



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230364SW0000116891

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2307/2022 -APPEAL

19609-9614

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-258/2022-23**
दिनांक Date : **16-03-2023** जारी करने की तारीख Date of Issue : **17-03-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **15/CGST/Ahmd-South/AC/PMC/2022**
DT.16.03.2022 issued by The Assistant Commissioner, CGST, Division-V, Ahmedabad South

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

**Anil Nyati of M/s. Anil Metals, 286, Vijay Industrial Estate,
Near Bhikshuk Gruh, Odhav, Ahmedabad-382415**

(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 .

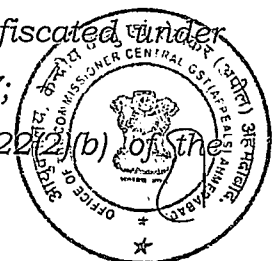


ORDER IN APPEAL**Brief Facts of the Case :-**

This appeal has been filed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "*the Act*") by **M/s. Anil Metals**, 286, Vijay Industrial Estate, Near Bhikshuk Gruh, Odhav, Ahmedabad – 382 415 (hereinafter referred to as "**Appellant**") against the Order-in-Original No. 15/CGST/Ahmd-South/AC/PMC/2022 dated 16.03.2022 (hereinafter referred to as "**impugned order**") passed by the Assistant Commissioner, CGST, Division – V, Ahmedabad South (hereinafter referred to as "**Adjudicating Authority**").

2(i). Facts of the case, in brief, are that the *appellant* is registered under the Central Goods and Services Tax Act, 2017 vide GST Registration GSTIN No. 24BBZPS2602D1ZL. While conducting an investigation against M/s. Arihant Metal Co., Ahmedabad by Directorate General of GST Intelligence, Zonal Unit, Ahmedabad (herein after referred to as 'DGGI'), in relation to availment of illegal wrongful/fraudulent ITC of GST and passing on illegal ITC of GST to their various buyers using fake invoices, without supply of corresponding goods, a search was conducted at appellant's premises i.e. of M/s. Anil Metals, Odhav, Ahmedabad being one of the buyers of M/s. Arihant Metal Co. During the search proceedings, Aluminium Ingots found unaccounted, as stock of same found excess (715.9 Kgs) as compared with books of accounts. As the appellant failed to produce any document as evidence of procurement of said goods, it was alleged that said goods were procured without invoices and without payment of GST and accordingly, said goods i.e. Aluminium Ingots of 715.9 Kgs. were placed under seizure. Accordingly, a Show Cause Notice dated 28.07.2020 was issued by the Deputy Director, DGGI, AZU to the *Appellant* and asked as to why –

- I. *Seized goods valued Rs.80897/- should not be confiscated under the provisions of Section 130(1) of the CGST Act, 2017;*
- II. *Penalty under Section 122(1) read with Section 122(2)(b) of the CGST Act, 2017 should not be imposed;*



- III. Total GST liability of Rs.14561/- on the seized goods should not be demanded under Section 130(3) read with Section 74(1) of the CGST Act, 2017;
- IV. Interest at applicable rate on GST demanded should not be recovered under Section 130(3) read with Section 50(1) of the CGST Act, 2017;
- V. Penalty should not be imposed under Section 130(3) of the CGST Act, 2017.

2(ii). Thereafter, the adjudicating authority has adjudicated the said SCN and passed impugned order as under –

- i. Order for confiscation of seized goods valued at Rs.80,897/- under the provisions of Section 130(1) of the CGST Act. However, give an option to appellant to redeem the goods on payment of redemption fine of Rs.80,897/- in lieu of confiscation of the said goods under the provisions of Section 130(2) of the CGST Act, 2017.
- ii. Confirm the tax of Rs.14562/- (CGST 7281 + SGST 7281) under Section 74(1) of the CGST Act, 2017 read with Section 130(3) of the CGST Act, 2017. Also appropriate the amount of Rs.14562/- paid by M/s. Anil Metals.
- iii. Order to recover the interest on the amount of Rs.14562/- under Section 50 read with Section 130(3) of the CGST Act, 2017. Also appropriate the amount of Rs.108/- paid by M/s. Anil Metals under Section 50 read with Section 130(3) of the CGST Act, 2017.
- iv. M/s. Anil Metals liable to pay penalty, tax and other charges in addition to redemption fine under Section 130(3) of the CGST Act, 2017.
- v. Imposed penalty of Rs.14562/- under Section 122(1) read with Section 122 (2) (b) of the CGST Act, 2017 upon M/s. Anil Metals. Also appropriate the amount of Rs.14562/- paid by M/s. Anil Metals under Section 122(1) read with Section 122 (2) (b) of the CGST Act, 2017

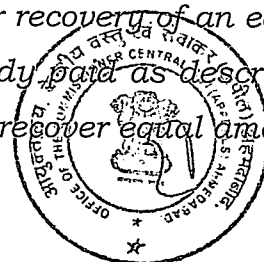
3. Being aggrieved with the “impugned order” the ‘Appellant’ has filed the present appeal on 05.07.2022 on the following grounds –

- The written submissions made by them dated 07.09.2020 and further reply dated 06.01.2021 submitted by them have not been considered by the adjudicating authority.
- Defense in the matter has not been considered and the order has been passed mechanically. It was brought out vividly through two affidavits tendered by them that goods found surplus were nothing but were accumulated waste/scrap over the period of time. And there has been



no malafide intention to evade tax or make undue and unjust benefits. In the SCN also there is no evidence adduced to this effect that the goods found surplus were procured by illegal means to evade tax. Thus, it can be safely concluded that there was no ill intention on the part of noticee.

- *For imposing penalty Section 126 of the CGST Act, 2017 is to be taken into consideration. While penalties are not new in tax laws, this section lays down certain guiding principles to ensure tax administration can be held accountable to the tax-paying citizens.*
- *Penalties can or may be levied depending on the facts and circumstances of each case. Provisions of penalty must be strictly construed and within the term and language of the statute. Referred following case laws :*
 - o *CIT Vs Vegetable Products Ltd. (88 ITR 192 (SC)).*
 - o *Hindustan Steel Ltd. Vs State of Orissa 25 STC 210*
 - o *Shree Enterprises Vs CTO reported in 2019-TIOL-1185-HCKAR-GST*
- *Non-compliance of law under genuine belief or without a guilty mind should not generally invoke penalties. In the case of noticee it is a matter of negligence and there is no element to even suggest that there was any mischief and intent to gain undue monetary benefits. The goods found to be surplus were waste or aluminium accumulated over a period of time. The same has been accounted for in the stock books after its provisional release and shall be supplied to the buyer concerned on payment of applicable tax.*
- *Certain proposal made for imposition of penalty is not applicable in this case. None of the ingredients as described in Section 122(2) are present, hence proposal made is unjust and illegal. However, the Ld. Adjudicating Authority did not consider these facts while deciding the case.*
- *Equal amount of penalty wrongly invoked under Section 130(3) since the goods were not ingots and were broken piece of ingots and were liable to be described as aluminium scrap. Therefore, the valuation arrived by investigating officer is incorrect.*
- *Order to recover equal amount of interest under provisions of Section 50 read with Section 130(3) of the CGST Act, 2017 without the authority of law and two sections quoted by the Adjudicating Authority is nothing but the said sections do not provide for recovery of an equal amount of interest. Applicable interest was already paid as described in SCN itself and hence imposing and ordering to recover equal amount*



of interest is without authority and thus unjust and illegal. And accordingly, prayed that same may be annulled.

In view of above submissions and grounds of appeal, the *appellant* has made prayer as under :

- *The Impugned Order may be modified to the extent of prayer made in this appeal and the order to recover an equal amount of interest may be annulled with consequential relief to the applicant.*
- *Any other relief as may be deem fit in the above premises.*

Since, the present appeal is filed beyond the prescribed time limit under CGST Act, 2017, the *appellant* has submitted COD application (Condonation of Delay) for condoning the delay in filing appeal. The *appellant* in COD application has submitted that -

- *This has been ever first litigation against the appellant. the appellant had to acquire basics of the law relating to notice, order and appeal mechanism. In doing so, the applicant has approached the trade circle and also legal experts and consultants. In which applicant was given to understand that the appeal is required to be filed within three months and for the purpose of 10% of tax/penalty/fine amount is also required to be deposited. This all took time and unintended delay has since been occurred, more so when the appellant is facing paucity of funds.*
- *There is no deliberate negligence on their part in filing appeal within stipulated time. There is no malafide intention on the Applicant's part in filing appeal belatedly. The Applicant would not gain nothing by not filing the appeal on time under the Statute, and on the contrary, the Applicant runs a serious risk of getting their case defeated at the very threshold because of delay, and therefore, delay in filing this appeal has never been deliberate on the Applicant's part.*
- *The Applicant tender an unconditional apology to this Hon'ble Com(A) for the delay in filing appeals and further pray that this delay may be condoned in the interest of natural justice.*

4. Personal Hearing in the matter was held on 25.11.2022 wherein Mr. M. K. Kothari, Consultant was appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted written submission dated 25.11.2022 and stated that they have nothing more to add to their written submissions till date. The *appellant* in their written submission dated 25.11.2022 stated that -

- *As per Impugned Order seized goods valued at Rs.80,89,711/- is confiscated and allowed release of same by imposing redemption fine*



of equal value of seized goods of Rs.80,897/- under the provisions of Section 130(2) of the CGST Act, 2017. The redemption fine is 100 % of value of the goods of Rs.80,897/- is quite high.

- The provisions of Section 130(2) specifies that the redemption fine imposed shall not be more than the market value of the goods but at the same time it should not be less than amount of penalty leviable under sub-section 1 of Section 129 of the CGST Act, 2017.
- According to the provisions of Section 129(1) at the relevant time, the minimum redemption fine payable is equal to the tax amount, which is Rs.14562/- on the value of the seized goods of Rs.80,897/- as determined by seizing officer.

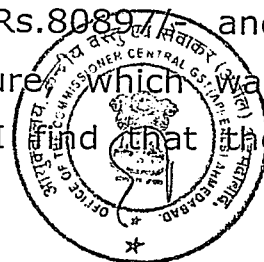
In view of above, the *appellant* has made prayer that the redemption fine imposed in the OIO may kindly be reduced.

Discussion and Findings :-

5(i). I have gone through the facts of the case. I find that the appeal in the present matter is filed beyond the normal period of three months prescribed under Section 107 of the CGST Act, 2017. However, I find that as per the provisions of Section 107(4) of the CGST Act, 2017 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. In the present matter the *impugned order* is of 16.03.2022 and appeal is filed on 05.07.22, thus there is a delay of 20 days (Approx.) i.e. delay of less than one month.

In view of above provisions and by considering the COD application of the *appellant* in the instant matter, I am inclined to condone the delay of filing of appeal. Therefore, I find that the present appeal is considered to be filed within stipulated time limit. Accordingly, I am proceeded to decide the case.

5(ii). I have carefully gone through the facts of the case, written submissions made by the "*Appellant*". I find that the *appellant's* premises was searched by the DGGI, AZU, Ahmedabad in connection with avilment and passing of illegal wrongful/fraudulent ITC of GST by one of the supplier of *appellant*. During said search proceedings, the DGGI had detected unaccounted goods i.e. *Aluminium Ingots* weighing 715.9 Kgs. valued Rs.80897/- and accordingly said goods was placed under seizure which was subsequently confiscated vide *impugned order*. I find that the



adjudicating authority has imposed redemption fine of Rs.80,897/- in lieu of confiscation of said goods ; confirmed demand of tax of Rs.14,562/- with interest and also imposed penalty of Rs.14562/- on the *appellant*.

5(iii). The *appellant* in the present appeal mainly contended that the said seized goods were not *aluminium ingots* as the goods found surplus were nothing but were accumulated waste/scrap over the period of time and there was no malafide intention to evade tax or make undue and unjust benefits. Accordingly, the *appellant* has contended that the demand of interest of equal amount under Section 50 read with Section 130(3) and imposition of penalty of Rs.14562/- as well as imposition of redemption fine of equal to the value of goods i.e. Rs.80,897/- under Section 130(2) of the CGST Act, 2017 are not justified. Further, I find that the *appellant* has also contended that looking to facts of their case, while imposing penalty, the provisions of Section 126 of the CGST Act, 2017 was to be taken in consideration.

5(iv). Since, the *appellant* is contended that penalty and redemption fine so imposed vide *impugned order* are not justified, I hereby refer the relevant provisions as under :

*** Section 130. Confiscation of goods or conveyances and levy of penalty.-**

(1) ¹[Where] any person-

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

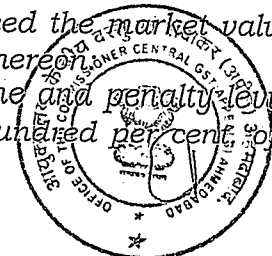
(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon.

Provided further that the aggregate of such fine and penalty leviable shall not be less than the ²[penalty equal to hundred per cent. of the tax payable on such goods]



Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

In view of above, I find that as per Section 130(2) "Whenever confiscation of any goods is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit : **Provided that such fine leviable shall not exceed the market value of the goods confiscated**". Therefore, I find that the redemption fine imposed by the adjudicating authority in the present matter is as per the provisions of relevant law. I find that it was alleged in the subject SCN that "*appellant failed to keep and maintain true and correct account of inward and outward supply of goods, and did not maintain correct balance of stock of goods in their business premises; the unaccounted goods so detected was stored at principle place of business without accounting for same in their records for the purpose of clandestine supply of goods with intention to evade GST. Since, the appellant failed to produce any document as evidence of procurement of said goods, the unaccounted goods was placed under seizure. Accordingly, I find that the adjudicating authority has correctly imposed the redemption fine vide impugned order.*

5(v). As regards to equal amount of penalty of Rs.14562/- imposed upon *appellant*, I hereby referred Section 122(2)(b) of the CGST Act, 2017 as under :

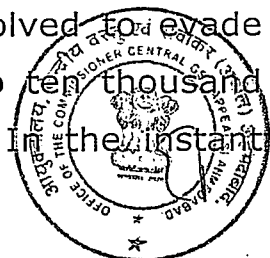
***Section 122. Penalty for certain offences.-**

(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.

In view of above, I find that in the matter of fraud, suppression of facts, willful misstatement are involved to evade payment of tax, the penalty imposable is equal to ten thousand rupees or equal to tax due whichever is higher. In the instant



matter, I find that the penalty of Rs.14,562/- is equal to the tax of Rs.14,562/-. Hence, looking to the facts of case as discussed in foregoing paras, I find that the penalty of Rs.14562/- is correctly imposed vide *impugned order* and it is as per the provisos of relevant law.

5(vi). As regards to confirmation of demand of tax under Section 74(1) read with Section 130(3) as well as interest under Section 50 I hereby referred the same 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 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.

²[(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed]

*** Section 130. Confiscation of goods or conveyances and levy of penalty.-**

"(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance."



In view of above provisions and considering the facts of case as mentioned in the foregoing paras I find that *adjudicating authority* has correctly confirmed the demand of tax under Section 74(1) of the CGST Act, 2017 with interest under Section 50 of the CGST Act, 2017. Further, I find that *appellant* has not produced any strong or valid evidence in support of their defense in the present appeal. Therefore, I do not find any force in the contentions of the *appellant* that penalty, redemption fine, interest are not justified. Accordingly, I find that the tax was correctly calculated & demanded on unaccounted goods so detected during the search of DGGI. Therefore, there is nothing wrong in confirming the same with interest as well as imposing penalty and redemption fine in lieu of confiscation of seized goods.

6. In view of the above, I do not find any force in the contentions of the *Appellant*. Therefore, I do not find any reason to interfere with the decision taken by the 'Adjudicating Authority' vide 'Impugned Order'. Accordingly, I hereby reject the present appeal of the 'Appellant'.


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

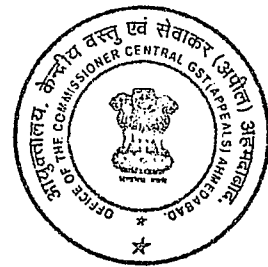
The appeal filed by the *appellant* stands disposed of in above terms.


16/03/23
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 16.03.2023

Attested

(Dilip Jadhav)
12/03/23
Superintendent (Appeals)
CGST, Ahmedabad



By R.P.A.D.

To,
M/s. Anil Metals,
286, Vijay Industrial Estate, Near Bhikshuk Gruh,
Odhav, Ahmedabad - 382 415

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-V, Ahmedabad South.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File