



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. GST/15-54/OA/2022

DIN-20231264WT0000311226

आदेश की तारीख/Date of Order: - 21.12.2023

जारी करने की तारीख/Date of Issue :- 21.12.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 50/JC/ LD /GST/2023-24**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

आयुक्त का कार्यालय, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009

क्रमांक/ Proceeding initiated against Show Cause Notice F.No. DGGI/AZU/Gr.B/36-451/2022-23 dated 20.12.2022 issued to M/s Chokhani Construction, having GSTIN 24AAHPC3304J1Z8, A-4, Viraj Apartment, Opp. Hari Nursing Home, Navrangpura, Ahmedabad, Gujarat-380009.



## BRIEF FACTS OF THE CASE

M/s Chokhani Construction, A-4, Viraj Apartment, Opp. Hari Nursing Home, Navrangpura, Ahmedabad, Gujarat, 380009 (hereinafter referred to as "M/s Chokhani" for the sake of brevity) is a Proprietorship firm. They are engaged in providing Work Contract Service falling under HSN code 00440410. respectively and attracting tax @ 18%. They are registered with GST and holding GSTIN 24AAHPC3304J1Z8 which falls under the jurisdiction of Range-I, Division-VII- S G Highway East, Ahmedabad North CGST & Central Excise Commissionerate.

2. An intelligence developed by the Data Analytical Cell of Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit, Ahmedabad [herein after referred to as "DGGI" for the sake of brevity] indicated that M/s Chokhani were not complying with the provisions of section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017 and had not been filing GSTR-3B Returns for the period from April-2019 to October-2019.

3.1 Based on intelligence regarding evasion of GST by M/s Chokhani Construction, an inquiry was initiated against them under the provisions of Section 67 of the CGST Act, 2017 under authorization for Inspection No. 409/2019 and inspection was carried out at the registered address of M/s Chokhani situated at A-4, Viraj Apartment, Opp. Hari Nursing Home, Navrangpura, Ahmedabad, Gujarat, 380009, Ahmedabad on **05.12.2019**. During the course of Inspection, various records were examined. **Preliminary inquiry revealed that M/s Chokhani had filed their GSTR-1M Returns and GSTR-3B Returns for the period April-2019 to October-2019 and also discharged their GST liability.** Details of returns filed by M/s. Chokhani are given in Table-1 of Para 5.1.

3.2 During the course of investigation, it has been observed that M/s Chokhani had filed the GSTR-3B Returns **on 03.12.2019** for the period from April 2019 to October 2019 and also discharged their tax liability amounting to Rs. 2,18,22,306/- [Rs. 93,58,356/- paid through ITC + Rs. 1,22,10,066/- paid in cash + Rs. 2,53,884/- paid under RCM]. They have also discharged their interest liability of Rs. 8,72,387/-.

4. During the course of investigation, M/s CHOKHANI had submitted the following documents:

- a) Copy of GST Certificate
- b) Sales and purchase register for the period from April-19 to October- 2019
- c) Copies of sample sales and purchase invoices.
- d) Copy of GSTR-3B for the period from April-19 to October- 2019

5. Scrutiny of the documents submitted by M/s Chokhani Construction revealed that they had discharged their GST liability amounting to Rs.2,15,74,961/-for the period from April-2019 to October-2019. The month-wise summary of GST liability shown under GSTR-1M returns filed by M/s Chokhani Construction for the even period as provided by is shown in Table-I below:

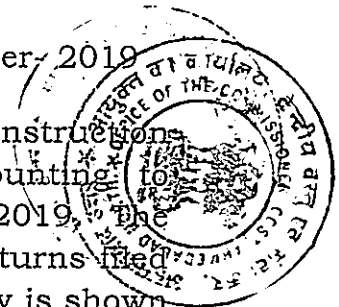


Table-I

(Amount in Rs.)

Details a per the GSTR -1 M							
Month & Year	Due date of filing	Actual date of filing	Taxable value	IGST on outward supply	CGST on outward supply	SGST ON OUTWARD SUPPLY	Total GST on outward supply
Apr-19	20.05.2019	04.12.2019	41887490	0	3769874	3769874	7539748
May-19	20.06.2019	04.12.2019	5282307	0	475408	475408	950815
Jun-19	20.07.2019	04.12.2019	4047455	0	364271	364271	728542
Jul-19	20.08.2019	04.12.2019	34246347	0	3082171	3082171	6164342
Aug-19	20.09.2019	04.12.2019	3924785	0	356504	356504	713008
Sep-19	20.10.2019	04.12.2019	20553156	0	1849784	1849784	3699568
Nov-19	20.11.2019	04.12.2019	9882986	0	889469	889469	1778938
			119860894	0	10787481	10787481	21574961

5.2 After being pointed out by the officers of DGGI, AZU, M/s.Chokhani Construction had submitted the copies of GSTR-3B and paid their outstanding tax liability for the period from April-2019 to October-2019 by way of filing their GSTR-3B return. Details of the payment made by M/s Chokhani Construction by filing their GSTR-3B returns are given in Table-II below:

Table-II

(Amt. in Rs.)

Month' Year .	Due date of filing of GSTR-3BReturn	Date of Filing of GSTR-38 Return	Taxable Value	Total GST payable	Paid through CASH	Paid through ITC	Total GST paid=including RCM)	Late fees paid
Apr-19	20.05.2019	03.12.2019	41887490	7539750	6714868	841780	7556648	9200
May-19	20.06.2019	03.12.2019	5282307	950816	65910	950816	1016726	9850
Jun-19	20.07.2019	03.12.2019	4047455	728542	39958	728542	768500	8300
Jul-19	20.08.2019	03.12.2019	34246347	6164344	3371448	2840166	6211614	6800
Aug-19	20.09.2019	03.12.2019	3924785	706462	42658	706462	749120	5150
Sep-19	20.10.2019	03.12.2019	20553156	3699570	1006550	2720178	3726728	3700
Nov-19	20.11.2019	03.12.2019	9882986	1778938	1222558	570412	1792970	2200
Total			119824526	21568422	12463950	9358356	21822306	45200

5.3 M/s Chokhani Construction have discharged their outstanding tax liability amounting to Rs.2,18,22,306/- for period from April-2019 to October-2019 by way of debiting Rs.93,58,356/- from their electronic credit ledger and Rs.1,24,63,950/-by way of debiting from electronic cash ledger. M/s Chokhani Construction had filed the GSTR-3B returns for the period from April 2019 to November 2019 **before initiation of investigation by DGGI, AZU but well after the prescribed due date** (more than six months) for filing of such Returns.

5.4 M/s Chokhani Construction have paid the applicable interest liability of Rs. 8,72,388/- vide GST DRC-03 debit entry no. DC2412190168615 dated 17.12.2019 under section 50 of CGST Act, 2017 after initiation of investigation by DGGI, AZU. The details are as under:-

Table-III

Amt. in Rs.

For the Month of	Due Date of Return/Payment	Actual Date of filling of Return	Delay by Days	Total Tax Paid by Cash (Rs.)	Interest Amount (Rs.)
Apr-19	20-05-2019	03-12-2019	197	6714868	655665
May-19	20-06-2019	03-12-2019	166	65910	5428
Jun-19	20-07-2019	03-12-2019	136	39958	2700
Jul-19	20-08-2019	03-12-2019	105	3371448	176239
Aug-19	20-09-2019	03-12-2019	74	42658	1578
Sep-19	20-10-2019	03-12-2019	44	1006550	22337
Oct-19	20-11-2019	03-12-2019	13	1222558	8441
Total				1,24,63,950	8,72,388

5.5 Therefore, it appeared that M/s Chokhani Construction, has paid the GST liability of Rs.2,18,22,306/- for the period from April-2019 to October-2019 along with the applicable interest as envisaged under Section 50 of the CGST Act, 2017 and penalty as envisaged under Section 125 of the CGST Act, 2017. However, although the taxpayer discharged the tax liability and interest but they have not discharged the penalty under section 122(1)(iii) of CGST Act, 2017.

6.1 Application of provisions of Central Goods and Services Tax Act defined under Section 20 of the IGST Act, 2017:

*"20. Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act."*

6.2 Scope of supply as defined under Section 7 of the CGST Act, 2017, read with Gujarat GST Act, 2017:

*"7. (1) For the purposes of this Act, the expression "supply" includes--*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

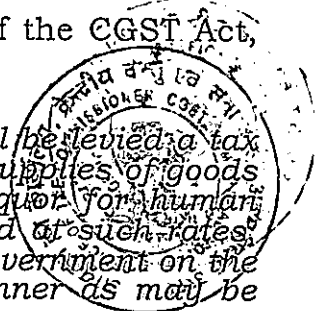
*(b) import of services for a consideration whether or not in the course or furtherance of business;*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and*

In view the above provisions it appeared that the services provided by Mis Chokhani Construction to their clients were supply of taxable services.

6.3 Levy and Collection as defined under Section 9 (1) of the CGST Act, 2017 read with Gujarat GST Act, 2017:

*"9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."*



By virtue of the above provisions, M/sChokhani Construction were legally obliged to pay the Government Exchequer, Goods and Services Tax at applicable rate on outward supply of said services to their clients.

6.4. The time to pay the tax on supply of taxable services is stipulated in Section 13 of the CGST Act, 2017 read with Gujarat GST Act, 2017. The relevant portion of the same is reproduced below:

*"13. (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*

*(2) The time of supply of services shall be the earlier of the following dates, namely:—*

*(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

*(b) the date of provision of service, if the invoice is not issued within the period prescribed under section-31 or the date of receipt of payment, whichever is earlier; or*

*(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply;*

*Explanation : For the purpose of clause clauses (a) and (b)*

*(i) The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;*

*(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier."*

The above provision stipulates that the payment of Goods and Services Tax payable on supply of the services should be either the date of issue of invoice or the date of receipt of payment whichever is earlier. Accordingly, M/s Chokhani Construction are under obligation to make payment of GST at the time as stipulated in Section 13 of the CGST Act, 2017 read with Gujarat GST Act, 2017.

6.5 Section 15 of the CGST Act, 2017 stipulates that the value of the supply of goods and/or services shall be the transaction value which is the price actually paid or payable for the said supply of goods and/or services where the recipient and provider of supply are not related and the price is the sole consideration for the supply. The relevant portion of section 15 is as under:

*15, (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

*(2) The value of supply shall include---*

*(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments,

As M/s. Chokhani construction had failed to discharge their tax liability on the actual taxable income in their GSTR-3B returns, it appeared that they have contravened of the provisions of section 15 of the CGST Act, 2017, read with Gujarat GST Act, 2017.

6.6. Section 39 of the CGST Act, 2017 lays down that every registered person should file a return giving details of the outward supply made by them, inward supply received by them including the ITC available with them. As M/s Chokhani Construction had failed to file GSTR-3B Returns within the prescribed time limit for the period April-2019 to October-2019, it appeared that M/s Chokhani Construction have contravened the provisions of Section 39 of the CGST Act, 2017, read with Rule 61 of CGST Act, 2017.

6.6.1. Rule 61 of the CGST, Rules, 2017, as amended reads as:

"61. Form and manner of submission of monthly return.-(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner."

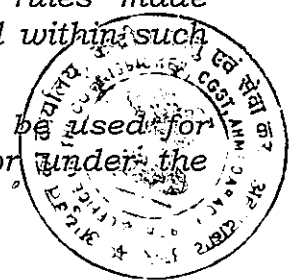
6.7. Payment of tax as detailed under Section 49 of the CGST Act, 2017 read with Gujarat GST Act, 2017:

"49. (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by Internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or



*Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.*

..

..

*(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.*

*(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made there under in the following order, namely;*

- a) self-assessed tax, and other dues related to returns of previous tax period;*
- b) self-assessed tax, and other dues related to the return of the current tax period;*
- c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74."*

6.7.1 Payment of tax detailed under Chapter-IX (Rules 85, 86 & 87) of the CGST Rules, 2017 read with SGST Gujarat Rules, 2017 & Section 20 of IGST Act, 2017. Rules 85, 86 & 87 of the CGST Rules, 2017 are as under:

**"85. Electronic Liability Register:**

- 1. The electronic liability register specified under sub-section (7) of the section 49 shall be maintained in Form GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common port on the common portal and all amount payable by him shall be debited to the said register.*
- 2. ....*
- 3. Subject to the provisions of section 49, payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per Rule 86 or the electronic cash ledger maintained as per Rule 87 and the electronic liability register shall be credited accordingly'.*

**"86. Electronic Credit Ledger:**

- 1. The electronic credit ledger shall be maintained in Form GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.*
- 2. The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49".*

**"87. Electronic Cash Ledger:**

- 1. The electronic cash ledger under sub-section (1) of section 49 shall be maintained in Form GST PMT-05 for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment there from towards tax, interest, penalty, fee or any other amount."*

Thus, it appears that M/s Chokhani Construction had knowingly failed to pay the tax, in gross contravention of Section 49 of the CGST Act, 2017 read with Rule 85, 86 and 87 of the CGST Rules, 2017 & Section 49 of the Gujarat GST Act, 2017 read with Rule 85, 86 and 87 of the Gujarat GST Rules, 2017.

6.8. Interest on delayed payment as detailed under Section 50 of the CGST Act, 2017 read with Gujarat GST Act, 2017:



"50. (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.

(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.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council."

Further, Hon'ble Jharkhand High Court in the case of M/s Mahadeo Construction have stated that-

"Liability of interest is automatic, but the same is required to be adjudicated in the event an assessee disputes the computation or very levibility of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act. In our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules,"

Thus, it appeared that M/s Chokhani Construction had failed to discharge their GST liability within the prescribed time limit and also, they had failed to furnish return within the time limit provided under the Act and therefore, they are required to pay interest at appropriate rates in accordance with the provisions stipulated under Section 50 of the CGST Act, 2017 read with Gujarat GST Act, 2017.

6.9 Self-Assessment as defined under Section 59 of the CGST Act, 2017 read with Gujarat GST Act, 2017:

"59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39."

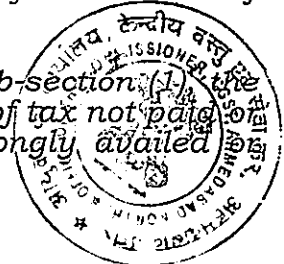
M/s Chokhani Construction had knowingly failed to correctly self-assess the tax payable and file the stipulated return as per section 59 of CGST Act, 2017 read with Gujarat GST Act, 2017.

6.10 Determination of Tax under Section 73 of the CGST Act, 2017 read with Gujarat GST Act, 2017:

"73, (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 utilized 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 utilized 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 there under.

(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, short paid or erroneously refunded or input tax credit wrongly availed



utilized 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 sub-section (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 there under.

(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 utilized 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."

In view of the investigation conducted on the basis of relevant records/documents, M/s Chokhani Construction is liable to pay GST amounting to Rs. 2,18,22,306/- under Section 73(5) of CGST Act, 2017 read with Section 73(5) of Gujarat GST Act, 2017 along with the applicable interest and penalty for the period April-2019 to October-2019. The scope of investigation is restricted to specific issue for non-filing of GSTR-3B returns and Non-payment of GST for the above said period. No further investigation apart from said particular issue has been conducted in this case.

6.11 Penalty for certain offences as detailed under Section 122 of the CGST

Act, 2017

122 (1) Where a taxable person who—

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) ...

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due

(iv) to (xvi) .....

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(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 percent of the tax due from such person, whichever is higher;

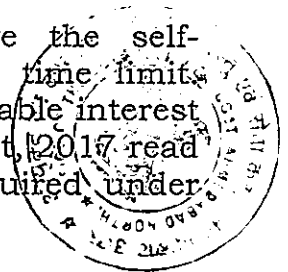
(b) ....

(3) Any person who--

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees."

7. In view of discussions in the foregoing paragraphs, it appeared that:

- M/s Chokhani Construction, A-4, Viraj Appartment, Opp. Hari Nursing Home, Navrangpura, Ahmedabad, Gujarat, 380009 is a Proprietorship firm;
- They are engaged in providing taxable service falling under HSN code 00440410 attracting tax @ 18%;
- They were registered with GST and are holding GSTIN 24AAHPC3304J1Z8 which falls under the jurisdiction of Range-I, Division-VII- S G Highway East, Ahmedabad North CGST & Central Excise Commissionerate;
- M/s Chokhani Construction had filed GSTR-1M and GSTR-3B Return for the period from April-2019 to October-2019. M/s Chokhani Construction knowingly failed to timely file the GSTR-3B return under Section 39 for the period from April-2019 to October-2019;
- M/s Chokhani Construction had failed to file the stipulated GSTR-3B return on time for the period April-2019 to October-2019. M/s Chokhani Construction had discharged their Tax liability of Rs. 2,18,22,306/- by way of filing the GSTR-3B returns for the period April-2019 to October-2019 before initiation of investigation by DGGI, AZU but well after the prescribed due date (more than six months) for filing of such Returns.
- M/s Chokhani Construction have failed to discharge the self-assessed tax liability of Rs. 2,18,22,306/- within stipulated time limits. Therefore, M/s Chokhani Construction are liable to pay applicable interest on Rs. 2,18,22,306/- (tax paid) under Section 50 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017 and penalty as required under Section 122 of the CGST Act, 2017.



8.1 M/s Chokhani Construction had discharged their tax liability for the period from April-2019 to October-2019, which has been quantified as Rs. 2,18,22,306/- as per available records submitted by them. The same is detailed in Table IV below:

Table-IV

(Amt.  
in Rs.)

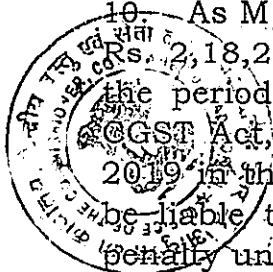
Month' Year	Due date of filing of GSTR-3B Return	Date of Filing of GSTR-3B Return	Taxable Value	Total GST payable	Paid through Cash	Paid through ITC	Total GST Paid (including RCM)	Late fees paid
Apr-19	20.05.2019	03.12.2019	41887490	7539750	6714868	841780	7556648	9200
May-19	20.06.20	03.12.2019	5282307	950816	65910	950816	1016726	9850
Jun-19	20.07.2019	03.12.2019	4047455	728542	39958	728542	768 50 0	8300
Jul-19	20.08.2019	03.12.2019	34246347	6164344	3371448	2840166	62 1 1614	6800
Aug-19	20.09.2019	03.12.2019	3924785	706462	42658	706462	749120	5150
Sep-19	20.10.2019	03.12.2019	20553156	3699570	1006550	2720178	3726728	3700
Oct-19	20.11.2019	03.12.2019	9882986	1778938	1222558	570412	1792970	2200
Total			11982452	21568422	12463950	9358356	21822306	45200

8.2 The scope of investigation is restricted to specific issue of non-filing of GST returns for the said period within stipulated time limit. No further investigation apart from the said particular issue has been conducted in this case.

9. In light of the facts discussed hereinabove and the material evidences available on records, it is revealed that M/s. Chokhani Construction had contravened the following provisions of the CGST Act, 2017:

- (i) Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Act, 2017 in as much as they failed to file GSTR-3B returns for the period April-2019 to October-2019, with an intent to evade payment of tax;
- (ii) Section 49(8) of the CGST Act, 2017, in as much as they failed to discharge their tax liability for the period from April-2019 to October-2019, with an intent to evade payment of tax;
- (iii) Section 59 of the CGST Act, 2017, in as much as they failed to self- assess their tax liability for the period from April-2019 to October-2019, with an intent to evade payment of tax;
- (iv) Section 122(1)(iii) of the CGST Act, 2017 in as much as they collect any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due.

10. As M/s, Chokhani Construction, had discharged the applicable tax of Rs. 2,18,22,306/- on the outward taxable supplies made by them during the period from April-2019 to October-2019, provisions of Section 73 of the CGST Act, 2017, is invocable for the period from April-2019 to October-2019 in the subject matter. M/s. Chokhani Construction also appeared to be liable to pay interest as per Section 50 of the CGST Act, 2017 and penalty under Section 122 of the CGST Act, 2017.



11. The tax amount of Rs.2,18,22,306/- was paid through ITC and cash, as discussed here-in above [Table II in Para 5.2] by M/s Chokhani Construction. Further interest of Rs.8,72,388/- was paid, discussed here-in above [Table III in Para 5.3] by M/s Chokhani Construction. Further, they have paid penalty of Rs.25,000/- under section 125 of CGST Act, 2017.

12. Further, all the above acts of contravention of the provisions of the CGST Act, 2017 and the Rules made there under read with Gujarat GST Act, 2017 and Rules made there under and further read with Section 20 of the IGST Act, 2017 on part of M/s Chokhani Construction constitute an offence as mentioned under Section 122(1)(iii) read with Section 73 of the CGST Act, 2017 read with Section 122(1)(iii) and Section 73 of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017, thereby making themselves liable to pay penalty as prescribed under Section 122(1)(111) of the CGST Act, 2017.

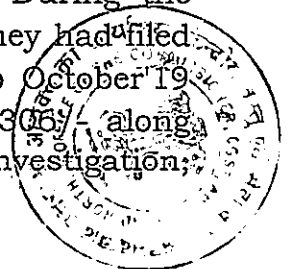
13. The aforesaid GST liabilities of M/s. Chokhani Construction, for the period from April-2019 to October-2019, have been worked out on the basis of records/data/information withdrawn during inspection and received from M/s. Chokhani Construction subsequently. Thus, the present notice relates exclusively to the information available on record and period covered.

14. Therefore Show Cause Notice NoDGGI/AZU/Gr.B/36-451/2022-23 dated 20.12.2022 was issued to M/s Chokhani Construction called upon as to why:-

(i) Penalty should not be imposed upon them under Section 122 (1)(iii) of the CGST Act, 2017 read with Section 122 (1)(iii) of the GGST Act, 2017 for collecting tax amount of Rs.2,18,22,306/- and not depositing to the Government beyond a period of three months from the date on which such payment becomes due.

#### DEFENCE REPLY

15. M/s.Chokhani vide their letter dated Nil received on 10.02.2023 submitted their reply to Show Cause Notice wherein they stated that they are registered with GST vide our GSTIN No. 24AAHPC3304J1Z8 engaged in providing works contract service such as industrial civil work, site development & infrastructure and industrial structural work to various clients including Intas Pharmaceutical Ltd, Hindustan Coca-Cola Beverages Private Limited, Kanhai Foods Limited to name a few. The firm is in this business for more than 30 years and are regularly complying with all the relevant statutory laws applicable to the firm, i.e. the Income Tax Act, 1961, Goods & Services Tax Act, 2017 & Employee Provident Fund Scheme, 1952. An inquiry was initiated against the firm under the provision of Section 67 of CGST Act, 2017 under authorization for Inspection No. 409/2019 and Inspection was carried out at their firm's registered address. During the course of investigation, it was observed by the department that they had filed GSTR-3B returns on 03.12.2019 for the period from April'19 to October'19 and also discharged the tax liability amounting to Rs. 2,18,22,306/- along with interest liability of Rs. 8,72,387/-. With reference to the investigation, they had submitted the following documents:

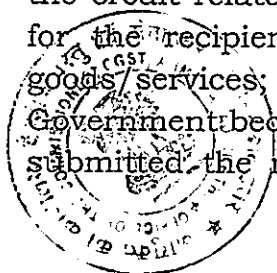


- a) Copy of firm' GST Certificate
- b) Sales and purchase register for the period from April-2019 to October-2019
- c) Copies of sample sales and purchase invoices.
- d) Copy of GSTR-3I3 for the period from April-2019 to October-2019.

16. M/s.Chokhani further stated that the main reason for delayed/Non-payment of GST was due to huge delay in the realisation of the amounts due from the clients. During the FY 2019-20, while the receivables for few important projects were delayed beyond normal time, huge operating expenses related to those projects continued to be incurred which led to working capital crises, ultimately leading to cash crunch in the business. The ideal average time taken for the realisation increased to more than 4-5 months, whereas, the firm had to pay the salaries to the onsite staff, engineers & technical team, construction materials to be procured, labourers etc. on monthly basis. The interest/finance cost on the overheads was almost shelling out the margins of the firm. The delayed payment of GST is arisen mainly because of this huge cash crunch.

17. Though the firm was facing extremely severe cash crunch, once the receipts became regular, it prioritized the revenue of the government over business needs and deposited GST along with applicable interest and late fees in toto. The firm then submitted GSTR-3B for the month of April 2019 to Oct 2019 along with all the tax liability, interest on the tax liability and late fees on delayed filing of GST returns. The amount of interest and late fees has been properly calculated and paid as per the relevant provisions and the said has been mentioned even in the para No. 11 of the show case notice. As instructed by the investigating officer and in good faith, the firm has also paid penalty under section 125 of the CGST Act, 2017 (general penalty) of Rs. 25,000 vide CPIN: 21062400114548 dt.09.06.2021 (Annexure B). They are enclosed below the relevant provisions for interest, late fees and general penalty as per the CGST Act, 2017.

18. They further stated that even if the GSTR-3B returns for the period April 2019 to October 2019 were filed beyond the prescribed time limit, they have paid the applicable interest and late fees for delayed filing of GST returns. The firm's non-submission of GSTR-3B (on time) was not at all a means for fraudulent and willful attempt for suppression of liable tax. They have not attempted for suppression of facts and have correctly declared our outward taxable supplies turnovers through GST returns. Further, non-filing of GSTR-3B returns was certainly an omission on their part, but such non-filing shall not lead to penalty under section 122, because there was no prima-facie suppression by them regarding outward taxable supplies. Moreover, there was not even an iota of evidence established by investigating authority pointing out willfulness in omission to file return in Form GSTR-3B and/or in determined suppression of outward tax. Therefore, levy of penalty is not justifiable. All the outward taxable supplies of services filed in GSTR -1 and the credit related to the same was also correctly auto-populated in GSTR-2A for the recipients to avail the input tax credit on their procurement of goods/services; hence there was no financial loss to any customer or Government because of the late filing of GST returns. Since, they have already submitted the returns in Form GSTR-3B for the months of April, 2019 to



October, 2019 along with relevant interest and late fees, it should be seen as a genuine effort by us to discharge their tax due.

They further stated that after FY 2019-20, they have filed all the GST returns i.e. GSTR-1 & GSTR-3B within the prescribed due dates. The details of the same for few months is mentioned in below table:

Table-IGSTR 1 & 3b FOR 21-22

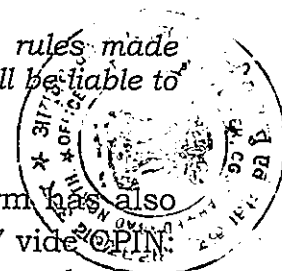
Month	Due date of filing of GSTR-1	Actual date of filing of GSTR-1	Filed within time	Due date for filing GSTR 3B	Actual date of filing of GSTR 3B	Filed within time
APRIL	26.05.2021	25.05.2021	YES	20.05.2021	25.05.2021	NO
MAY	26.06.2021	17.06.2021	YES	20.06.2021	19.06.2021	YES
JUNE	11.07.2021	09.07.2021	YES	20.07.2021	20.07.2021	YES
JULY	11.08.2021	11.08.2021	YES	20.08.2021	20.08.2021	YES
AUG	11.09.2021	11.09.2021	YES	20.09.2021	20.09.2021	YES
SEPT	11.10.2021	08.10.2021	YES	20.10.2021	15.10.2021	YES
OCT	11.11.2021	11.11.2021	YES	20.11.2021	18.11.2021	YES
NOV	11.12.2021	11.12.2021	YES	20.12.2021	20.12.2021	YES
DEC	11.01.2022	11.01.2022	YES	20.01.2022	20.01.2022	YES
JAN	11.02.2022	10.02.2022	YES	20.02.2022	19.02.2022	YES
FEB	11.03.2022	10.03.2022	YES	20.03.2022	26.03.2022	NO
MAR	11.04.2022	09.04.2022	YES	20.04.2022	20.04.2022	YES

19. As per the show cause notice issued by GST department, the company is liable to pay Rs.2,18,22,306/- as penalty under section 122(1)(iii) of the CGST Act, 2017 for collecting tax and not depositing to the Government beyond a period of three months from the date on which such payment becomes due. However, return for the months of August, September and October 2019 were filed within the period of three months from the due date, hence the same should not even be considered for levy of penalty. Further, penalty should also not be levied for other months as per the reasons mentioned in this letter. As informed above, the main reason for delay in payment of GST was due to huge delay in realization of cash and the tax liability was later on paid along with the interest and late fees on the same. Further there is no financial loss accrued to the revenue as the interest on delayed payment & late fees has been paid.

**General penalty 125:**

*Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided or in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.*

As instructed by the investigating officer and in good faith, the firm has also paid penalty of Rs. 25,000 under section 125 of the CGST Act, 2017 vide OPIN: 21062400114548 dt. 09.06.2021. The copy of said challan is attached as Annexure B.



We would like to give our submission with regards to levy of penalty under section 122 of the CGST Act, 2017.

**Penalty for certain offences as detailed under Section 122 of the CGST Act, 2017:**

*Section 122 (1) Where a taxable person who—*

*supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*

*(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*

*(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*

*(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*

*(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof the amount deducted as tax;*

*(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;*

*(vii) takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;*

*(viii) fraudulently obtains refund of tax under this Act;*

*(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*

*(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*

*(xi) is liable to be registered under this Act but fails to obtain registration;*

*(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;*

*(xiii) obstructs or prevents any officer in discharge of his duties under this Act;*

*(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;*

*(xv) suppresses his turnover leading to evasion of tax under this Act;*

*(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;*

*(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;*

*(xviii) supplies, transports or stores any goods which he has reasons to believe are liable*

*to confiscation under this Act;*

*(xix) issues any invoice or document by using the registration number of another registered person;*

*(xx) tampers with, or destroys any material evidence or document;*

*(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,*

*shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or*



short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

20. They further stated that the department has invoked section 122, on which department relied and treated the non-submission of GSTR-3B as a means for fraudulent and willful attempt for suppression of liable tax and levied 100% penalty. To levy penalty under section 122, there must be suppression of facts, but in the instant case, all the tax liability along with interest and late fees paid before issue of Show Cause Notice, hence 100% penalty is not imposable. **(Similar case reference: Aeon Formulations Private Limited vs. Commissioner of Central Excise — 21.11.2019 — Madras HC).**

21. It cannot be inferred that the firm was having any intention of evading tax as mere late filing and delayed payment of GST should not be a base to impose penalty under Section 122 (1) (iii) of CGST Act, 2017 unless there is **mens rea** on the part of the firm. Mens rea is an essential ingredient for imposing penalty. The fundamental principle pertaining to mens rea is based on maxim actus non facit ream nisi mens sit rea. (the intent and act must both concur to constitute the crime). Meaning thereby, an act does not make a man guilty without guilty intention to do the guilty act which is made penal by the statute or common law. Penalty clauses cannot be attracted automatically unless and until the element of mens rea is established and in this respect, they placed reliance on the following decisions:

- (i) Assistant Commercial Taxes Officer v. Voltas Limited [2000] 120 STC 217 (SB judgment)
- (ii) Assistant Commercial Taxes Officer v. Rajasthan Taxation Tribunal [2001] 123 STC 172 (DB judgment)
- (iii) Parashwanath Granite India Ltd. v. State of Rajasthan
- (iv) Assistant Commercial Taxes Officer v. Mahaveer Chand Jain and Co. [2000] 120 STC 212 (SB judgment)
- (v) Assistant Commercial Taxes Officer v. J.P. Singh & Sons (S.B. Civil Sales Tax Revision No. 823 of 2002 decided on July 6, 2004 Reported at [2006] 146 STC 382 (Raj)).

They have also produced below extracts of few important judgements relating to levy of penalty:

**It was so held in Hindustan steel Ltd. vs State of Orissa [(1969) 2 SCC 627]:**

*"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and **penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so.** Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where*

*the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*

In the case of Omsai Professional Detective v. C.C.E (ORDER NO. 5132 OF 2020 APPEAL NO. APL1900230)

*"Section 122 of the Central Goods and Services Tax Act, 2017/Section 122 of the Andhra Pradesh Goods and Services Tax Act, 2017- Penalty - For certain offences- Assessing Authority invoked section 122 and treated appellant's non-submission of GSTR-38 as a means for fraudulent and wilful attempt for suppression of liable tax and levied 100 per cent penalty -However, it was found that to levy penalty under section 122, basically there must be suppression of facts, but in instant case, appellant had not attempted for suppression of facts. Further, non filing of GSTR-3B returns was certainly an omission on part of appellant, but such **non filing shall not lead to penalty under section 122**. Moreover, there was not even an iota of evidence established by Assessing Authority pointing out wilfulness in omission to file return in Form GSTR-3B and/or in determined suppression of outward tax - Whether therefore, levy of penalty was not justifiable and was to be set aside - Held, yes."*

The CESTAT in the case of **Sumeet Industries Ltd. v. CCE, MANU/CM/1001/2003: 2004 (164) E.L.T. 335 (Tri — Mumhai)**], in has held as under: -

*"Power to levy the penalty should not be ordinarily imposed unless there is a deliberate defiance of law or contumacious or dishonest conduct or a conscious disregard to an obligation is established in the facts of a case".*

22. In view of the above discussion, it is clear that there is no reason except cash crunch for the failure to file returns in Form GSTR-3B and there is no such intention for evasion of tax. Hence, the penalty should not be imposed under Section 122(1)(iii) of CGST Act, 2017. In view of above facts and circumstances of the case it was requested to consider the above submission and accordingly drop the notice issued.

#### PERONNEL HEARING

23. Personnel Hearing in the instant case was held on 11.12.2023. Shri Harit Dhariwal, Chartered Accountant and duly authrisede representative attended the P.H. on behalf of M/s.Chokhanio Construction and re iterated their written submissions dated Nil received on 10.02.2023 and requested to decide the SCN on merits.

#### DISCUSSION AND FINDINGS

In the instant case, I have gone through the Show Cause Notice, reply to SCN, Relied upon documents and other documents, I find that issue is to be decided is whether penalty under Section 122(1)(iii) is imposable on M/s.Chokhani Construction or not.

25. On perusal of the above documents, I find that an intelligence developed by the Data Analytical Cell of Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit, indicated that M/s

Chokhani were not complying with the provisions of section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017 and had not been filing GSTR-3B Returns for the period from April-2019 to October-2019. Based on this information regarding evasion of GST by M/s Chokhani Construction, an inquiry was initiated against them under the provisions of Section 67 of the CGST Act, 2017 under authorization for Inspection No. 409/2019 and inspection was carried out at the registered address of M/s Chokhani on 05.12.2019. During the course of Inspection, various records were examined. Preliminary inquiry revealed that M/s Chokhani had filed their GSTR-1M Returns and GSTR-3B Returns for the period April-2019 to October-2019 and also discharged their GST liability as under:.

(Amt. in Rs.)

Month' Year .	Due date of filing of GSTR-3B Return	Date of Filing of GSTR-3B Return	Taxable Value	Total GST payable	Paid through CASH	Paid through ITC	Total GST paid =including RCM)	Late fees paid
Apr-19	20.05.2019	03.12.2019	41887490	7539750	6714868	841780	7556648	9200
May-19	20.06.2019	03.12.2019	5282307	950816	65910	950816	1016726	9850
Jun-19	20.07.2019	03.12.2019	4047455	728542	39958	728542	768500	8300
Jul-19	20.08.2019	03.12.2019	34246347	6164344	3371448	2840166	6211614	6800
Aug-19	20.09.2019	03.12.2019	3924785	706462	42658	706462	749120	5150
Sep-19	20.10.2019	03.12.2019	20553156	3699570	1006550	2720178	3726728	3700
Oct -19	20.11.2019	03.12.2019	9882986	1778938	1222558	570412	1792970	2200
Total			119824526	21568422	12463950	9358356	21822306	45200

26. On perusal of the records, I find that during the course of investigation, it has been observed that M/s.Chokhani had filed the GSTR-3B Returns **on 03.12.2019** for the period from April 2019 to October 2019 and also discharged their tax liability amounting to Rs. 2,18,22,306/- [Rs. 93,58,356/- paid through ITC + Rs. 1,22,10,066/- paid in cash + Rs. 2,53,884/- paid under RCM]. They have also discharged their interest liability of Rs. 8,72,387/-. M/s Chokhani had also filed the GSTR-3B returns for the period from April 2019 to November 2019 on 03.12.2019 i.e. **before initiation of investigation by DGGI i.e. 05.12.2019**, AZU but well **after the prescribed due date** (more than six months) for filing of such Returns. I also find that M/s Chokhani Construction have paid the applicable interest liability of Rs. 8,72,388/- vide GST DRC-03 debit entry no. DC2412190168615 dated 17.12.2019 under section 50 of CGST Act, 2017 as detailed under:-

Table-III

Amt. in Rs.

For the Month of	Due Date of Return/Payment	Actual Date of filling of Return	Delay by Days	Total Tax Paid by Cash (Rs.)	Interest Amount (Rs.)
Apr-19	20-05-2019	03-12-2019	197	6714868	655665
May-19	20-06-2019	03-12-2019	166	65910	5428
Jun-19	20-07-2019	03-12-2019	136	39958	2700
Jul-19	20-08-2019	03-12-2019	105	3371448	176239
Aug-19	20-09-2019	03-12-2019	74	42658	1578
Sep-19	20-10-2019	03-12-2019	44	1006550	22337
Oct-19	20-11-2019	03-12-2019	13	1222558	8441
Total				1,24,63,950	8,72,388

27. From the above, I find that M/s Chokhani Construction, has paid the GST liability of Rs.2,18,22,306/- for the period from April-2019 to October-2019 along with the applicable interest as envisaged under Section 50 of the CGST Act, 2017 and penalty as envisaged under Section 125 of the CGST Act, 2017. However, although the taxpayer discharged the tax liability and interest but they have not discharged the penalty under section 122(1)(iii) of CGST Act, 2017.

28. As far as applicability of penalty under the provisions of Section 73(1) of CGST Act, 2017 read with section 122(1)(iii) of the CGST Act, 2017 is concerned, I take up the matter with respect to penalty under the provisions of Section 73(1) of CGST Act, 2017. For better understanding, the Section 73 is being reproduced as under:-

**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) .....

(3) .....

(4) .....

(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.

29. on perusal of the above, I find that Section 73(8) categorically stated that 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. Herein the instant case, M/s. Chokhani has paid the GST alongwith interest before the issuance of Show Cause Notice as detailed above, hence they are not liable to pay any penalty as proposed in the Show Cause notice. It is also pertinent to mention here that they have also paid Rs.25,000/- under section 125 of the GST Act, 2017 as discussed in Para 11 of Show Cause Notice and applicable late fee for late filing of GST 3 B as detailed above..

30. With regard to imposition of penalty, M/s.Chokhani in their reply to SCN also stated that penalty cannot be imposed on thereof as there is no mens rea on the part of the firm as mens rea is an essential part for imposing any penalty. In this connection, I have gone through the Show Cause Notice and find that the Show Cause Notice has not explained or charged with any mens rea on the part of the assessee while proposing penalty. Herein the instant case, it is clear that the assessee has collected the tax and paid the same late but before initiating any inquiry/SCN/procedure and also paid interest and late fee before issuance of Show Cause Notice. If there is mens rea on the part of the assessee, they could have paid the said tax, interest and late fee after starting of inquiry/verification. However in the instant case they have willingly paid the tax, interest, late fee as detailed above and general penalty of Rs.25,000/- also.

31. I further find that the show cause notice was issued with proposal to impose penalty under the provisions of section 73(1) of CGST Act, 2017 read with section 1221(iii) of CGST Act, 2017. I find that the short paid/non paid tax along with interest has already been paid by the taxpayer as detailed above, before issuance of the show cause notice i.e. 20.12.2022 under section 73(1) and therefore the proposal to impose penalty under Section 122(1)(iii) is not legitimate as discussed in the foregoing paras. From the above, it can be inferred that there was no tax or interest due from the taxpayer at the time of issuance of SCN. Accordingly, in light of section 73(8) of the CGST Act, 2017, I do not find any corner to impose a penalty under the provisions of Section 122(1)(iii) read with Section 73 of the CGST Act, 2017.

32. I also find that C.B.I. & C vide Circular No. 76/50/2018-GST, dated 31-12-2018 clarified that no penalty is imposable even under Section 73 in such cases. It is clarified as under:

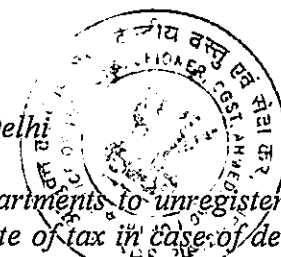
*C.B.I. & C. Circular No. 76/50/2018-GST, dated 31-12-2018*

*F. No. CBEC-20/16/04/2018-GST*

*Government of India*

*Ministry of Finance (Department of Revenue)*

*Central Board of Indirect Taxes & Customs, New Delhi*



*Subject: Clarification on certain issues (sale by government departments to unregistered person; leviability of penalty under section 73(11) of the CGST Act; rate of tax in case of debit notes/credit notes issued under section 142(2) of the CGST Act; applicability of notification No. 50/2018-Central Tax; valuation methodology in case of TCS under Income Tax Act and definition of owner of goods) related to GST - Regarding.*

Various representations have been received seeking clarification on certain issues under the GST laws. In order to clarify these issues and to ensure uniformity of implementation across field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") hereby clarifies the issues as below :

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?	<p>1. 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.</p> <p>2. 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.</p> <p>3. 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.</p>

From the above circular itself it is amply clear that there is no intent to impose penalty on the registered person for mere late payment of tax and late filing of returns for which there is inbuilt mechanism to charge interest and payment of late filing fees.

38. With reference to the proposal in the subject notice for imposition of penalty under various sub-sections of Section 122 ibid, I find that since it is a genuine case of late payment of tax, the provisions of Section 122 is not applicable. As explained in the foregoing paragraphs, the tax payer was not able to pay the tax because of non-availability of fund. It is not a case where the tax is wrongly collected or intention to evade tax. All the transactions were recorded in the books of account and disclosed the tax liability by way of filing GSTR-1. The system does not allow to file FORM GSTR-3B before payment of

the tax due. As and when the fund was available, the tax payer had paid the tax and filed the GSTR-3B. Thus, it is very clear that the tax payer did not have any intention of evading tax payment. In the circumstances, the provisions of Section 122 are not applicable and there is inbuilt provision under Section 73 *ibid* for imposing penalty. As discussed earlier, as per Section 73, no penalty is imposable when the tax has been paid with interest within 30 days from the date of receipt of notice. In this case the tax payer had already paid the tax due and interest even before issue of the show cause notice. Therefore no penalty is imposable on them. The government has made it clear that it has no intention to penalise the assessee in late filing of GSTR-3B as clarified under C.B.I. & C. Circular No. 76/50/2018-GST, dated 31-12-2018 wherein it is clarified that no penalty is imposable even under Section 73 in such cases and a general penalty under Section 125 is to be imposed. In view of the above, I hold that no penalty is imposable under Section 122 of GST Act.

39. The provision for imposing penalty on the failure to furnish return within the stipulated period is covered under Section 123 of the GST Act which read as under:

**SECTION 123. Penalty for failure to furnish information return. —**  
*If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues :*

*Provided that the penalty imposed under this section shall not exceed five thousand rupees.*

40. When there is statutory provision under Section 123 *ibid*, for imposing penalty for late filing of returns, the proposal for imposing penalty under Section 122 is undesirable and needs to be dropped as they have already paid the late fee for late filing of returns. I have also gone through various case laws mentioned by M/s.Chokhani Construction for not imposing penalty in various circumstances. On perusal of the said case laws and other facts of the case, I find that this is not a fit case to impose any penalty under provisions of Section 73 of the CGST Act, 2017 read with Section 122(1)(iii) of the CGST Act, 2017 as they have already paid the tax along with interest before issuance of Show Cause Notice, filed their GSTR 3 B returns before initiation of investigation and paid general penalty of Rs.25,000/- as discussed above.

41 In view of the above, I am of the view that penalty proposed under provisions of Section 73 of the CGST Act, 2017 read with Section 122(1)(iii) of the CGST Act, 2017 in this case is not sustainable.

42. In view of the above discussion and findings, I pass the order as under:

ORDER

- (i) I hereby drop the penalty proceedings initiated on the M/s.Chokhani Construction under Section 73(1) of the CGST Act, 2017 read with Section 122(1)(iii) of the CGST Act, 2017 vide Show Cause Notice bearing F.No. No.DGGI/AZU/Gr.B/36-451/2022-23 dated 20.12.2022.

43. Accordingly the Show Cause Notice bearing F.No. No.DGGI/AZU/Gr.B/36-451/2022-23 dated 20.12.2022 was issued to M/s Chokhani Construction is disposed off in above terms.



(Lokesh Damor)  
Joint Commissioner,  
Central Excise & CGST,  
Ahmedabad North.

Place: Ahmedabad

Dated 21.12.2023

F.No. GST/15-54/OA/2022

To,  
M/s Chokhani Construction,  
A-4, Viraj Appartment, Opp. Hari Nursing Home,  
Navrangpura, Ahmedabad,  
Gujarat, 380009.

Copy to:-

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-VII, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, CGST & Central Excise, Ahmedabad North **with a request to create Form GST DRC-07 electronically in terms of DSR Advisory no.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.**
- ✓ 4. The Superintendent (System), CGST & Central Excise, Ahmedabad North for uploading the order on website.
5. Guard File.