



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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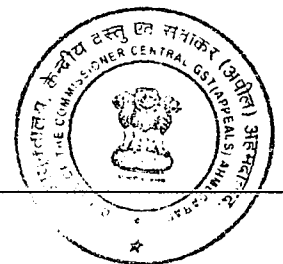


By Regd. Post

DIN NO.: 20240264SW0000622215

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/GSTP/44/2023 / ३०५४ - ६१
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-287/2023-24 and 26.02.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	28.02.2024
(ङ)	Arising out of Order-In-Original No. 23/2022 (DGGI) dated 30.09.2022 passed by The Additional Commissioner, CGST & Central Excise, Chennai South Commissionerate, Chennai.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Zoomcar India Private Ltd., Thaltej, Opp. TV Tower, Drive In Road, Gala Empire, Ahmedabad, Gujarat - 380015

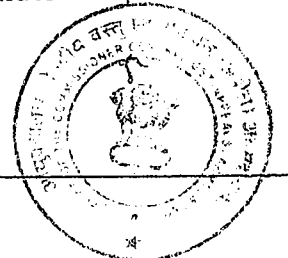
(A)	इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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) <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, 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. Zoomcar (I) Pvt. Ltd., Thaltej, Opp. TV Tower, Drive In Road, Gala Empire, Ahmedabad, Gujarat - 380015 (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. 23/2022(DGGI) dated 30.09.2022 (hereinafter referred as 'Impugned Order') passed by the Additional Commissioner, CGST, Chennai (hereinafter referred as 'Adjudicating Authority').

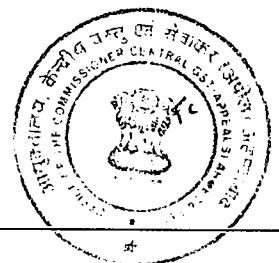
2. Briefly stated the fact of the case is that the 'Appellant' registered under GSTIN 24A4ACZ6094L1ZU and an Intelligence gathered by the officers of Directorate General of Goods & Services Tax Intelligence, Bengaluru Zonal Unit (DGGI, BZU for short) indicated that M/s. Zoomcar, engaged in the activity of renting of motor cars without operator (i.e., self-driven four wheelers) under the brand name "ZOOM", have not levied proper GST rate on the services of renting of motor cars/ motor cycles w.e.f 01/10/2019. Consequent to amendment of principal Notification No. 11/2017 CT (R) vide Notification No. 20/2019 CT (R) dated 30/09/2019 made effective from 01/10/2019, SI. No. (10) of the said notification covering 'renting services of transport vehicles' under SAC heading 9966 has been amended to 'renting services of transport vehicles with operator' and at SI. No. (17) of the said notification covering 'leasing or rental services with or without operator' under SAC heading 9973 has been amended to 'leasing or rental services without operator'. Further, in the said notification, wherever the words "without operator" is found against the SI. No. (10) has been removed and "with operator" have been inserted and in respect of SI. No. (17) of the said notification wherever the wordings 'with or without operator' has been amended to only 'without operator'. In view of the above, renting services with operator are classifiable under SAC heading 9966 and renting services without operator are classifiable under SAC heading 9973. The rate of GST applicable on renting or leasing of goods (SL No. 17(viia)) services without operator classifiable under SAC heading 9973 is same rate of GST as applicable on supply of like goods involving transfer of title in goods. The applicable rate of GST on motor cars/ motor cycles falling under chapter



heading 8703 & 8711 is 28%. However, M/s Zoomcar has classified their services Q subsequent to amendment under SI. No. (17) of the said notification under sub sl. No. (viii) instead of (viia).

2.1 Subsequently, the appellant were issued Show Cause Notice No. 120/2021-22 dated 24.11.2021 wherein it was proposed to

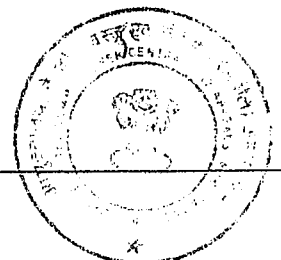
- (i) differential CGST of Rs. 11,19,506/- on intra-state supply of the taxable supply of services during the period from 01-10-2019 to 31-12-2019, as ii) detailed at para 6 should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017;
- (ii) differential SGST of Rs. 11,19,506/- on intra-state supply of the taxable supply of services during the period from 01-10-2019 to 31-12-2019, as detailed at para 6 should not be demanded and recovered from them under Section 74(1) of the SGST Act, 2017;
- (iii) differential IGST of Rs. 2,276/- on inter-state supply of the taxable supply of v) .. services during the period from 01-10-2019 t 31-12-2019, as detailed at para 6 should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;
- (iv) CGST of Rs.11,19,506/- and SGST of Rs.11,19,506/- paid on intra-state supply of the taxable supply of services rendered during the period 1-10-2019 to 31-12-2019 paid under DRC-O3 dated 20-3-2020 should not be appropriated towards the demand of CGST/SGST at S.No.(i) & (ii) above;
- (v) IGST of Rs.2,276 1-paid on inter-state supply of the taxable supply of services rendered during the period 1-10-2019 to 31-12-2019 paid under DRC-03 dated 20-3-2020 should not be appropriated towards the demand of 1GST at 8. In view of the above, Show Cause Notice was issued to MIs Zoomcar vide SCN No. 120/2021-22 dated 24/11/2021 by Deputy Director, DGGI, Bengaluru Zonal unit as to why: S.No.(iii) above;
- (vi) interest as applicable under the provisions of Section 50(1) of the CGST Act, 2017 (relevant section of the Gujarat GST Act, 2017) read with Section 20 of IGST Act,2017, should not be demanded and recovered from them on the amount of output tax demanded at (@), (ii) & (iii) above;



- (vii) penalty equivalent to the output tax demanded at (i) above, should not be imposed on them under Section 74(1) of the CGST Act, 2017, for short payment of CGST by reason of suppression of facts/wrong classification of taxable services supplied by them, on intra-state supplies, during the period from 01-10-2019 to 31-12-2019;
- (viii) penalty equivalent to the output tax demanded at (ii) above, should not be imposed on them under Section 74(1) of the SGST Act, 2017, for short taxable services supplied by them, on intra-state supplies, during the period from 01-10-2019 to 31-12-2019;
- (ix) penalty equivalent to the output tax demanded at (iii) above, should not be imposed on them under Section 74(1) of the CGST Act, 2017/Gujarat SGST Act 2017 read with Section 20 of the IGST Act, 2017, for short payment of IGST by reason of suppression of facts/wrong classification of taxable services supplied by them, on inter-state supplies, during the period from 01-10-2019 to 31-12-2019;

2.2 The Adjudicating Authority vide Order-in-Original No. 23/2022 (DGGI) dated 14.07.2022: –

- i. Confirm the demand of CGST of Rs.11,19,506/- (Rupees Eleven Lakh Nineteen Thousand Five Hundred and Six only) under Sec.73(9) of CGST Act 2017; and appropriate an amount of CGST of Rs.11,19,506/- paid by the taxpayer vide DRC 03 dated 20-3-2020 against the demand;
- ii. Confirm the demand of interest under Sec.50(1) of CGST Act 2017 on the tax amount demanded at S.No.(a) above;-
- iii. Impose a penalty of Rs. 1,11,951/- (Rupees One Lakh Eleven Thousand Nine Hundred and Fifty One only) on M/s. Zoomcar India Private Ltd under Sec.73(9) of CGST Act 2017 read with Sec.122(2)(a) of CGST Act 2017;
- iv. Confirm the demand of SGST of Rs.11,19,506/- (Rupees Eleven Lakh Nineteen Thousand Five Hundred and Six only) under Sec.73(9) of Gujarat GST Act 2017 and appropriate an amount of SGST of Rs.11,19,506/- (Rupees Eleven Lakh Nineteen Thousand



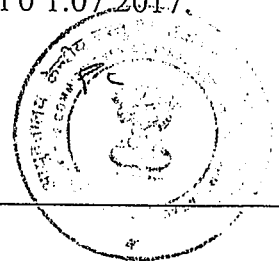
- Five Hundred and Six only} paid by the taxpayer vide DRC Q 03 dated 20-3-2020 against the demand at S.No.(e) above;
- v. Confirm the demand of interest under Sec.50(1) of Gujarat GST Ac'2017 on the tax amount demanded at S.No.(e) above;
 - vi. Impose a penalty of Rs. 1,11,951/- (Rupees One Lakh Eleven Thousand Nine Hundred and Fifty One only) on Mis Zoomcar India Private Ltd under Sec.73(9) of Gujarat GST Act 2017 read with Sec.122(2)(a) of Gujarat GST Act 2017 - »
 - vii. Confirm the demand of IGST of Rs. 2,276/- (Rupees Two Thousand Two Hundred and Seventy Six only) under Sec.73(9) of the CGST Act, 2017 read With Section 20 of the IGST Act, 2017 and appropriate an amount of IGST of Rs. 2,276/- (Rupees Two Thousand Two Hundred and Seventy Six only) paid by the taxpayer vide DRC 03 dated 20-3- 2020 against the demand at S.No.(i) above;
 - viii. Confirm the demand of interest under Sec.50(1) of CGST Act 2017 read with Section 20 of the IGST Act, 2017 on the tax amount demanded at S.No.(i) above;
 - ix. Impose a penalty of Rs.10,000/- (Rupees Seventy Thousand Five Hundred and Fifty Only) on Mis Zoom car India Private Ltd under Sec.73(9) read with Sec. 122(2)(a) of CGST Act'2017 read with Section 20 of the IGST Act, 2017.

4. Being aggrieved with the impugned order the appellant has filed the present appeal on 23.02.2023, wherein the appellant has *inter-alia contended* on the following grounds:-

- At the outset, it is submitted that the impugned order is ex-facie untenable and unsustainable in law and is liable to be quashed and set aside.

No interest can be demanded from the Appellant under Section 50(1) of the CGST Act.

- It is submitted that no interest can be demanded from the Appellant under Section 50(1) of the CGST Act
- The proviso to Section 50(1) of the CGST Act was inserted vide the Finance (No. 2) Act, 2019 with retrospective effect from 01.07.2017.



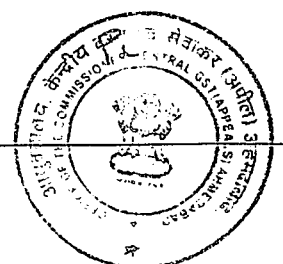
- It is pertinent to note that the intention for amendment of the proviso to Section 50 as expressed as by the GST Council at the meeting held in December 2018 and published in the Press release dated 22.12.2018 is relevant and reproduced below:

Amendment of section 50 of the Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e., interest would be leviable only on the amount payable through the electronic cash ledger

- Thus, no interest is leviable on delayed payment of tax which payment has been made by debiting the electronic credit ledger
- In the present case as well, the Appellant made payment of the entire differential tax liability vide Form DRC-03 dated 20.03.2020
- From a bare perusal of the said Form DRC-03, it is amply clear that the entire payment has been made by the Appellant by debiting the electronic credit ledger. In terms of the proviso to Section 50(1) of the CGST Act, the interest liability is to be restricted to that portion of tax paid belatedly by debiting the electronic cash ledger.
- Thus, in absence of any debit from the electronic cash ledger, no interest can be demanded from the Appellant under Section 50(1) of the CGST Act.

No penalty is liable to be imposed on the Appellant under Section 73(9) read with Section 122(2)a) of the CGST Act.

- Section 122(2)(a) of the CGST Act provides for a penalty, inter alia, in a case where any tax has been erroneously refunded or any input tax credit has been wrongly availed or utilized for any reason other than the reason of fraud, willful misstatement or suppression of facts.
- In the present case, it is submitted that the Appellant has already discharged the tax liability suo moto even prior to the issuance of the show cause notice. In view of the above, it is amply clear that no show cause notice ought to have been issued for demanding any tax or imposing any penalty in view of the suo moto tax payment made by the Appellant in view of Section 73(5) and (6) of the CGST Act.
- In any event, it is submitted that no penalty can be imposed on the Appellant in absence of any mensrea on the part of the Appellant.



PERSONAL HEARING :-

5. Personal Hearing in the matter was held on 10.10.2023, wherein Mr. Suyog Bhave, Advocate was appeared on behalf of the appellant as authorize representative. During PH he has stated that the appellant is not disputing the tax liability, which they have accepted during investigation and have paid. However, they are disputing interest liability, since the amount of tax was paid from electronic credit ledger and they always had sufficient balance. Further, since the adjudicating authority has accepted in the impugned order that there was ambiguity for some time regarding classification of the service and rate of tax applicable thereon, no penalty can be imposed on the appellant in the absence of any intention or menserea to evade payment of tax. He requested to modify the impugned order accordingly.

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. It is observed that the appellant is engaged in the activity of renting of motor cars without operator (i.e., self-driven four wheelers) under the brand name "ZOOM", have not levied proper GST rate on the services of renting of motor cars/ motor cycles w.e.f 01/10/2019. Consequent to amendment of principal Notification No. 11/2017 CT (R) vide Notification No. 20/2019 CT (R) dated 30/09/2019 made effective from 01/10/2019, SI. No. (10) of the said notification covering 'renting services of transport vehicles' under SAC heading 9966 has been amended to 'renting services of transport vehicles with operator' and at SI. No. (17) of the said notification covering 'leasing or rental services with or without operator' under SAC heading 9973 has been amended to 'leasing or rental services without operator'. Further, in the said notification, wherever the words "without operator" is found against the SI. No. (10) has been removed and "with operator" have been inserted and in respect of SI. No. (17) of the said notification wherever the wordings 'with or without operator' has been amended to only 'without operator'. In view of the above, renting services with operator are classifiable under SAC heading 9966 and renting services without operator are classifiable under SAC heading 9973. The rate of GST applicable on renting



or leasing of goods (SL No. 17(viia)) services without operator classifiable under SAC heading 9973 is same rate of GST as applicable on supply of like goods involving transfer of title in goods. The applicable rate of GST on motor cars/ motor cycles falling under chapter heading 8703 & 8711 is 28%. However, the appellant has paid their tax liability.

8. It is observed that the main contentions of the appellant in the appeal memorandum are that (i) They are not liable to pay the interest liability, since the amount of tax was paid from electronic credit ledger and they always had sufficient balance; (ii) the said matter is regarding classification of the service and rate of tax applicable thereon, no penalty can be imposed on the appellant in the absence of any intention to evade payment of tax.

9. I find that there is no dispute regarding the demand in the present case. However, the appellant has stated that they are not liable to pay the interest, since the amount of tax was paid from electronic credit ledger and they always had sufficient balance under Section 50(1) of the CGST Act, 2017.

9.1 Therefore, I refer to the relevant provision of Section 50(1) of the CGST Act, 2017 with regard to interest, which 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.

Subsequently amendments were made in Section 50 vide F.A. (No.2), 2019 and further vide F.A. 2021 and the amended provision was given effect from 01.07.2017. The amended provisions are reproduced below:

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.]

9.2 From the plain reading of the above Section 50(as amended), it is clear that the interest under Section 50 of the CGST Act, 2017 can only be levied on the net tax liability and not on the gross tax liability where the supplies made during the tax period are declared in the return after the due date and interest shall be levied on the portion of the tax that is paid by debiting the electronic cash ledger.

9.3 In the instant case, I find that the appellant has not been declared his tax liability in the relevant GSTR 3B and same was paid through DRC-03 dated 20.03.2020. Hence, interest shall be payable even on the liability discharged by utilizing the Input Tax Credit on delayed payment of tax which was not paid at the time of filing the return for the said period furnished accordance with the provisions of Section 39.

9.4 Therefore I hold that the taxpayer is liable to pay interest even for GST paid by utilizing input tax credit as per Sec. 50(1) of CGST Act' 2017 as made applicable to IGST under Sec. 20 of IGST Act' 2017.

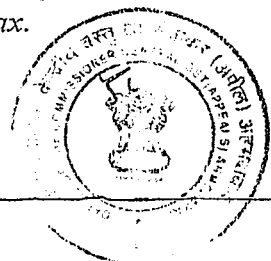
10. Further, for determination of penalty, I refer the provisions of the following Section:

** Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.



- (2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.
- (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
- (4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.
- (5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), 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.
- (6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
- (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
- (8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.
- (9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.
- ****(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.
- (11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of 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.



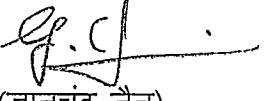
10.1 I find that the appellant has not paid the amount at the time of filing of return for the relevant period furnished accordance with the provisions of Section 39 and same was paid through DRC-03 dated 20.03.2020. However, the interest portion thereon is remaining unpaid. Thus, they have not fulfilled the criteria of Section 73(8) of the Act, *ibid*, therefore, they are liable for penalty under section 73 read with Section 122(2)(a) of the CGST, Act, 2017.

10.2 Therefore I hold that the taxpayer is liable to pay penalty under the sec 73.(9) read with Sec 122(2)(a) of CGST/Gujarat GST Act' 2017.

11. 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*'.

12. 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.


(मानचंद जैन)

आयुक्त (अपील्स)

Dated: 26th February, 2024

सत्यापित /Attested:

(अमरेंद्र कुमार)

अधीक्षक(अपील्स)

केंद्रीय जीएसटी, अहमदाबाद

By RPAD / SPEED POST

To,

M/s. Zoomcar (I) Pvt. Ltd., Thaltej,

Opp. TV Tower, Drive In Road, Gala Empire,

Ahmedabad, Gujarat - 380015.

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Additional Commissioner, CGST & C. Ex. Chennai South, 692. M.H.U complex, Nandanam Chennai - 600035
- 4) The supdt(Systems) Appeals Ahmedabad, with a request to upload on Website,
- 5) Guard File
- 6) PA file

