



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in

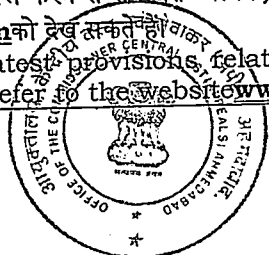


By Regd. Post/E-mail

DIN NO.: 20240564SW000077057D

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2192/2024 / 5426-32
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-27/2024-25 and 10.05.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	14.05.2024
(ङ)	Arising out of Order-In-Original No. 31/AC/Triveni/Div-II/A'bad-South/BPP/2023-24 dated 14.12.2023 (FORM GST DRC - 07 ref. no. ZD240124009915N dated 04.01.2024) passed by The Assistant Commissioner, CGST Division- II, Ahmedabad South Commissionerate.	
(च)	Name of the Appellant	Name of the Respondent
	M/s Triveni Engineering (Legal Name: Balraje Baban Rao Thorbole), Plot No.1518, GIDC Estate, Phase-3, Vatva, Ahmedabad, Gujarat, 382445	The Assistant Commissioner, CGST Division- II, Ahmedabad South Commissionerate

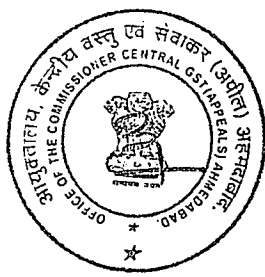
(A)	इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed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

M/s Triveni Engineering, Plot No. 1518, GIDC Estate, Phase-3, Vatva, Ahmedabad, Gujarat-382445 (hereinafter referred to as the "appellant") has filed the appeal on 07.03.2024 against Order-in-Original No. ZD240124009915N, dated 14.12.2023(31/AC/Triveni/Div-II/A'bad-South/BPP/2023-24, dated 14.12.2023) (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Division- II, Ahmedabad South Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24ADLPT7897A1Z2, is engaged in the taxable supply of Machinery, Plant or Laboratory Equipment, etc. The scrutiny of the returns of the supplier was conducted for the period from July 2017 to March 2018 some discrepancies have been noticed and accordingly ASTM-10 issued on dated 18.05.2022 was issued to the appellant in accordance with rule 99 of the CGST Rules, 2017. Show Cause Notice Vide DRC-01A dated 31.08.2022 was issued to the appellant. The details of the objection raised on which demand raised are as under:

- 
- (i) Short payment of tax on difference between GSTR-1 and GSTR-3B amounting to Rs. 80,47,633/-;
 - (ii) Wrong availment of input tax credit as per GSTR 2A and GSTR 3B amounting to Rs. 1,10,026/-;
 - (iii) Excess Credit taken in GSTR-3B as compared to available in GSTR-2A amounting to Rs. 20,054/-;
 - (iv) Late Fee and Interest on Delayed filing of returns amounting to Rs. 7,88,600/-.

3. Further, the adjudicating authority passed the impugned order dated 14.12.2023 and confirmed the demand as mentioned below:

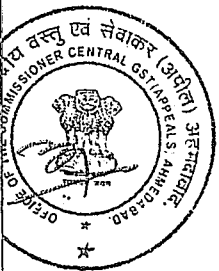
- (i) Short payment of tax on difference between GSTR-1 and GSTR-3B amounting to Rs. 80,47,633/- under Section 73(1) of the CGST Act 2017 read with Section 20 of the IGST Act 2017 alongwith interest under Section 50(1) of the CGST Act 2017 and penalty under Section 73(1) of the CGST Act 2017;
- (ii) Excess Credit taken in GSTR-3B as compared to available in GSTR-2A amounting to Rs. 20,054/- under Section 73(1) of the CGST Act 2017 read with Section 20 of the IGST Act 2017;
- (iii) Late Fee and Interest on Delayed filing of returns amounting to Rs. 7,88,600/-;

- (v) And drop the demand of Wrong availment of input tax credit as per GSTR 2A and GSTR 3B amounting to Rs. 1,10,026/- under Section 73(1) of the CGST Act 2017 read with Section 20 of the IGST Act 2017.

4. Being aggrieved with the impugned order, the appellant preferred the present appeal on 07.03.2024 for the following reasons:

- that the department confirm the demand and order to recover the short paid/ not paid GST amount to Rs. 80,47,633/- under the provision of section 73 (1) of the CGST Act, 2017 and Gujarat Goods & Service Tax Act, 2017 read with section 20 of the IGST Act, 2017 because the department not accepting voluntary payment of Rs. 63,68,999/- made by me against the difference in the GSTR-1 and GSTR-3B return of January-2018 month just because of not mentioning reason in the DRC-03 and same not informing the proper officer and not accepting credit note no. 1. Dated 31.03.2018 against original invoice No. 21 dated 04.01.2018 of M/s. Chhatral Environment Private Limited of Rs. 12,86,334/- due to this credit note not uploaded in GSTR-1 but mentioned in the final return GSTR9 and GSTR9C;
- I have issued credit note no. 1. Dated 31.03.2018 against original invoice No. 21 dated 04.01.2018 of M/s. Chhatral Environment Private Limited but due to human error my accountant forgets to filled it in GSTR1 due to the financial year 2017-18 is first financial year of GST implementation and he do not know how to upload credit note in GSTR1 and same issue I realise at the time of my accounts was audited and the due date of uploading credit note expired so chartered accountant give its effect of credit note in the final return GSTR9 and GSTR9C for the period 2017-18. As per department preview GSTR9-GSTR9C is final return of particular financial / previous year in which any mistake happens in GSTR3B / GSTR1 can be rectify and the department also consider final return GSTR9 / 9C;
- The department impose penalty of Rs. 8,06,768/- under section 73(1) of the CGST Act, 2017; Penalty impose under section 73(1) is depends upon the tax not paid by the assessee but I am already discharged my GST liability voluntarily before issuing order from the department. So, I am requesting you to the appellate authority that please gives me penalty amount on unpaid amount of GST so I will discharge it.

In view of the above the appellant requested to allow them payment of Rs. 63,68,999/- (GSTR-1 Liability Rs. 67,40,800/- Input credit of Rs. 3,71,801/- January 2018) discrepancy in GSTR 3B and GSTR 1 of the month January 2018, to reduce credit note GST liability of Rs. 12,86,334/- from the GST liability decided in the order and reduce penalty amount to the extent of unpaid GST amount.



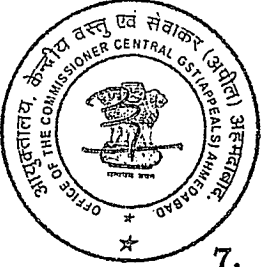
Personal Hearing :

5. Personal hearing in the appeal was held on 26.04.2024. Mr. Sohanlal K. Prajapati, C.A. appeared in person on behalf of the appellant in the present appeal. During personal hearing they submitted that they have already paid Rs. 63,68,999/- vide DRC-03. Interest and penalty yet to be paid. As regards the credit note the same is not reflected in GSTR-1. He further reiterated the written submissions and requested to allow appeal.

DISCUSSION AND FINDINGS:

6. I have gone through the facts of the case and written submission made by the 'appellant'. The appellant while filing APL-01, has paid Late Fee and Interest on Delayed filing of returns of Rs. 7,88,600/ and also paid the Excess Credit taken in GSTR-3B as compared to available in GSTR-2A of Rs. 20,054/-, however they have not paid interest and penalty on the demand of Rs. 20,054/- and Rs. Rs. 80,47,634/-. However as per APL-01 it is observed that the appellant has filed the present appeal against the disputed tax amount of Rs. 80,47,634/- alongwith penalty of Rs. 8,06,768/-. The disputed paras as per APL-01 of amount of Rs. 80,47,634/- alongwith penalty of Rs. 8,06,768/- are as under:-

- (i) Short payment of tax on difference between GSTR-1 and GSTR-3B amounting to Rs. 80,47,633/- alongwith penalty;
- (ii) Penalty on Excess Credit taken in GSTR-3B as compared to available in GSTR-2A on the amount of Rs. 20,054/-;



7. In respect of the demand for short payment of tax on difference between GSTR-1 and GSTR-3B amounting to Rs. 80,47,633/- arises on the ground that during 2017-18 the appellant has shown outward taxable supply in GSTR 1 of Rs.8,75,26,310/- whereas in GSTR 3B for the corresponding period, they have declared taxable supply of Rs.5,62,20,017/-. However in the instant case it is observed that the appellant had paid the tax liability of Rs. 63,68,999/- vide DRC's-03, dated 05.07.2019, 11.07.2019 and 02.08.2019, however they have not paid the interest on the tax liability of Rs. 63,68,999/- under Section 50(1) of the CGST Act 2017. In view of the above, the appellant has to paid the outstanding amount liability of Rs. 16,78,633/- [Rs. 80,47,633/- minus Rs. 63,68,999/- (paid through DRC-03)]. On being pointed out during the personal hearing the appellant agreed to pay the liability of Rs. 16,78,633/- under Section 73(1) of the CGST Act 2017 alongwith interest under Section 50(1) of the CGST Act 2017 and penalty under Section 73(1) of the CGST Act 2017.

8. In respect of the excess credit taken in GSTR 3B as compared to available in GSTR 2A of Rs. 20,054/- it is observed that appellant while filing APL-01 has paid the Excess Credit taken in GSTR-3B as compared to available in GSTR-2A of Rs. 20,054/-, however they have not paid interest and penalty on the demand of Rs. 20,054/-. In view of the above the appellant is liable to pay the interest under

Section 50(1) of the CGST Act, 2017 and penalty under the provisions of Section 73(1) of the Central Goods and Service Tax Act, 2017 on the demand of Rs. 20,054/-. On being pointed out during the personal hearing the appellant agreed to pay the said interest and penalty.

9. In view of the above discussions, I

- (i) uphold the demand for short payment of tax on difference between GSTR-1 and GSTR-3B amounting to Rs. 80,47,633/-. Out of the total liability of Rs. 80,47,633/-, the appellant had paid had paid the tax liability of Rs. 63,68,999/- vide DRC's-03, which is appropriated and the appellant shall pay the outstanding amount of Rs. 16,78,633/- (Rs. 80,47,633/- minus Rs. 63,68,999/-), (Sixteen Lakhs Seventy Eight Thousand Six Hundred and Thirty Three rupees) under Section 73 of the CGST Act 2017. Interest under Section 50(1) of the CGST Act 2017 is also payable on short paid amount of Rs. 80,47,633/- alongwith penalty (@ 10%) Rs. 8,04,763/- (Eight Lakhs Four Thousand Seven Hundred and Sixty Three rupees) under Section 73(9) of the CGST Act 2017.
- (ii) uphold the demand for excess availed and utilized ITC amounting to Rs.20,054/- and appropriate the same, which has been paid at the time of filing APL-01 and also uphold the interest under Section 50(1) of the CGST Act 2017 and penalty (@ 10%) Rs. 2005/- (Two Thousand Five Rupees) under Section 73(9) of the CGST Act 2017.

The impugned order in original is modified to above extent only.

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

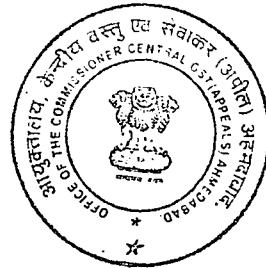
The appeal filed by the appellant stands disposed of in above terms.

Adesh Kumar Jain

(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 16.05.2024



Attested

(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To

M/s Triveni Engineering, Plot No. 1518, GIDC Estate,
Phase-3, Vatva, Ahmedabad, Gujarat-382445.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Gandhinagar Commissionerate
4. The Dy. / Assistant Commissioner(RRA), CGST & C.Ex, Ahmedabad South.
5. The Dy. / Assistant Commissioner, CGST & C.Ex, Division- II, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File/P.A. File.

