



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-20230264SW000000FC84

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1723/2022 -APPEAL

19193 - 98

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-242/2022-23**

दिनांक Date : **27-02-2023** जारी करने की तारीख Date of Issue : **28-02-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

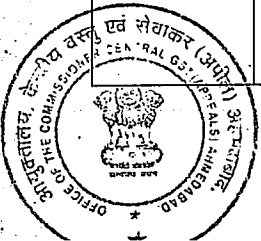
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **3CEEWS0704SO22100003 DT. 16.12.2021** issued by The Superintendent, CGST, Range-IV, Division-VII, Ahmedabad South

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

M/s. Anant Consultancy, A/214 Tirthraj Complex, Ellis bridge, Ahmedabad-380006

(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

M/s. Anant Consultancy, A/214 Tirthraj Complex, Ellis bridge, Ahmedabad – 380 006 (hereinafter referred to as the 'Appellant') has filed the present appeal on dated 28.05.2022 against the order in FORM ASMT-13 Order No. 3CEEWS0704SO22100003 dated 16.12.2021 (hereinafter referred to as the 'Impugned Order') passed by the Superintendent, CGST, Range-IV, Division VII, CGST, Ahmedabad South (hereinafter referred to as the 'Adjudicating Authority').

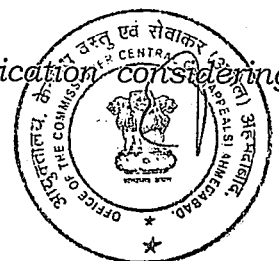
2. Briefly stated the facts of the case are that the appellant failed to file GST Returns. Accordingly, notice under GSTR-3A was issued by the Revenue Department under Section 46 of the CGST Act, 2017 for failure to furnish the returns. For the period January 2020 to December 2020, the appellant failed to furnish any GSTR-1 for the supplies made and also failed to furnish GSTR-3B for the said period as well as failed to discharge resultant tax liability for the said tax period within 15 days of the receipt of aforesaid GSTR-3A notice. Accordingly, Assessment Order under Section 62 of the CGST Act, 2017 under Form GST ASMT – 13 was issued on 16.02.2021. As per the ASMT – 13 Order, the tax liability was assessed u/s 62 of the CGST Act, 2017 on best judgment taking into account all relevant material available with the Revenue Department (i.e. GSTR-3B for the month Oct.'19 to Dec.'2019).

3. Being aggrieved with the impugned order i.e. ASMT – 13 order dated 16.02.2021 the appellant has filed the present appeal on 28.05.2022. The appellant has stated the statement of facts in their appeal as under :

- *Appellant's registration has been cancelled on 28.12.2020.*
- *Appellant is engaged in business of legal consultancy service. Appellant has declared all the Tax liability while filing GST Returns.*
- *The action of officer is totally bad in law because appellant has fulfilled all the responsibility which is imposed by law. The order passed by proper officer for imposing Tax, Interest and Penalty is without giving proper opportunity of being heard.*

In view of above submissions, the appellant has made prayer that –

- *Prays for deletion of Tax, Interest and Penalty charged without giving any opportunity of being heard and as the appellant has not undertaken any business transactions.*
- *Kindly consider the matter and accept the appeal application considering statement of facts and grounds of appeal*



4. Personal Hearing in the matter was held on 11.01.2023 wherein Mr. Viral Sanghvi, CA appeared on behalf of the 'Appellant' as authorized representative. During PH he has stated that they have nothing more to add to their earlier submissions till date.

Discussion and Findings:

5. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that as the appellant failed to file the GSTR 1 & GSTR 3B returns, the GST department has issued notice under form GSTR 3A. Since, the appellant has not filed the pending returns for the period January 2020 to December 2020 the *Adjudicating Authority* has issued the 'impugned order' i.e. Assessment Order in FORM GST ASMT-13 in terms of provisions of Section 62 of the CGST Act, 2017. Accordingly, vide *impugned order* the *adjudicating authority* has assessed the tax liability with interest and Penalty.

6. Further, I find that the present appeal is filed by the *appellant* on 28.05.2022 against the *impugned order* dated 16.02.2021. Hence, I observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Services Tax Act, 2017. However, in the above context, looking to the COVID 19 pandemic situation, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020. In view of said order of Hon'ble Supreme Court the present appeal is considered as filed within the stipulated time limit.

7. The appellant in the present appeal has mainly contended that the impugned order is passed without providing them the proper opportunity of being heard. The appellant has contended that the impugned order is passed, ~~vide which~~ imposed Tax, Interest and Penalty without being heard them, ~~therefore,~~ the *adjudicating authority* has violated the principle of natural



justice. Further, I find that the appellant has contended that they have not undertaken any business transactions also.

8. Since, the appellant is mainly contending that the adjudicating authority has passed the impugned order without being heard them and thus violated the principle of natural justice, I have referred the decision rendered by the Hon'ble High Court of Andhra Pradesh in similar matter in case of *S.P.Y Agro Industries Versus Union of India* as reported at 2021 (44) G.S.T.L. 337 (A.P.). The relevant para of the said case law is reproduced as under :

13. In fact, a perusal of the material on record show that, a notice under Form GSTR-3A came to be issued, on 15-1-2019, for filing of GSTR-3B returns for the period from February to December, 2018 under Section 46 of CGST Act, which was received, on 15-1-2019, itself. Without waiting for statutory period stipulated under the Act, assessment Order came to be issued in Form GSTR ASMT-13 under Section 62 of CGST Act, on 29-1-2019, directing the Petitioner to pay huge sum of money including penalty.

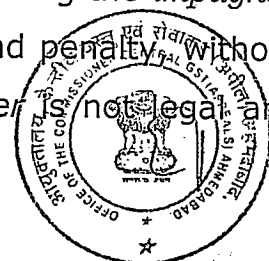
14. In view of the circumstances referred to above, more particularly, the order came to be passed without following the principles of natural justice, the Writ Petition is allowed setting aside the impugned Order, dated 29-1-2019, and consequential proceedings, dated 12-8-2020, and the matter is remanded back to the authorities concerned to deal with the same afresh, in accordance with law, after giving an opportunity of hearing to the Petitioner. No Order as to Costs

Further, I have also referred the case of *S.P.Y Agro Industries Versus Union of India* as reported at 2022 (63) G.S.T.L. 190 (A.P.). The relevant para of the said case law is reproduced as under :

18. As stated earlier Section 62 of the Act does not anywhere speaks about imposing penalty. It only speaks about liability for payment of interest under sub-section (1) of Section 50 or for payment of late fee under Section 47 of the Act. Further, if the penalty is to be imposed in cases, which are not covered under Section 62 or Section 63 or Section 64 or Section 73 or Section 74 or Section 129 or Section 130, the authority can impose penalty after giving reasonable opportunity of hearing such person. Further as observed earlier, under Section 161 of the Act any rectification, which adversely affects any person is possible only after following the principles of natural justice. Since the order impugned substantially affects the assessee as penalty is sought to be imposed, which demand did not form part of notice dated 13-8-2020, without giving an opportunity of hearing, the orders under challenge are set aside. However, the respondents are permitted to proceed further by issuing a fresh notice and pass orders in accordance with law.

19. Accordingly, the writ petition is allowed. No costs

9. In view of above, I find that in the instant case the adjudicating authority has violated the principle of natural justice in passing the impugned order vide which assessed the tax liability with interest and penalty without being heard the Appellant. Therefore, the impugned order is not legal and

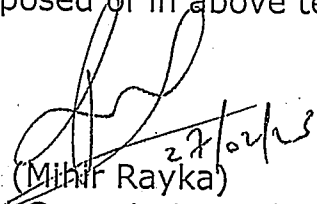


proper as passed without being heard the *Appellant* particularly, when the *Appellant* is contending that they have not undertaken any business transactions.

10. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly allowed the appeal filed by *Appellant*.

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

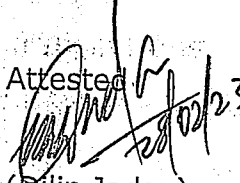
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 27.02.2023

Attested


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

By R.P.A.D.

To,
M/s. Anant Consultancy,
A/214 Tirthraj Complex, Ellis bridge,
Ahmedabad - 380 006

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/Asst. Commissioner, CGST, Division-VII, Ahmedabad South.
5. The Superintendent, CGST, Range - IV, Division-VII, Ahmedabad South.
6. The Superintendent (System), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File



