of imposition of penalty in cases where the return in Form GSTR-3B has been filed after the due date of filing such



return and where self-assessed tax or any amount collected as tax has not been paid. In the said Circular, it has been clarified as follows-

Sl. No.	Issue	Clarification
2	Whether penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?	<ol style="list-style-type: none"> As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax. It may be noted that a show cause notice (SCN for short) is required to be issued to a person 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 for any reason under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.

Thus, as clarified in the aforesaid Circular, the provisions of Section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in Form GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It has been clarified that penalty under the provisions of Section 73(11) of the CGST Act is not payable in such cases. In the present case also, the tax along with applicable interest has already been paid by the appellant much before the issuance of show cause notice, though such payment and filing of returns for August, 2019 to January, 2020 had been after the due date for payment of such tax and filing of such returns. As the CBIC has clarified that penalty under Section 73 of the GST Acts, 2017 cannot be imposed in such cases, the question of invoking provisions of Section 74 of the GST Acts, 2017 and imposition of penalty under Section 74 of the GST Acts, 2017 in this case does not arise.



10.4. As per the Circular No. 76/50/2018-GST, dated 31-12-2018, penalty under Section 125 only is required to be imposed in case of late payment of tax and late filing of returns. Accordingly, I hold that the appellant is liable to penalty of Rs.25,000/- (Rupees twenty five thousand only) under Section 125 of the CGST/IGST Act, 2017.

11. The issue of imposition of penalty for non-payment of tax within stipulated time, which was paid after the due date with interest, came up before the Hon'ble High Court of Karnataka in case of *CCE & ST, LTU, Bangalore Versus Adecco Flexione Workforce Solutions Ltd.* [C.E.A. Nos. 101-102 of 2008, decided on 8.9.11 - reported at 2012 (26) STR 3 (Kar.)], wherein it has been held as follows:-

"2. Facts are not in dispute. The assessee has paid both the service tax and interest for delayed payments before issue of show cause notice under the Act. Sub-sec. (3) of Section 73 of the Finance Act, 1994 categorically states, after the payment of service tax and interest is made and the said information is furnished to the authorities, then the authorities shall not serve any notice under sub-sec. (1) in respect of the amount so paid. Therefore, authorities have no authority to initiate proceedings for recovery of penalty under Sec. 76 of the Act.

3. Unfortunately the assessing authority as well as the appellate authority seem to think. If an assessee does not pay the tax within the stipulated time and regularly pays tax after the due date with interest. It is something which is not pardonable in law. Though the law does not say so, authorities working under the law seem to think otherwise and thus they are wasting that valuable time in proceeding against persons who are paying service tax with interest promptly. They are paid salary to act in accordance with law and to initiate proceedings against defaulters who have not paid service tax and interest in spite of service of notice calling upon them to make payment and certainly not to harass and initiate proceedings against persons who are paying tax with interest for delayed payment. It is high time, the authorities will change their attitude towards these tax payers, understanding the object with which this enactment is passed and also keep in mind the express provision as contained in sub-sec. (3) of Sec. 73. The Parliament has expressly stated that against persons who have paid tax with interest, no notice shall be served. If notices are issued contrary to the said Section, the person to be punished is the person who has issued notice and not the person to whom it is issued. We take that, in ignorance of law, the authorities are indulging in the extravagance and wasting their precious time and also the time of the Tribunal and this Court. It is high time that the authorities shall issue appropriate directions to see that such tax payers are not harassed. If such instances are noticed by this Court hereafter, certainly it will be a case for taking proper action against those law breakers."

Though the aforesaid judgement pertains to Service Tax matter, the ratio laid down therein is applicable in the present case as well in as much



as sub-sections (5) and (6) of Section 73 of the GST Acts, 2017 contains provisions similar to provisions of sub-section (3) of Section 73 of the Finance Act, 1994. As per sub-sections (5) and (6) of Section 73 of the GST Acts, 2017, the person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder. I, therefore, respectfully follow the aforesaid judgement of the Hon'ble High Court of Karnataka and hold that imposition of penalty on the appellant in this case is not sustainable as the appellant had already paid GST with applicable interest, much before the issuance of show cause notice.

12. As per proviso to Section 50 of the GST Acts, 2017, 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 shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger. The appellant has accordingly paid interest on delayed payment of GST for August, 2019 to January, 2020. In the impugned order, interest has been ordered to be charged and recovered on gross liability of GST on the ground that the proviso to Section 50 is not applicable as returns for August, 2019 to January, 2020 have been furnished after commencement of proceedings under section 74 of the GST Acts, 2017. As already held, section 74 of the GST Acts, 2017 is not applicable in the present case; therefore, charging of interest on gross GST liability is not sustainable.

13. As against the demand of CGST Rs.50,68,607/- & GGST Rs.50,68,607/- confirmed in the impugned order the appellant paid CGST Rs.50,50,990/- & GGST Rs.50,50,990/-, thus short paid Rs.35,234/- (CGST 17617 + GGST 17617). For the said short of GST the appellant has contended in the present appeal that the amendment done in B2C has been ignored; that total amendment carried out during January 2020 was of Rs.1,75,152/- from B2C to B2B and accordingly as this figure was added to B2B, the same value could have been reduced from B2C, instead only Rs.1,47,417/- was deducted, resulting in excess declaration of taxable value of Rs.27,735/- and this error was corrected while filing annual return GSTR-9/9C for FY 2019-20.




As regards to above argument of appellant, I find that appellant failed to produce any tangible or substantial evidence/material or records in the present appeal proceedings to substantiate their claim that amendment done by them in January 2020 has not been considered. Therefore, I find that the GST liability so worked out is as per the documents produced by the appellant and subsequent filing of GSTR Returns of relevant period.

14. In view of the foregoing, I uphold the demand of GST of Rs.1,10,25,488/- (Rs.50,68,607/- CGST + Rs.50,68,607/- SGST + Rs.98977/- IGST + Rs.789298/- Cess) & appropriation of GST of Rs.1,09,90,255/- already paid by appellant. Accordingly, Rs.35,233/- (CGST+SGST) to be recovered with interest as applicable under Section 50 of the CGST Act, 2017. The demand of interest on gross liability in the present appeal proceedings is not justifiable/sustainable therefore, I uphold the payment of interest of Rs.9,52,798/- already paid by the appellant on net tax liability basis for the period August, 2019 to January, 2020. Further, I imposed a penalty of Rs.25,000/- under Section 125 of the CGST/GGST Act, 2017. However, I hold that invocation of Section 74 & imposition of penalty under Section 74 in the impugned order is not sustainable. The impugned order is modified and the appeal is allowed to the above extent.

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.


30/01/23
(Mimir Rayka)

Additional Commissioner (Appeals)

Date: 30.01.2023

Attached

(Dimp Jadhav)
31.01.23
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
M/s. Active Automobile,
Plot No. 398/1, Next to Sarkhej Bavla Flyover,
Fatehwadi, Ahmedabad 382 210

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 Dy./Asstt. Commr., CGST & C. Ex, Division-VIII, Ahmedabad South
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.

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