
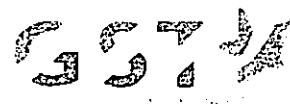


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- aaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

फ़ा.सं./F.No. GST/15-226/OA/2020

DIN- 20240164WT0000777C18

आदेश की तारीख/Date of Order: - 10.01.2024

जारी करने की तारीख/Date of Issue :- 10.01.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 64/ADC/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.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. DGGI/AZU/Gr-'A'/36-47/20-21 dated 25.02.2021 issued to M/s Gujarat Industrial Security Force Society, 5th Floor, F Block, Bahumali Bhavan, Manjushree Mill Compound, Nr. Girdharnagar Bridge, Asarwa, Ahmedabad.



BRIEF FACTS OF THE CASE

M/s Gujarat Industrial Security Force Society, F Block, Bahumali Bhavan, Manjushree Mill Compound, Nr. Girdharnagar Bridge, Asarwa, Ahmedabad (hereinafter referred to as "M/s GISFS" for the sake of brevity) is a Society created under the Society Registration Act, 1860. M/s GISFS is providing security services mainly to various departments of Government of Gujarat and Gujarat Government Undertakings viz. GIDC, GMB, Educational Institutions, Gujarat Pollution Control Board, Government Hospitals, SEZs, etc. It is registered with GST Department and holding GSTIN 24AAAAG0372L1ZW.

2. Acting on the intelligence regarding evasion of GST by M/s GISFS, search was conducted on 06.12.2018 by DGGI, Ahmedabad and relevant documents were withdrawn under regular panchnama. During search proceedings, it was found that M/s GISFS had collected GST from their customers/clients, however they had failed to deposit the same to the Govt. exchequer and failed to file their monthly GSTR-1 and GSTR-3B Returns for the period from April, 2018 to October, 2018 within the prescribed due dates. GST liability for this period was worked out to be Rs. 8,60,03,558/-. In addition to the same, an additional GST liability of Rs. 70,16,561/- was worked out on account of wrongly claimed exemptions for the period from July 2017 to October 2018. Thus their total GST liability was worked out to be Rs. 9,30,20,119/-.

3. During the course of investigation, statement of Shri B. M. Chauhan, Chief Executive Officer of M/s GISFS was recorded on 06.12.2018 and 30.07.2020, wherein, he stated that the GST liabilities worked out by them and gave the undertaking to discharge any additional liability coming out on account of mis-calculation or wrongly claimed exemptions. Further, M/s GISFS had discharged their GST liability of Rs. 8,60,03,185/- and filed the corresponding GST Returns viz. GSTR-1 and GSTR-3B for the period April, 2018 to October, 2018, during the course of investigation. Copy of statements dated 06.12.2018 and 30.07.2020 of Shri B. M. Chauhan, Chief Executive Officer of M/s GISFS are enclosed with SCN. Details of investigation are elaborated as below:-

4. During the investigation of DGGI, it was noticed that for the period April, 2018 to October, 2018 M/s GISFS had collected GST from their clients/customers but had not deposited the same to the Govt. exchequer. As per sales registers, it was found that they made total outward supplies of Rs. 56,81,57,241/- with corresponding GST of Rs. 8,60,03,558/-. The month-wise details are given as under:

TABLE A

Month	SALES A/C	Establishment Charges	Vehicle Hire Charges	Total Taxable Value	CGST 9%	SCGST 9%	IGST 18%	Total GST
Apr-18	74714034	8621775	0	83335809	6270256	6270256	9382	12549894
May18	71708469	8605035	0	80313504	5998784	5998784	9382	12006950
Jun-18	71956163	8635872	0	80592035	6019261	6019261	9382	12047904
Jul-18	71791346	8580202	0	80371548	6136297	6136297	0	12272594
Aug-18	72508948	8626965	0	81135913	6198658	6198658	0	12397316

Sep-18	72565622	8784008	0	81349630	6135437	6135437	0	12270874
Oct-18	72419180	8639622	0	81058802	6229013	6229013	0	12458026
TOTAL	507663762	60493479	0	568157241	42987706	42987706	28146	86003558

5. From the above, it appeared that M/s GISFS had collected but not paid GST on the total taxable supplies of Rs. 50,76,63,762/- made by them during the period from April, 2018 to October, 2018 and thereby evaded applicable GST of Rs. 8,60,03,558/- (CGST — Rs. 4,29,87,706/- SGST — Rs. 4,29,87,706/- and IGST — Rs. 28,146/-) [Rupees Eight Crore Sixty Lakh Three Thousand Five Hundred Fifty Eight Only]. Further, during investigation, M/s GISFS had discharged their GST liability of Rs. 8,60,03,185/- and filed the corresponding GSTR-3B Returns.

6. Further on scrutiny of the invoices of exempted services submitted by M/s GISFS, it was observed that they had claimed exemptions for making outwards supplies to some of the recipients who can be categorized under the categories discussed below.

6.1 Organisations providing services under Article 243 of the Constitutions:- M/s GISFS had provided security services to the following organization of Government of Gujarat which are engaged into providing services under Article 243 of Constitution (*engaged into the activities of 'Supply of Water, sanitization'*) by claiming exemption as Pure service under Sl. No.3 of Notification No.12/2017-CT dated 28-06-2017:

TABLE B

S.N.	Name of Recipient	Total Value of supply (Rs.)
1	Baroda-GWSSB P.H.Health Sub Division	446995
2	Gandhinagar GWSSB	1927947
3	Gandhinagar Jal Seva Training Inst. Sec 15	821536
	TOTAL	3196478

The relevant portion of the Notification is produced below :

"G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Table

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Per Cent)	Condition
(1)	(2)	(3)	(4)	(5)
1	..	..	..	..
2	..	..	..	..
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in Nil Nil 2 relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

However, on being specifically asked about the nature of services provided by M/s GISFS to the above mentioned organisations, Shri B.M. Chauhan, CEO of MIs GISFS in his statement dated 30.07.2020 had clearly stated that M/s GISFS had not rendered any service in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution and as such the exemptions claimed by them did not appear to be justified. Hence, security services provided to the above organisations do not meet the criteria of exemption mentioned at Sr. No. 3 of Notification No. 12/2017-Central Tax (Rate) and hence the same are taxable. The GST liability of M/s GISFS on account of the same during the period from July, 2017 to October, 2018 works out to be Rs. 5,75,366/-. The month-wise GST liability is given as under :

TABLE C

Month	Sales A/c	ESTABLISHMENT CHARGES	Total Taxable Value	CGST @ 9%	SGST @ 9%	Total GST
Dec-17	170708	20485	191193	17207	17207	34415
Jan-18	171333	20560	191893	17270	17270	34541
Mar-18	307244	36869	044113	30970	30970	61940
Apr-18	311802	37416	349218	31430	31430	62859

May-18	308047	36966	345013	31051	31051	62102
Jun-18	316220	37946	354166	31875	31875	63750
Jul-18	318197	38184	356381	32074	32074	64149
Aug-18	316921	38030	3549S1	31946	31946	63891
Sep-18	315611	37873	353484	31814	31814	63627
Oct-18	317916	38150	356066	32046	32046	64092
Grand Total	2853999	342479	9196478	287683	287683	575366

6.2 Security Service provided to Diploma College by claiming exemption under Notification No. 12/2017-CT (Rate) - M/s GISFS had claimed exemption Sr. No. 66 of Notification No. 12/2017-CT (Rate) for providing security services to L.E. Collège, Morbi claiming it to be a Diploma College. L. E. Morbi College is a college, which is operated by the Government of Gujarat and is affiliated with Gujarat Technological University. This college offers both Degree and Diploma Course. M/s GISFS stated that they had entered into two contracts with L.E. College, Morbi. One for providing security services. to the Engineering College on which they are collecting and paying GST and the other for providing security services to their Diploma College, on which they have claimed exemptions under Sr. No. 66 of Notification No. 12/2017-CT (Rate). However, copy of such contracts were not submitted by them.

In this regard, it is observed that L.E. College is engaged in providing Degree course also alongwith Diploma Course and hence cannot be termed as an Institute providing education upto Higher Secondary level. Hence security services provided to L.E. College, Morbi do not meet the criteria of exemption mentioned at Sr. No. 66 of Notification No. 12/2017-Central Tax (Rate) and hence are taxable. The GST liability of M/s GISFS on account of providing taxable services to L.E. College Morbi during the period from July, 2017 to October, 2018 works out to be Rs. 4,68,783/- The month-wise GST liability is given as under:-

TABLE D

Month	Sales A/c	Establishment Charge	Total Taxable Value	CGST	SGST	IGST	TOIAL GST
Jul-17	15196	1824	17020	1532	1532	0	3064
Aug-17	16177	1941	18118	1631	1631	0	3261
Sep-17	26846	3222	30068	2706	2706	0	5412
Oct-17	22794	2735	25529	2298	2298	0	4595
Nov-17	22794	2735	25529	2298	2298	0	4595
Dec-17	22794	2735	25529	2298	2298	0	4595
Jan-18	106863	12824	119687	10772	10772	0	21544
Feb-18	121569	14588	136157	12254	12254	0	24508
Mar-18	121569	14588	136157	12254	12254	0	24508
Apr-18	124088	14891	138979	12508	12508	0	25016
May-18	100071	12009	112080	10087	10087	0	20174
Jun-18	130293	15635	145928	13134	13134	0	26267

Jul-18	159113	19094	178207	16039	16039	0	32077
Aug-18	171622	20595	192217	17300	17300	0	34599
Sep-18	857245	238165	1095410	98587	98587	0	197174
Oct-18	185478	22257	207735	18696	18696	0	37392
TOTAL	2204512	399838	2604350	234392	234392	0	468783

6.3. Security Service provided to Hostels for socially backward classes by claiming exemption under Notification No. 12/2017-CT (Rate):- M/s GISFS had provided security services to various Govt. run Hostels providing lodging services to students of weaker sections of the society. M/s GISFS had claimed exemptions for providing security services to these hostels claiming it to be services provided to educational institutions. In case of these hostels, it is observed that these hostels are providing lodging facilities to students of weaker sections of the society but are not educational institutions themselves and hence do not fulfill the conditions prescribed in Notification No. 12/2017-CT (Rates) for falling under exempted category. Hence services provided to these hostels are taxable.

The GST liability of M/s GISFS for providing security services to these Hostels during the period from July, 2017 to October, 2018 works out to be Rs. 25,99,323/-. Month-wise details of the same is given below :

TABLE E

Month	Sales A/c	Establishment Charges	Total Taxable Value	CGST @ 9%	SGST @ 9%	Total GST
Jul-17	1110559	133273	1243832	111945	111945	223890
Aug-17	1131883	135831	1267714	114094	114094	228189
Sep-17	1162677	139527	1302204	117198	117198	234397
Oct-17	992163	119065	1111228	100011	100011	200021
Nov-17	1026244	123155	1149399	103446	103446	206892
Dec-17	973058	116773	1089831	98085	98085	196170
Jan-18	1047568	125715	1173283	105595	105595	211191
Feb-18	1128890	135474	1264364	113793	113793	227586
Mar-18	1093426	131218	1224644	110218	110218	220436
Apr-18	1086123	130336	1216459	109481	109481	218963
May-18	1039059	124688	1163747	104737	104737	209474
Jun-18	1039547	124747	1164294	104786	104786	209573
Jul-18	31110	3733	34843	3136	3136	6272
Aug-18	31110	3733	34843	3136	3136	6272
Grand Total	12893417	1547268	14440685	1299662	1299662	2599323

6.4 Supplies to Special Economic Zone (SEZ's):- M/s GISFS had provided security services to following SEZs :

TABLE F

S.N.	Name of Recipient	Total Value of supply in Rs.
1	GIDC - APPERAL PARK AHD	1089619
2	GIDC - APPERL PARK SURAT SEZ	1840074
3	GIDC Bharuch Dahej Sez Ltd Vaghra	13945597
4	GIDC GNAGAR MEGHA IT PROJECT	727522
5	GIDC GNAGAR SEC28	877073
6	GIDC Gnnagar Sez Sec 11	208424
	Total	18688309

Shri B.M. Chauhan, CEO of M/s GISFS had stated in his statement dated 30.07.2020 that the security services provided to these SEZs are Zero Rated Supply made under LUTs without payment of IGST. He submitted the copy of LUT (GST RFD-11) for the F.Y. 2018-19 but failed to produce the endorsement from the Specified Officer of the SEZ regarding receipt of services for the specified operations.

“Zero Rated Supply” has been inter-alia defined under Section 16 of the IGST Act, 2017 to be supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit. Such supplies are liable to be treated as Inter-State supply in terms of Section 7(5) of the IGST Act and are subject to compliance of the provisions made under the IGST Act, 2017. Further, on account of making such Zero Rated Supply, provisions for claiming of refunds of unutilized ITC or refund of IGST paid on such Zero Rated supplies has been given in Section 16 (2) / 16(3) of the Act. Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017, read with Section 54 of the CGST Act, 2017 made applicable to Inter-State supplies under Section 20 of the IGST Act, 2017, in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:

- (a) supplier of goods after such goods have been admitted in full in the SEZ for Authorized operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidences regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone.

Further clarification in this regard has been issued vide Circular No. 48/22/2018-GST dated 14.06.2018, wherein under Para 2.2 of Column 3 of the said circular, it is mentioned that :

“A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. And endorsement to this effect shall have to be issued by the specified officer of the Zone.”

In the present case of M/s GISFS has failed to produce the endorsements issued by the Specified Officers of the respective SEZs. In the absence of

endorsement by the specified officers of the respective SEZs, security services provided by M/s GISFS to the SEZs cannot be treated as "Zero Rated Supply" and the exemption claimed by them on this account appears to be ineligible and GST liability, arising due to such wrongly claimed exemption works out to be Rs. 33,63,896/- The month-wise details is given as under:-

TABLE G

Month	Sales A/c	Establishment Charges	Taxable Value	CGST	SGST	IGST	Total GST
Nov-17	467719	56126	523845	0	0	94292	94292
Dec-17	678793	81455	760248	0	0	136845	136845
Jan-18	985080	118210	1103290	0	0	198592	198592
Feb-18	974810	116977	1091787	0	0	196522	196522
Mar-18	1524163	182900	1707063	0	0	307271	307271
Apr-18	1556282	186754	1743036	0	0	313746	313746
May-18	1622829	194739	1817568	0	0	327162	327162
Jun-18	1773437	212812	1986249	0	0	357525	357525
Jul-18	1866503	223980	2090483	0	0	376287	376287
Aug-18	1865001	223800	2088801	0	0	375984	375984
Sep-18	1866503	223980	2090483	0	0	376287	376287
Oct-18	1504871	180585	1685456	0	0	303382	303382
TOTAL	16685991	2002318	18688309	0	0	3363896	3363896

6.5 Taxable Shown as Exempt:- In case of an invoice, wherein the supplies made by M/s GISFS to M/s GPCB, Mehsana was taxable, they had shown the same as exempted in their Sales Ledger and no GST was paid on the value of the said invoice. In this regard, Shri B.M. Chauhan in his statement dated 30.07.2020 accepted that due to clerical error the said mistake was done. However, he agreed to correct the said mistake and pay the applicable GST. The details of the same are given below. The GST liability on account of above erroneous entries works out to be Rs. 9190/-. Details of the same are given below :

TABLE H

Invoice No.	Name of Service recipient	Total Taxable value	CGST9%	SGST9%	IGST 18%	Total GST	Invoice value
GISF/17-18/3845 DATED 31.01.18	GPCB- MEHSANA	51059	4595	4595	0	9190	60249

The amount of GST worked out due to ineligible exemptions as per para 6.1 to 6.5 is reproduced below:-

TABLE I

Sr. No	Details/Head	SALES A/C incl. vehicle hire charge	establishment charges	Total taxable value	CGST	SGST	IGST	Total GST
1	Diploma College (L.E.) College, Morbi)	2204512	399838	2604350	234392	234392	0	468784
2	Hostel for weaker section of society	12893417	1547268	14440685	1299662	1299662	0	2599324
4	SEZ	16685991	2002318	18688309	0	0	3363896	3363896
4	Pure service	2853999	342479	3196478	287683	287683	0	575366
5	Taxable shown as exempted	45588	5471	51059	4595	4595	0	9191
	TOTAL	34683507	4297374	38980881	1826332	1826332	3363896	7016561

7. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of the CGST Act, 2017. In the scheme of self-assessment, the department comes to know about the supplies made and payment made only during the scrutiny of the statutory returns filed by the taxpayers under Rule 59 made there under read with Section 39 of the CGST Act, 2017. Therefore, it places greater onus on the taxpayer to comply with higher standards of disclosure of information in the statutory returns. Explanation 2 to Section 71 of the CGST Act, 2017 has defined suppression as under :

"Explanation 2.—For the purposes of this Act the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer"

8. It is seen from the facts emerged during the investigation of the instant case that M/s GISFS has suppressed their actual tax liability by claiming ineligible exemptions. Also in order to suppress their taxable income from the department they had not filed the GST Returns for the period from April, 2018 to October, 2018. The facts about collecting and not depositing GST was detected only when the department (GGGI) initiated the present investigation. Also the facts regarding evasion of GST by claiming ineligible exemptions came into light due to the present investigation conducted by DGGI. Had the present investigation not been initiated by DGGI against M/s GISFS, they would have continued with their modus of claiming ineligible exemptions on a regular basis. This clearly appears to be done intentionally in order to suppress their actual tax liability and thereby evading GST. Various Courts including the Apex Court

have clearly laid down the principle that tax liability is a civil obligation and therefore the intent to evade payment of tax cannot be established by peering into the minds of the tax payer but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s GISFS it shows their intent to evade payment of GST by an act of omission in as much as M/s GISFS though being well aware of the unambiguous provisions of the CGST 2017 and Rules made thereunder failed to disclose to the department at any point of time their tax liability on which GST was collected but not paid by them by way of not filing their GST Returns viz. GSTR-1 and GSTR-3B for the period from April 2018 i.e. October, 2018 before initiation of the present investigation. In addition to the same, they had claimed ineligible exemptions for evading GST on certain taxable supplies made by them during the period from July, 2017 to October, 2018. Had the investigation proceedings not been conducted by DGGI Zonal Unit Ahmedabad, these facts would not have come to light.

9. It is worth mentioning here that M/s GISFS had failed to declare their taxable income towards providing the taxable supplies made by them by not filing the GST Returns viz. GSTR-1 and GSTR-3B for the period from April, 2018 to October 2018. In addition to the same they had claimed ineligible exemptions for evading GST. This amounts to willful suppression of facts with the deliberate inlet to evade payment of GST. The total evasion of GST for the period from July, 2017 to October, 2018 on the entire income received towards making taxable supplies by M/s GISFS came to the forefront only due to specific investigations carried out by DGGI. Therefore, the extended period of limitation as envisaged under Section 74 of the CGST Act 2017 read with Section 74 of Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 is invocable to demand GST for the period from July, 2017 to October 2018.

10. Therefore, it appeared that M/s GISFS had willfully suppressed the above facts with intent to evade payment of GST and the extended period of limitation of five years as envisaged under Section 74 of CGST Act 2017 read with Section 74 of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017, for the demand and recovery of GST (CGST, SGST & IGST) as quantified in the subsequent paras is applicable in the instant case.

11. In view of the material evidences available on records and as stated in foregoing paras, it appeared M/s GISFS have contravened the following provisions of the CGST Act, 2017 and SGST Act, 2017:

- (i) Section 9 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they failed to pay the appropriate GST on supply of taxable services made by them to their customers /clients with an intent to evade payment of Tax.
- (ii) Section 15 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they have suppressed the taxable value of the supplies by claiming wrong exemption under said Notification with an intent to evade payment of Tax;

- (iii) Section 37 of the CGST Act 2017 read with Section 37 of the Gujarat State GST Act, 2017 read with Rule 59 of the CGST Rules 2017 read with Rule 59 of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017, in as much as they failed to file the GSTR-1 returns for the April, 2018 to October, 2018 with an intent to evade payment of tax.
- (iv) Section 39 of the CGST Act 2017 read with Section 39 of the Gujarat State GST Act, 2017 read with Rule 61 of the CGST Act, 2017, as amended vide Notification No. 49/2019-CT dated 09.10.2019 read with Rule 61 of the Gujarat State GST Act; 2017 read with Section 20 of the IGST Act, 2017 in as much as they failed to file GSTR-3/GSTR-3B returns for the period April, 2018 to October, 2018 with an intent to evade payment of tax.
- (v) Section 49 (8) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they failed to discharge their tax liability with an intent to evade payment of tax;
- (vi) Section 59 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they failed to self assess their tax liability with an intent to evade payment of tax.

12. As per above the total GST liability of M/s GISFS for the period from July, 2017 to October, 2018 is calculated. The summary of the same is given as under:

GST liability for the period April-Oct 2018(collected but not paid)

TABLE J

Month	SALES A/C	Establishment Charges	Vehicle Hire Charges	Total Taxable Value	CGST 9%	SCGST 9%	IGST 18%	Total GST
Apr-18	74714034	8621775	0	83335809	6270256	6270256	9382	12549894
May18	71708469	8605035	0	80313504	5998784	5998784	9382	12006950
Jun-18	71956163	8635872	0	80592035	6019261	6019261	9382	12047904
Jul-18	71791346	8580202	0	80371548	6136297	6136297	0	12272594
Aug-18	72508948	8626965	0	81135913	6198658	6198658	0	12397316
Sep-18	72565622	8784008	0	81349630	6135437	6135437	0	12270874
Oct-18	72419180	8639622	0	81058802	6229013	6229013	0	12458026
TOTAL	507663762	60493479	0	568157241	42987706	42987706	28146	86003558

Additional GST liability due to wrongly claimed exemption for the period July 2017 to October 2018.

TABLE K

Sr. No	Details/Head	SALES A/C incl. vehicle hire charge	establishment charges	Total taxable value	CGST	SGST	IGST	Total GST
1	Diploma College (L.E.) College, Morbi)	2204512	399838	2604350	234392	234392	0	468784
2	Hostel for weaker section of society	12893417	1547268	14440685	1299662	1299662	0	2599324
4	SEZ	16685991	2002318	18688309	0	0	3363896	3363896
4	Pure service	2853999	342479	3196478	287683	287683	0	575366
5	Taxable shown as exempted	45588	5471	51059	4595	4595	0	9191
	TOTAL	34683507	4297374	38980881	1826332	1826332	3363896	7016561

Grand Total

TABLE L

GRAND TOTAL	Total Taxable Value	CGST	SGST	IGST	Total GST
	607138122	44814038	44814038	3392042	93020119

13. From the above, it appeared that M/s GISFS had collected but not paid GST on the total taxable supplies of Rs. 50,76,63,762/- made by them during the period from April, 2018 to October, 2018 and thereby evaded applicable GST of Rs. 8,60,03,558/- (CGST — Rs. 4,29,87,706/- SGST — Rs. 4,29,87,706/- and IGST — Rs. 28,146/-) [Rupees Eight Crore Sixty Lakh Three Thousand Five Hundred Fifty Eight Only]. The said amount stood recoverable from them under Section 74 (1) of the CGST Act 2017 read with Section 74 (1) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 alongwith applicable interest under Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 and penalty under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017.

14. From the above, it also appeared that M/S GISFS have claimed ineligible exemptions on the various grounds discussed here-in-above on the taxable supplies of Rs. 3,46,83,507/- made by them during the period from July, 2017 to October, 2018 and thereby evaded applicable GST of Rs. 70,16,561/- (CGST of Rs. 18,26,332/-, SGST of Rs. 18,26,332/- and IGST of Rs. 33 63,8961-) [Rupees Seventy Lakhs Sixteen Thousand Five Hundred and Sixty One Only]. The said amount stood recoverable from them under Section 74 (1) of the CGST Act 2017 read with Section 74 (1) of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 alongwith applicable interest under Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat State GST Act,

2017 read with Section 20 of the IGST Act, 2017 and penalty under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017.

15. The GST amount of Rs. 8,60,03,105/- (CGST - Rs. 42987521/- SGST — Rs. 42987521/- and IGST — Rs. 28143/-) paid by them during investigation and reflected in their GSTR-3B as discussed here-in above needs to be appropriated against their outstanding GST liability.

16. Further all the above acts of contravention constitute an offence of the nature as described under the provisions of Section 122(1)(iii) and 122(2)(b) of the CGST Act, 2017 read with Section 122(1)(iii) and 122(2)(b) of the Gujarat State GST Act, 2017. respectively, rendering themselves liable to penalty under Section 74 and 122 of the CGST Act, 2017 read with Section 74 and 122 of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 for failure to file the statutory GST Returns duly discharging the tax liability, failure to pay tax, failure to self assess the tax liability, collecting but not paying AST and for non-compliance of various provisions of the act leading to penalty under Section 122 of CGST act 2017 read with Section 122 of GGST Act 2017 read with Section 20 of the IGST Act, 2017.

17. M/S GISFS was communicated the details of tax, interest and penalty due to them vide Part-A of DRC-01A dated 07.08.2020, under Rule 142(1A) of the CGST Rule, 2017. M/s GISFS submitted the reply in Part-B of DRC-01A dated 14.08.2020 stating that they will contest the demand and would like to receive Show Cause Notice under Section 74(1) of CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017. In view of the reply received from the taxpayer, the present Show Cause Notice was issued.

18. Accordingly, Show Cause Notice No. F.No. DGGI/AZU/GR-A/36-47/20-21 dated 25.02.2021 was issued to M/s Gujarat Industrial Security Force Society, 5th Floor, F Block, Bahumali Bhavan, Manjushree Mill Compound, Nr. Girdharnagar Bridge, Asarwa, Ahmedabad called upon to show cause as to why:

- i. The GST amount of **Rs. 8,60,03,558/- (CGST — Rs. 4,29,87,706/- SGST — Rs. 4,29,87,706/- and IGST — Rs. 28,146/-) [Rupees Eight Crore Sixty Lakh Three Thousand Five Hundred Fifty Eight Only]** as detailed in Annexure-'A' to this notice collected but not paid by them for providing taxable service during the period from April, 2018 to October, 2018 should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017 read with Section 74 (1) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017;
- ii. the exemptions claimed on the outward supplies of Rs. 3,46,83,507/- during the period from July, 2017 to October, 2018 should not be treated as taxable income and applicable GST (IGST/CGST/SGST) of **Rs. 70,16,561/- (CGST of Rs. 18,26,332/-, SGST of Rs. 18,26,332/- and IGST of Rs. 33 63,8961-)** [Rupees Seventy Lakhs Sixteen Thousand Five Hundred and Sixty One Only] as detailed in Annexure-'B*' to this notice should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017 read with

Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act 2017;

- iii. The GST amount of Rs. 8,60,03,185/- (CGST — Rs. 4,29,87,521/- SGST — Rs. 4,29,87,521/- and IGST — Rs. 28,143/-) paid during investigation and reflected in their GSTR 3Bs as discussed herein above by M/s GISFS should not be appropriated against their GST liability mentioned at Sr. No. (i) above.
- iv. Interest at applicable rates should not be demanded and recovered from them under Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 on the GST liability mentioned at Sr. No. (i) and (ii) above;
- v. Penalty should not be imposed upon them under Section 74 of the CGST Act 2017 read with Section 74 of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 for non-payment of GST liabilities mentioned in (i) and (ii) above.
- vi. 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 Gujarat State GST Act, 2017 read with Section 20 of the IGST 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 dues.
- vii. Penalty should not be imposed upon them under Section 122 (2)(b) of the CGST Act 2017 read with Section 122 (2)(b) of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017 for reason of fraud or willful misstatement or suppression of fact to evade tax.

DEFENCE REPLY

19. M/s Gujarat Industrial Security Force Society vide their letter dated 03.06.2022 submitted their reply to the SCN wherein they stated that:-

- I. For demand of interest of Rs. 8,60,03,558/- for the period April 2018 to Oct 2018, M/s GISFS stated that there is no late payment of any CGST or SGST. The said amounts were duly paid in time and they enclosed copy of challans evidencing payment of CGST or SGST. They already paid it in time by depositing an amount of Rs.7.44 crores in their electronic ledger. It was only since their final liability was not calculated entirely and correctly, the returns in GSTR-3B were not filed immediately and hence the amount though available in the electronic ledger could not be said to be utilized for payment of GST. Further, on the day of the search itself they made the payment of further Rs.2.00 crores in cash in their electronic ledger account towards the anticipated GST liability for this period which is also much more than the actual GST to be paid for this period. Hence on every aspect the noticee acted bonafide. Accordingly there is no delayed payment of any tax at all and for delay in filing returns, is bona fide and due to basic ignorance of the fact that the final tax liability was not calculated also due the transgression & shift from Service tax to GST Regime, which may kindly be condoned and

pardoned being new to the subject at the relevant time and not being guided properly.

- II. (a) For demand of Rs. 5,75,366/- for security services provided to GWSSB, (Gujarat Water supply Boards) amounting to taxable services of Rs.31,96,478/- for the period from Dec 2017 to Oct 2018, suggesting to be not exempt services under the provisions of Article 243 of the Constitution of India as prescribed under Notification no 12/2017-CT (Rate) dated 28-6-2017, M/s GISFS stated that the said proposition seeking to demand tax for supplies made to various Water supply offices of the Gujarat Government is clearly eligible to exemption as claimed by the them, under Notification no 12/2017 dated 28-6-2017, since it exempts all pure services provided to an Central & State Government organizations or Government authority or Local authorities entirely. It is not at all necessary that it should be in relation to anything in the first place.

(b)The interpretation adopted by the Department that such services are only exempt, if provided in relation to any service provided in relation to any activity or function entrusted to a Panchayat under Article 243 G of the Constitution or 243 W to a Municipality, is a complete misreading and illegal interpretation being adopted. The SI no 3 of the said Notification, rather clearly exempts all pure services being provided to any Central or State Government body or authority and later in 2018, also added the words of Government entities providing services to any panchayat activities. Meaning whereby the scope of the exemption was extended to other Government agencies also, who provide any activities for any panchayat, as stipulated under Article 243 H of the Constitution of India. However this does not mean that pure services like the one of security services as provided by the Noticee to Gujarat Government Water supply bodies, like Baroda GWSSB, Gnagar GWSSB, Gnagar Jal Sewa Training Institution, AHD Ahmedabad Municipal Corp which are clearly and entirely State Government bodies and authorities is not available.

(c) In fact the Exemption notification no 12/2017 dated 28-6-2017, was originally granting exemption to all Central & State Government bodies supplies and w.e.f. 25-1-2018 upon introduction of Notification No 2/2018 - Rate such exemption was also extended for services given to any government authority or entity which undertakes work in relation to any panchayat or municipal services also. However this extension of exemption did not change or take away the original exemption of pure services being provided to an Central or State Government body or Union territory or local authority which always continued from 28-6-2017 till date.

- III. (a) For Demand for Rs. 4,68,784/- for providing security services to LE College Morbi, for the period July 2017 to October 2018 seeking to deny exemption under Sr no 66 of Notification 12/2017-CT (Rate) dated 28-6-2017, suggesting that this college since undertakes both Degree and Diploma courses beyond higher school education and thus would not thus eligible for this exemption under the Proviso to this Notification under Sr no 66, M/s GISFS stated that LE College Morbi is only having a common campus imparting both School and College education. Hence

there cannot be any bifurcation of the activities as to which are provided for College & School, since they are in the same campus. Importantly services provided to any educational institution as defined under the Act, are clearly exempt and Definition of Educational Institution (ii) clearly covers this LE College Morbi, since it is imparting "education as a part of the curriculum for obtaining a qualification recognized by any Law for time being force" as clearly defined under the Act.

(b) Accordingly even going by the plain and simple reading of the definition of "Educational Institution" as provided under the Act, it squarely covers LE College Morbi, which is a recognized Government College, imparting education as the curriculum in affiliation with Gujarat Technology University as offered being equivalent to Higher Schooling Education itself.

- IV. (a) For the demand of IGST of Rs. 33,63,896/- raised on outward supplies to Special Economic Zones, by claiming exemption under S.16 (1) (b) of the IGST Act 2017 for Nov 17 to Oct 2018, M/s GISFS stated that they not claiming any ITC on these supplies nor it's Refund in any manner. Therefore there is absolutely no legal reason or justification, to resort to S.16(2) of the IGST Act when there is no issue of availment of any ITC or any dispute about the same in this case at all and simply that the Noticee has merely effected "Zero rated supplies" to SEZ Units and nothing beyond. They are not claiming any Refund of any ITC or Refund of tax paid firstly on these supplies, but has effected "Zero rated supplies" or exempt from tax supplies, from day one for these supply of security services to SEZ Units under S.16 (1) of the IGST Act. Hence question of availing any ITC and thereafter seeking refund of the same, once does not arise, the question of resorting to provisions of S.16(2) & 16 (3) of the said act does not arise at all.

(b) Further, There is no legal bar or an condition imposed from seeking an exemption for these supplies as Zero rated supplies under S.16 (1) (b) of the IGST Act nor an condition attached to claim the same in an manner which the Noticee may not have fulfilled. The noticee is not availing any ITC on these supplies here nor claiming any Refund of any ITC or tax paid in the first place which the need not at all to follow the provision of Section 16(2)&(3) of the said act and nor can the same be wrongly imposed upon them in such manner at all.

- V. For the demand of Rs. 9,190/- raised on taxable income shown as exempt, M/s GISFS stated that this was a genuine and bona fide mistakes and they had paid said amount vide Challan No. DRC 03-DC2405220316702 dated 31.05.2022 along with interest.
- VI. (a) For the demand of 25,99,324/- raised Security Service provided to Hostels for socially backward classes by claiming exemption under Notification No. 12/2017-CT (Rate), M/s GISFS stated that providing such "security services" to various Colleges, Schools, Diploma Colleges, SC/ST Hostels and such other "Educational Institutions" including of the of the Government of Gujarat, under specific agreements, which institutions do the dual duty and job of providing

education and residence both at the same time to such special category students. A copy of one of the relevant agreement is annexed. Further, originally the exemption to security services provided by educational institutions, was highlighted and defined under mega exemption notification 25/2012-ST dtd 20-6-2012. Under clause 9 of the said notification, services provided to or by an educational institution, in respect of education was exempted from service tax by way of a) auxiliary education services or b) renting of immovable property. In the definition clause of this notification "auxiliary education services" It is defined that any services provided to and for, and in relation which may be required to run the educational institution, either themselves or outsourced, would all be termed as auxiliary or ancillary to the education and examples are quoted therein of services like admission, conduct of examination, catering, transportation and likewise. Accordingly it is not that only education services for the students were exempted, but any other services carried out by such educational institutions by outsourced services for such institution which were necessary and requisite in furtherance of imparting of education, equally including for the students and the faculty or staff like services of catering, admission process, conduct of examination and all including, security services provided to such educational institution were also exempted.

(b) Central Board of Excise & Customs (CBEC) specifically clarified to all the Commissionerates, under paragraphs 3 & 4 of their circular dated 19 September 2013, that auxiliary educational services provided to educational institutions like transport operators to ferry students to and from the school, hostels, housekeeping services, canteens and security services etc would all be covered as auxiliary education services, since they also relate to and directly pertain to conduct and basic working of the educational institution in every manner and being related thereto directly, would also be eligible to exemption under notification 25/2012-ST. Accordingly they are directly covered under this notification and its further clarifications, since these Colleges, State Government & Tribal Development & SC/St run Hostels, are accommodating students since they cannot come from various places and by making them stay at such hostels, they are also taught in the schools (Chattralays) run by this social welfare department run for such special category students. This itself clearly clinches the issue and clearly entitles them to avail exemption for the "security services" provided by us to all these hostels (Chattralayas) run by the Government of Gujarat. It is also very pertinent to note that thereafter vide specific notification 6/2014-ST dtd 11-7-2014, the mega exemption notification 25/2012-ST and Sr no 9 thereof, pertaining to services provided by educational institutions, including auxiliary services were further clarified and specifically under sub clause (iii) thereof security or clearing or housekeeping services performed in such educational institution were specifically exempted from levy of service tax. Accordingly continuously the mega exemption notification no 25/2012ST, in relation to services provided by educational institutions, and its auxiliary services, were being notified and clarified as equally exempted.

(C) In their case clearly rather therefore, since these hostels are an indivisible part of the institution as run by the social welfare Department for charitable and benevolent purposes, the security services provided by us at the minimum rates offered under such contracts, would clearly be eligible to exemption without any doubt. The entire purpose and intent to run these hostels by the State Government is to provide residence, meals and education to students at one place, for the economically and socially backward students. Therefore providing of security services to safeguard and maintain such institutions, being an integral and well-defined part of such activities of these educational institutions, is clearly highlighted as an integral part of running of such educational institutions, with many other ancillary and auxiliary services similarly.

PERSONNEL HEARING

20. In the instant case, Personal Hearing was granted to the assessee on 08.09.2023. Shri Shriraj D Shah, Advocate and authorised signatory appeared on behalf of the assessee. They reiterated their written submissions dated 03.06.2022 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

21. In the instant case, I have carefully gone through the Show Cause Notice, reply to SCN, facts of the case on record and other submissions made by the noticee and find that issue involved in the present show cause notice is nonpayment of GST for the period April 2018 to October 2018 and wrong availment of various exemption notifications for the period July 2017 to October 2018. Thus, I am going to discuss issues one by one and examine the assessee's response to reach a conclusion in the matter.

(A) Non-payment of GST of Rs. 8,60,03,558/- for the period April 2018 to October 2018 for outward supplies:-

21.1 I find that during search proceedings, it was found that M/s GISFS had collected GST from their customers/clients however they had failed to deposit the same to the Govt. exchequer and failed to file their monthly GSTR-1 and GSTR-3B Returns for the period from April, 2018 to October, 2018 within the prescribed due dates. As per sales registers, it was found that they made total outward supplies of Rs. 56,81,57,241/- with corresponding GST of Rs. 8,60,03,558/-. The month-wise details are given as under:

TABLE M

Month	SALES A/C	Establishment Charges	Vehicle Hire Charges	Total Taxable Value	CGST 9%	SGST 9%	IGST 18%	Total GST
Apr-18	74714034	8621775	0	83335809	6270256	6270256	9382	12549894
May18	71708469	8605035	0	80313504	5998784	5998784	9382	12006950
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Jul-18	71791346	8580202	0	80371548	6136297	6136297	0	12272594
Aug-18	72508948	8626965	0	81135913	6198658	6198658	0	12397316

Sep-18	72565622	8784008	0	81349630	6135437	6135437	0	12270874
Oct-18	72419180	8639622	0	81058802	6229013	6229013	0	12458026
TOTAL	507663762	60493479	0	568157241	42987706	42987706	28146	86003558

22.2 I further find that Shri B. M. Chauhan, Chief Executive Officer of M/s GISFS in his statement dated 06.12.2018 has admitted that they had failed to file GSTR 3B for the period April 2018 to Oct 2018 within time period. Further, I find that in order to suppress their taxable income from the department, M/s GISFS had not filed the GST Returns for the period from April, 2018 to October, 2018. The facts about collecting and not depositing GST was detected only when the DGGI, Ahmedabad initiated the present investigation. I find that M/s GISFS has intentionally done this act to suppress their actual tax liability and thereby evading GST. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore the intent to evade payment of tax cannot be established by peering into the minds of the tax payer but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s GISFS it shows their intent to evade payment of GST by an act of omission in as much as M/s GISFS though being well aware of the provisions of the CGST 2017 and Rules made thereunder failed to disclose to the department at any point of time their tax liability on which GST was collected but not paid by them by way of not filing their GST Returns viz. GSTR-1 and GSTR-3B for the period from April 2018 to October, 2018 before initiation of the present investigation.

22.3 The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the payer.

22.4 Therefore, I find that M/s GISFS has willfully suppressed the above facts with intent to evade payment of GST and the extended period of limitation of five years under Section 74 of CGST ACT 2017 read with Section 74 of Gujarat GST ACT 2017 read with Section 20 of the IGST Act 2017 is applicable in present case. Accordingly, I find that M/s GISFS is liable to pay GST of Rs. 8,60,03,558/- (CGST — Rs. 4,29,87,706/- SGST — Rs. 4,29,87,706/- and IGST — Rs. 28,146/-) [Rupees Eight Crore Sixty Lakh Three Thousand Five Hundred Fifty Eight Only] for the period April, 2018 to October, 2018 and same is required to recovered from M/s GISFS by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.

22.5 In view of the material evidences available on records and as discussed above, I find that said assessee has also contravened following provisions of CGST ACT 2017 and IGST ACT 2017:-

- (i) Section 9 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they failed to pay the appropriate GST on

supply of taxable services made by them to their customers /clients with an intent to evade payment of Tax.

- (ii) Section 37 of the CGST Act 2017 read with Section 37 of the Gujarat State GST Act, 2017 read with Rule 59 of the CGST Rules 2017 read with Rule 59 of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017, in as much as they failed to file the GSTR-1 returns for the April, 2018 to October, 2018 with an intent to evade payment of tax.
- (iii) Section 39 of the CGST Act 2017 read with Section 39 of the Gujarat State GST Act, 2017 read with Rule 61 of the CGST Act, 2017, as amended vide Notification No. 49/2019-CT dated 09.10.2019 read with Rule 61 of the Gujarat State GST Act; 2017 read with Section 20 of the IGST Act, 20 17 in as much as they failed to file GSTR-3/GSTR-3B returns for the period April, 2018 to October, 2018 with an intend to evade payment of tax.
- (iv) Section 49 (8) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they failed to discharge their tax liability with an intend to evade payment of tax;
- (v) Section 59 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they failed to self assess their tax liability with an intend to evade payment of tax.

22.6 Further, I find that M/s GISFS had discharged their GST liability of Rs. 8,60,03,185/- and filed the corresponding GST Returns viz. GSTR-1 and GSTR-3B for the period April, 2018 to October, 2018. Therefore, said amount is liable for appropriate against demand of Rs. Rs. 8,60,03,558/- as discussed above.

22.7 Now, I proceed to decide the applicability of interest. I find that under Section 49 and Section 50 of the CGST Act, 2017 read with Rule 87 of the CGST Rules, 2017 and the corresponding entry of Gujarat State Goods and Services Tax Act, 2017 (in short 'SGST Act, 2017), it has been clearly stipulated that the taxpayer is required to pay interest @ 18% for delay payment of GST, paid in Cash by debiting the same in their Electronic Cash Ledger. Further, as per sub-section (2) of Section 50, 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, However, M/s GISFS has submitted that tax amounts were duly deposited in electronic cash ledger in time and accordingly paid duty in time and they enclosed copy of challans evidencing payment of CGST or SGST. I have gone through copy of challans and found that it is very settled law that Tax(CGST/SGST/IGST) to be deemed as paid to the government exchequer account only when the cash ledger/credit ledger is debited in the GSTR-3B, mere deposit of the amount in the Electronic Cash Ledger is not be deemed as payment of tax to the government exchequer account. Electronic Cash Ledger is an e-wallet where cash can be deposited at any time by creating the requisite Challans and deposit in the Electronic Cash Ledger, does not amount to payment of the tax liability.

22.8 Further, I find that Tax liability gets discharged only upon filing of GSTR 3B return, the last date of which is 20th of the succeeding month on which the

tax is due and even though GSTR-3B return can be filed prior to the last date and such tax liability can be discharged on its filing, but mere deposit of amount in the Electronic Cash Ledger on any date prior to filing of GSTR-3B return, does not amount to payment of tax due to its State exchequer. A combined reading of Section 39 (7), 49 (1) and Section 50(1) read with its proviso and Rule 61(2) also confirms this position. Rule 61(2) provides that 'every registered person required to furnish return under Sub-Rule (1) shall subject to provisions of Section 49, discharged his liability towards tax, interest, penalty, fee or any other amount payable under the Act or under the provisions of Chapter by debiting the Electronic Cash Ledger or Credit Ledger and include the details in the return in the form GSTR 3B. Therefore, discharge of tax liability is simultaneous with the filing of GSTR 3B return under the scheme of GST regime and the provisions of GST Act intended to ensure seamless flow of movement of goods and services and payment of tax by the registered persons in the form prescribed through a digital mode maintained by GSTIN. The contention of the petitioner of having discharged the tax liability by mere deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR-3B return would be against the scheme of GST Act.

22.9 On subject issue, I relied upon on the judgement of High Court of Jharkhand in RSB Transmissions India Limited Vs Union of India, W.P (T) No. 23 of 2022 wherein Hon'ble High Court has held that liability to pay interest arises on delayed filing of GSTR-3B return and debit of tax due from the Electronic Cash Ledger. Any deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR 3B return does not amount to discharge of tax liability on the part of the registered person. Relevant para of said judgement is reproduced below for reference:-

"15. A combined reading of Section 49(1) of CGST Act, 2017 and Rule 87 (6) and (7) of CGST Rules, 2017 both go to show that such deposit does not mean that the amount is appropriated towards the Government exchequer. On other hand other, a bare reading of sub-section (3) of Section 49 indicates that such amount available in the Electronic Cash Ledger is used for making payment towards tax, interest, penalty, fees or any other amount under the provisions of the Act and the Rules in the manner prescribed and subject to such conditions as may be prescribed. As per sub-section (4), the amount available in the Electronic Credit Ledger may be used for making any payment towards output tax under this Act or IGST Act in the manner prescribed and subject to the conditions. Explanation to sub-section (11) of Section 49 also makes it clear that the date of credit to the amount of Government in the authorized Bank shall be deemed to be the date of deposit in the Electronic Cash Ledger. The deposit in the Electronic Cash Ledger, therefore, does not amount to payment of the tax liability. If the scheme of the Act and the relevant provisions of Section 39(7) is read in conjunction with the manner of payment of tax prescribed under Section 49, it is clear that any registered person can pay the tax not later than the last date on which he is required to furnish such return. But on filing of GSTR-3B only, the amount lying in his Electronic Cash Ledger is debited towards payment of tax, interest or tax liability. Under the scheme of the Act, no person can make payment of tax prior to filing of GSTR 3B return, though such deposits may be made or are lying in his Electronic Cash Ledger. Tax liability gets discharged only upon filing of GSTR 3B return, the last date of which is 20th of the succeeding month on which the tax is due and even though GSTR-3B return can be filed prior to the last date and such tax liability can be discharged on its filing, but mere deposit of amount in the Electronic Cash Ledger on any date prior to filing of GSTR-3B return, does not amount to

payment of tax due to its State exchequer. The expression 'deposit' used in Section 49(1) and the expression 'may be used' in Section 49(3) leave no room of doubt in this regard. Further, a bare reading of the proviso to Section 50, which has been introduced by amendment in the Finance Act, 2019 and made retrospectively effective from 1st July, 2017, also goes to show that the interest on tax payable during the 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 proceeding under Section 73 or Section 74 in respect of the said period), shall be payable on that portion of the tax which is paid by debiting the Electronic Cash Ledger. This again goes to show that only on filing of GSTR-3B return, the debit of the tax dues is made from Electronic Cash Ledger and any amount lying in deposit in the Electronic Cash Ledger prior to that date does not amount to discharge of tax liability. A combined reading of Section 39 (7), 49 (1) and Section 50(1) read with its proviso and Rule 61(2) also confirms this position. Rule 61(2) provides that 'every registered person required to furnish return under Sub-Rule (1) shall subject to provisions of Section 49, discharged his liability towards tax, interest, penalty, fee or any other amount payable under the Act or under the provisions of Chapter by debiting the Electronic Cash Ledger or Credit Ledger and include the details in the return in the form GSTR 3B.' Therefore, discharge of tax liability is simultaneous with the filing of GSTR 3B return under the scheme of GST regime and the provisions of GST Act intended to ensure seamless flow of movement of goods and services and payment of tax by the registered persons in the form prescribed through a digital mode maintained by GSTIN. The contention of the petitioner of having discharged the tax liability by mere deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR-3B return would be against the scheme of GST Act and would make the working of GST regime unworkable. It can also be understood in a different way. There is no time prescribed for deposit of cash in the Cash Ledger. It, in fact, is just an e-wallet where cash can be deposited at any time by creating the requisite Challans. Since, the amount lies deposited in the Electronic Cash Ledger, a registered assessee can claim its refund any time, following the procedure prescribed under the Act and the Rules. Of course, while making refund from the Electronic Cash Ledger, the proper officer has to satisfy whether any outstanding tax liability remains to be discharged by the person concerned. The computation of interest liability is dependent upon the delay in filing of returns beyond the due date. The tax payer can claim refund under Section 54 of CGST Act at any point of time in accordance with the provisions of the Act. There is a distinction, so far as ITC available in the Electronic Credit Ledger and Electronic Cash Ledger is concerned. As such cash is just in the nature of deposit in the Electronic Cash Ledger, whereas the ITC is available in favour of the assessee on account of tax already paid. Therefore, certain distinction has been made under Section 50 of CGST Act as regards the computation of interest only on that portion of the tax paid after due date of filing of return under Section 39(7) of the Act by debiting the Electronic Cash Ledger.

16. The aforesaid mechanism is the only manner in which provisions of Section 39 (7) relating to furnishing of returns read with Section 49 relating to payment of tax, Section 50 relating to computation of interest and Rule 62 (1) and Rule 87 (6) and (7) can be harmoniously interpreted. If such interpretation is accorded, the contention of the petitioner that the interest so levied against the petitioner is in the nature of penalty is not worth acceptance. The decision of Delhi High Court in the case of **Prannoy Roy (Supra)** dealing with altogether different provisions of the Income Tax Act cannot be borrowed while interpreting the provisions of CGST Act enacted under Article 246A to give effect to the principles of cooperative federalism in sphere of Indirect Tax regime. The contentions raised by the petitioner that interest cannot be levied

upon delayed filing of return but only on delayed payment of tax, stands duly answered by virtue of the discussions made above and the reasons recorded.

17. Since the issue raised herein involves pure questions of law based on interpretation of the relevant provisions of CGST Act on undisputed facts, we are agreeable to the proposition advanced by learned senior counsel for the petitioner relying upon the case of *Magadh Sugar & Energy Ltd (Supra)* that the writ petition is maintainable. Applying the principles of interpretation as has been laid down by the Apex Court such as in the case *J.K. Synthetics Limited (supra)* and *Dwarka Prasad (Supra)*, we have no hesitation in holding that the liability to pay interest arises on delayed filing of GSTR-3B return and debit of tax due from the Electronic Cash Ledger. Any deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR 3B return does not amount to discharge of tax liability on the part of the registered person. Since the petitioner herein filed its return after some delay for the period July, 2017, October, 2017, November, 2017 and March, 2018 i.e. GSTR-3B return were filed after 20th day of the succeeding month for which the tax was due, the Revenue has rightly computed the interest on such delayed payment and requested the petitioner to pay the differential amount of Rs. 13,23,782.99. Since the petitioner has duly discharged his liability towards interest by making payment of total amount and filing Form DRC-03, no case of refund of such amount arises. The question posed at the outset is answered accordingly. Writ petition is dismissed.”

22.10 In view of the above, I find that M/s GISFS is liable to pay interest under the provisions of Sections 50(1)&(2) of the Central Goods and Services Tax Act, 2017:-

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

¹[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

22.11 Now, coming to next limb regarding imposition of penalty under the provisions of Section 74(1). I find from facts of case elaborated above, M/s GISFS has willfully suppressed the above facts with intent to evade payment of GST and the extended period of limitation of five years under Section 74 of CGST ACT 2017 read with Section 74 of Gujarat GST ACT 2017 read with Section 20 of the IGST Act 2017 is applicable in present case. Therefore, M/s GISFS is liable for penalty under the provisions of Section 74(1) of the CGST Act, 2017.

Section 74 (1) Where it appears to the proper officer that **any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax**, he shall serve

notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

22.12 Looking to the facts of the case and discussion as above, the nonpayment of tax has been soundly established in the instant case under Section 74 of the Act. Accordingly, M/s GISFS has made themselves liable for penalty under section 74(1) of the Act.

22.13 In the Show Cause Notice, it has also been proposed to impose penalty under Section 122(1)(iii) and Section 122(2)(a) of the CGST Act 2017. However, as per provisions of subsection 13 of Section 75 of CGST Act 2017, Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. Accordingly, I refrain from imposing penalties under Section 122(1)(iii) and Section 122(2)(a) of the CGST Act 2017.

(B) Non-payment of GST on outward supplies made to Organizations providing Services under Article 243 of Constitution by claiming exemption for the period July, 2017 to October, 2018:-

23.1 I find that during course of investigation by DGGI, Ahmedabad, it was observed that M/s GISFS had provided security services to the following organization of Government of Gujarat which are engaged into providing services under Article 243 of Constitution (*engaged into the activities of 'Supply of Water, sanitization'*) by claiming exemption as Pure service under Sl. No.3 of Notification No.12/2017-CT dated 28-06-2017:

TABLE N

S.N.	Name of Recipient	Total Value of supply (Rs.)
1	Baroda-GWSSB P.H.Health Sub Division	446995
2	Gandhinagar GWSSB	1927947
3	Gandhinagar Jal Seva Training Inst. Séc 15	821536
	TOTAL	3196478

23.2 Further, DGGI, Ahmedabad has observed that M/s GISFS had not rendered any service in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution and as such the exemptions claimed by them did not appear to be justified. Hence, security services provided to the above organisations do not meet the criteria of exemption mentioned at Sr. No. 3 of Notification No. 12/2017-Central Tax (Rate) and hence the same are taxable. The GST liability of M/s GISFS on account of the same during the period from July, 2017 to October, 2018 works out to be Rs. 5,75,366/-. The month-wise GST liability is given as under :

TABLE O

Month	Sales A/c	ESTABLISHMEN T CHARGES	Total Taxable Value	CGST @ 9%	SGST @ 9%	Total GST
Dec-17	170708	20485	191193	17207	17207	34415
Jan-18	171333	20560	191893	17270	17270	34541
Mar-18	307244	36869	044113	30970	30970	61940
Apr-18	311802	37416	349218	31430	31430	62859
May-18	308047	36966	345013	31051	31051	62102
Jun-18	316220	37946	354166	31875	31875	63750
Jul-18	318197	38184	356381	32074	32074	64149
Aug-18	316921	38030	3549S1	31946	31946	63891
Sep-18	315611	37873	353484	31814	31814	63627
Oct-18	317916	38150	356066	32046	32046	64092
Grand Total	2853999	342479	9196478	287683	287683	575366

23.3 However, I find that M/s GISFS denied said allegation and submitted that Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 clearly show and reveals that pure service always remain exempt for any service provided to Central State, Union territory authority or local authority and security service provided by them to (i) Baroda-GWSSB P. H. Health Sub Division, (ii) Gnagar GWSSB, (iii) Gnagar Jal Seva Training Inst. Sec 15 are fully exempted.

23.4 I have gone through the submissions made by M/s GISFS, the relevant facts along with the arguments made by M/s GISFS and find that M/s GISFS is providing Security Services to Gujarat State Government bodies (i) Baroda-GWSSB P. H. Health Sub Division, (ii) Gnagar GWSSB, (iii) Gnagar Jal Seva Training Inst. Sec 15 which are engaged into activities related to providing drinking water and sanitization in the state of Gujarat, i.e. activities related to Article 243 of the Constitution of India. M/s GISFS claims that Security Services rendered by them are pure services to the government agencies and eligible for exemption as per Sl.No. 3 of Notification 12/2017-CT(Rate) dated 28th June 2017. For sake of brevity, Sl.No. 3 of Notification 12/2017-CT(Rate) dated 28th June 2017 is reproduced below:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Per Cent)	Condition
(1)	(2)	(3)	(4)	(5)
1	..	..	..	..
2	..	..	..	..
3	Chapter 99	<i>Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.</i>	Nil	Nil

23.5 From the above said entry of the notification it is observed that, in order to claim exemption on supply of security service following conditions should be satisfied:

1. Pure Services (excluding works contract service or other composite supplies involving any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution."

23.6 Further, I go through the nature of functions entrusted to a Panchayat or a Municipality under the Constitution of India. Article 243G of the Constitution provides for powers, authority and responsibilities of Panchayats. The said article is reproduced hereunder for ready reference:-

243G- Powers, authority and responsibilities of Panchayats subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

(a) The preparation of plans for economic development and social justice;

(b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

Matters listed in Eleventh schedule are:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

23.7 On perusal of the aforesaid article, I find that the same provides for powers, authority & responsibilities of Panchayats. The said powers are endowed with respect to matters concerning *inter alia* economic development and social justice, implementation of schemes for economic development & social justice including matters listed in the Eleventh Schedule to the Constitution. The Eleventh Schedule to the Constitution *inter alia* covers (a) poverty alleviation program, (b) education, including primary and secondary schools, (c) family welfare, (d) women and child development, (e) public distribution system, (f) maintenance of community assets, etc.

23.8 Article 243W, on the other hand provides for powers, authority and responsibilities of Municipalities. The said article is reproduced hereunder for ready reference:-

243W. Powers, authority and responsibilities of Municipalities, etc Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law, may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

There are 18 items in the twelfth schedule of the Constitution which are as below:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

23.9 On perusal of the aforesaid article, I find that the same provides for similar powers, authority and responsibilities to a Municipality that have been endowed upon the Panchayat by the Constitution. In addition to the above, the Municipality is also conferred with the responsibilities listed under the Twelfth Schedule of the Constitution. The Twelfth Schedule of the Constitution *inter alia* provides for (a) urban planning including town planning, (b) regulation of land-use and construction of buildings, (c) planning for economic and social development, (d) roads and bridges, (e) public health, sanitation conservancy and solid waste management, etc.

23.10 In view of above, I find that when a supplier of services supplies services of the *aforesaid description* to the Central Government, State Government or Union territory or local authority or a Governmental authority, which are in relation to any function that have been entrusted upon the Panchayat or Municipality under the Constitution, only then such services supplied would be exempt from payment of tax. It is not the case that any and every services supplied to the Central Government, State Government or Union territory or local authority or a Governmental authority would be exempt from payment of GST. I also find that if the intention of the legislature is to exempt all the services provided to Central Government, State Government or Union Territory or Local authority then there is no need to specify activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

23.11 Thus, I find that as per activity define in 243G and 243W of the Constitution, "Security Services" provided by M/s GISFS to govt organisation are not provided by way of any activity in relation to any function entrusted to

a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. Hence, I find that M/s GISFS is not fulfilled conditions given at Sl.No. 3 of Notification 12/2017-CT(Rate) dated 28th June 2017 and he is wrongly claiming exemption under Sl.No.3 of Notification 12/2017-CT(Rate) dated 28th June 2017 for the said services. Accordingly security services provided by M/s GISFS to these organisation is liable for taxed at 18% (9% CGST and 9% SGST).

23.12 Therefore, I find that M/s GISFS has claimed ineligible exemption under Sl.No.3 of Notification 12/2017-CT(Rate) dated 28th June 2017 on the taxable supplies of Rs. 31,96,478/- for the period from July 2017 to Oct 2018 and thereby evaded applicable GST of Rs. 5,75,366/- (CGST of Rs.2,87,683/- and SGST of Rs.2,87,683/-).

(c) Non-payment of GST on outward supplies made to Diploma College by claiming exemption under Notification No. 12/2017-CT (Rate) for the period July 2017 to Oct 2018.

24.1 I find that during investigation of DGGI, Ahmedabad, it was observed that M/s GISFS had claimed exemption under Sr. No.66 of Notification No.12/2017-Centra Tax (Rate) dated 28.06.2017 for providing security services to L. E. College, Morbi claiming it to be Diploma College. However, it appeared that L.E. Morbi College is a college, which is operated by the Government of Gujarat and it is affiliated with Gujarat Technological University. This college offers both Degree and Diploma Course. Hence, it appeared that L.E. Morbi College cannot be termed as an Institution providing education upto Higher Secondary Level. Hence, it appeared that security services provided by M/s GISFS to L. E. College, Morbi for the period i.e. from July 2017 to Oct 2018 did not meet the criteria of exemption mentioned at Sr. No.66 of Notification No.12/2017-CT (Rate) and hence are taxable. The GST liability of M/s GISFS on account of providing taxable services to L.E. College Morbi during the period from July, 2017 to October, 2018 works out to be Rs. 4,68,783/-. The month-wise GST liability is given as under:-

Table P

Month	Sales A/c	Establishment Charge	Total Taxable Value	CGST	SGST	IGST	TOIA L GST
Jul-17	15196	1824	17020	1532	1532	0	3064
Aug-17	16177	1941	18118	1631	1631	0	3261
Sep-17	26846	3222	30068	2706	2706	0	5412
Oct-17	22794	2735	25529	2298	2298	0	4595
Nov-17	22794	2735	25529	2298	2298	0	4595
Dec-17	22794	2735	25529	2298	2298	0	4595
Jan-18	106863	12824	119687	10772	10772	0	21544
Feb-18	121569	14588	136157	12254	12254	0	24508
Mar-18	121569	14588	136157	12254	12254	0	24508
Apr-18	124088	14891	138979	12508	12508	0	25016
May-18	100071	12009	112080	10087	10087	0	20174
Jun-18	130293	15635	145928	13134	13134	0	26267
Jul-18	159113	19094	178207	16039	16039	0	32077
Aug-18	171622	20595	192217	17300	17300	0	34599
Sep-18	857245	238165	1095410	98587	98587	0	197174
Oct-18	185478	22257	207735	18696	18696	0	37392
TOTAL	2204512	399838	2604350	234392	234392	0	468783

24.2 However, I find that M/s GISFS denied said allegation and submitted that LE College Morbi is only having a common campus imparting both School and College education. Hence there cannot be any bifurcation of the activities as to which are provided for College & School, since they are in the same campus. Importantly services provided to any educational institution as defined under the Act, are clearly exempt and Definition of Educational Institution (ii) clearly covers this LE College Morbi, since it is imparting "education as a part of the curriculum for obtaining a qualification recognized by any Law for time being force" as clearly defined under the Act.

24.3 I have gone through the submissions made by M/s GISFS, the relevant facts and find that L. E. College, Morbi is approved by AICTE and affiliated to Gujarat Technological University. Further, as per website of said college, I find that initially they offered conventional degree and diploma courses in Engineering like Civil, Mechanical and Electrical Engineering. Gradually, the diversified disciplines like Industrial, Production, Power Electronics and Information Technology, Chemical Engineering, Applied Mechanics were introduced at degree level and Ceramic, Metallurgy, Electronics and Communication at diploma level. In brief, this college offers both Degree and Diploma Course.

24.4 Whereas Sr. No.66 of Notification No.12/2017-CT (Rate) dated 28.06.2017 *inter alia* provides for exemption in relation to certain service availed by educational institution as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Per Cent)	Condition
(1)	(2)	(3)	(4)	(5)
66	Chapter 9992	<p>Services provided —</p> <p>(a) by an educational institution to its students, faculty and staff;</p> <p>(b) to an educational institution, by way of,</p> <p>(i) transportation of students, faculty and staff,</p> <p>(ii) catering, including any mid-day meals Corporate, Tax and Business Advisory Law Firm New Delhi scheme sponsored by the Central Government, State Government or Union territory;</p> <p>(iii) security or cleaning or housekeeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution; up to higher secondary: Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.</p>	Nil	Nil

Further "*educational institutions*" have been defined in the same Notification as under :

"educational institution' means an institution providing services by way of-

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course"

In terms of the aforesaid entry, exemption is only provided *inter alia* in relation to security services provided by a supplier of service to an educational institution providing services by way of *pre-school education and education up to higher secondary school or equivalent*. Therefore, the said exemption is not available to any and every kind of educational institution.

24.5 Further, I find that in present case, L. E. College, Morbi is providing Power Electronics, Information Technology, Chemical Engineering and Applied Mechanics etc. at degree level. Further, said college also provide different type of diploma course. Hence, L. E. College, Morbi cannot be termed as an educational Institution providing services by way of pre-school education and education up to higher secondary school or equivalent only. Hence, I find that M/s GISFS is not fulfilled conditions given at Sl.No. 66 of Notification 12/2017-CT(Rate) dated 28th June 2017 and he is wrongly claiming exemption under Sl.No.66 of Notification 12/2017-CT(Rate) dated 28th June 2017 for the said services. Accordingly security services provided by M/s GISFS to LE College Morbi is liable for taxed at 18% (9% CGST and 9% SGST).

24.6 Therefore, I find that M/s GISFS has claimed ineligible exemption under Sl.No. 66 of Notification 12/2017-CT(Rate) dated 28th June 2017 on the taxable supplies of Rs. 26,04,350/- for the period from July, 2017 to October, 2018 and thereby evaded applicable GST of Rs. 4,68,783/- (CGST of Rs. 2,34,392/- and SGST of Rs2,34,392/-).

(D) Security Service provided to Hostels for socially backward classes by claiming exemption under Notification No. 12/2017-CT (Rate):-

25.1 I find that during investigation of DGGI, Ahmedabad, it was observed that M/s GISFS had provided security services to various Govt. run Hostels providing lodging services to students of weaker sections of the society. M/s GISFS had claimed exemptions for providing security services to these hostels claiming it to be services provided to educational institutions. In case of these hostels, it is observed that these hostels are providing lodging facilities to students of weaker sections of the society but are not educational institutions themselves and hence do not fulfill the conditions prescribed in Notification No. 12/2017-CT (Rates) for falling under exempted category. Hence services provided to these hostels are taxable.

25.2 The GST liability of M/s GISFS for providing security services to these Hostels during the period from July, 2017 to October, 2018 works out to be Rs. 25,99,324/-. Month-wise details of the same is given below :

Table Q

Month	Sales A/c	Establishment Charges	Total Taxable Value	CGST @ 9%	SGST @ 9%	Total GST
Jul-17	1110559	133273	1243832	111945	111945	223890
Aug-17	1131883	135831	1267714	114094	114094	228189
Sep-17	1162677	139527	1302204	117198	117198	234397
Oct-17	992163	119065	1111228	100011	100011	200021
Nov-17	1026244	123155	1149399	103446	103446	206892
Dec-17	973058	116773	1089831	98085	98085	196170
Jan-18	1047568	125715	1173283	105595	105595	211191
Feb-18	1128890	135474	1264364	113793	113793	227586
Mar-18	1093426	131218	1224644	110218	110218	220436
Apr-18	1086123	130336	1216459	109481	109481	218963
May-18	1039059	124688	1163747	104737	104737	209474
Jun-18	1039547	124747	1164294	104786	104786	209573
Jul-18	31110	3733	34843	3136	3136	6272
Aug-18	31110	3733	34843	3136	3136	6272
Grand Total	12893417	1547268	14440685	1299662	1299662	2599323

25.3 I have gone through the submissions made by M/s GISFS, the relevant facts and find that M/s GISFS has tried to establish that they have provided services to the educational institution and the government run hostels are treated as educational institutes for exemption purpose under the exemption notification. I also find that M/s GISFS have contended that these hostels run by the State Government of Gujarat, through the Social Welfare Department, are special category hostels for residence of students of schedule castes and schedule tribes, who not only reside there, but are also undertaking education entirely from the same very institution. They also submitted agreement dated 14.07.2017 entered with the District Deputy Director - Development Caste Class-I, Vadodara in support of their claim. I find that "educational institutions" have been defined in the said Notification as under :

"educational institution" means an institution providing services by way of-

- (i) pre-school education and education up to higher secondary school or equivalent;*
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) education as a part of an approved vocational education course"*

25.4 Educational institutions providing services, namely ,Pre-school education and education upto higher secondary school or equivalent;

education as a part of curriculum for obtaining qualification recognized by any law for the time being in force; and education as a part of an approval vocational education course are exempted. Hostels are not educational institutions providing the above types of education and therefore security services provided to such Hostels are not covered under the exemption Notification No. 12/2017-CT (Rate) dated 28.06.2017. Further, I find that since Hostels are merely places to stay, and are not covered under the definition of *educational institution*, the security services provided by the noticee to such Hostels run by the Social Welfare Department of the Government of Gujarat is not be eligible for exemption. Hence services provided to these hostels are taxable.

25.5 Therefore, I find that M/s GISFS has claimed ineligible exemption under Notification 12/2017-CT(Rate) dated 28th June 2017 on the taxable supplies of Rs. 1,44,40,685/- for the period from July, 2017 to October, 2018 and thereby evaded applicable GST of Rs. 25,99,324/- (CGST of Rs. 12,99,662/- and SGST of Rs 12,99,662/-).

(E) Non-payment of GST on outward supplies made to Special Economic Zone (SEZ's) by claiming exemption under Section 16(1)(b) of IGST Act, 2017 for the period July 2017 to October 2018:

26.1 I find that during investigation of DGGI, Ahmedabad, it was observed that M/s GISFS had provided security services to Special Economic Zones (SEZs) by claiming exemption under Section 16 (1)(b) of IGST Act, 2017 following SEZs :

TABLE R

S.N.	Name of Recipient	Total Value of supply in Rs.
1	GIDC - APPERAL PARK AHD	1089619
2	GIDC - APPERL PARK SURAT SEZ	1840074
3	GIDC Bharuch Dahej Sez Ltd Vaghra	13945597
4	GIDC GNAGAR MEGHA IT PROJECT	727522
5	GIDC GNAGAR SEC28	877073
6	GIDC Gnnagar Sez Sec 11	208424
	Total	18688309

26.2 I find that Shri B.M. Chauhan, CEO of M/s GISFS had stated in his statement dated 30.07.2020 that the security services provided to these SEZs are Zero Rated Supply made under LUTs without payment of IGST. He submitted the copy of LUT (GST RFD-11) for the F.Y. 2018-19 but failed to produce the endorsement from the Specified Officer of the SEZ regarding receipt of services for the specified operations under Rule 89(1) of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017, made applicable to Inter-State Supplies under Section 20 of the IGST Act, 2017 and Circular No.48/22/2018-GST dated 14.06.2018 . In the absence of endorsement by the specified officers of tile respective SEZs, security services provided by M/s GISFS to the SEZs cannot be treated as "Zero Rated Supply" and the exemption claimed by them on this account appears to be ineligible and GST liability, arising due to such wrongly claimed exemption works out to be Rs. 33,63,896/- The month-wise details is given as under:-

TABLE S

Month	Sales A/c	Establishment Charges	Taxable Value	CGST	SGST	IGST	Total GST
Nov-17	467719	56126	523845	0	0	94292	94292
Dec-17	678793	81455	760248	0	0	136845	136845
Jan-18	985080	118210	1103290	0	0	198592	198592
Feb-18	974810	116977	1091787	0	0	196522	196522
Mar-18	1524163	182900	1707063	0	0	307271	307271
Apr-18	1556282	186754	1743036	0	0	313746	313746
May-18	1622829	194739	1817568	0	0	327162	327162
Jun-18	1773437	212812	1986249	0	0	357525	357525
Jul-18	1866503	223980	2090483	0	0	376287	376287
Aug-18	1865001	223800	2088801	0	0	375984	375984
Sep-18	1866503	223980	2090483	0	0	376287	376287
Oct-18	1504871	180585	1685456	0	0	303382	303382
TOTAL	16685991	2002318	18688309	0	0	3363896	3363896

26.3 However, I find that M/s GISFS denied said allegation and submitted that they not claiming any ITC on these supplies nor it's Refund in any manner. Therefore there is absolutely no legal reason or justification, to resort to S.16(2) of the IGST Act when there is no issue of availment of any ITC or any dispute about the same in this case at all and simply that the Noticee has merely effected "Zero rated supplies" to SEZ Units and nothing beyond.

26.4 I have gone through the submissions made by M/s GISFS, the relevant facts and find that M/s GISFS has made supply of security services amounting to Rs. 1,86,88,309/- to SEZ units by claiming exemption under Section 16 (1)(b) of IGST Act, 2017 under LUTs without payment of IGST. Further, for making Zero Rated Supplies, provisions for claiming of refunds of unutilized ITC or refund of IGST paid on such Zero Rated Supplies has been given in Section 16(2) / 16(3) of the IGST Act, 2017. Further as per the second proviso to Rule 89(1) of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017, made applicable to Inter-State Supplies under Section 20 of the IGST Act, 2017, in respect of supplies to a SEZ developer or a SEZ Unit, the application for refund shall be filed by the-

- (a) *Supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the Zone;*
- (b) *Supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone.*

26.5 Further, I find that a clarification has been issued vide Circular No.48/22/2018-GST dated 14.06.2018, wherein at para 2.2 of Column 3 it has been clarified that "A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone."

26.6 In view of the above, I find that LUT and endorsements issued by the specified officers of the SEZs is basic condition for availing exemption under 'Zero Rated Supply'. However, M/s GISFS failed to provide/produce endorsements issued by the specified officers of the SEZs at time of investigation as well as in their defence reply. It is settled law that an exemption notification has to be construed in a strict manner and it is for the noticee to prove that they fall within the four corners of the exemption claimed. The Hon'ble Supreme Court, in their decision in the case of Commissioner of Customs (Import), Mumbai Vs. M/s Dilipkumar & Company [2018 (361) E.L.T. 577 (SC)], has settled the legal position in this regard, wherein it was held that "*Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification*".

26.7 Hence, said noticee has failed to provide the necessary documentary evidence i.e. endorsement to demonstrate that such security services provided by the them are approved by the Specified Officer of the SEZ. In absence of endorsements issued by the specified officers of the SEZs, security services provided by M/s GISFS is not 'Zero Rated Supply' and exemption claimed by them is not available to them. Accordingly security services provided by M/s GISFS to SEZs is liable for taxed at 18% .

26.8 Therefore, I find that M/s GISFS has claimed ineligible exemption under Section 16 (1)(b) of IGST Act, 2017 on the taxable supplies of Rs. 1,86,88,309/- for the period from July, 2017 to October, 2018 and thereby evaded IGST of Rs. 33,63,896/-.

(F) Taxable Shown as Exempt:-

27.1 I find that during investigation of DGGI, Ahmedabad, it was observed that in case of an invoice, wherein the supplies made by M/s GISFS to M/s GPCB, Mehsana was taxable, they had shown the same as exempted in their Sales Ledger and no GST was paid on the value of the said invoice. In this regard, Shri B.M. Chauhan in his statement dated 30.07.2020 accepted that due to clerical error the said mistake was done and he agreed to correct the said mistake and pay the applicable GST. The details of the same are given below. The GST liability on account of above erroneous entries works out to be Rs. 9,190/-. Details of the same are given below :

TABLE T

Invoice No.	Name of Service recipient	Total Taxable value	CGST 9%	SGST9 %	IGST 18%	Total GST	Invoice value
GISF/17-18/3845 DATED 31.01.18	GPCB- MEHSANA	51059	4595	4595	0	9190	60249

27.2 In this regard, I find that M/s GISFS has submitted copy of DRC 03 having ARN No.- AD240522017654C dated 31.05.2022 and stated that they have paid said tax of Rs. 9,190/- alongwith interest 7,076/-. Therefore, I find that said amount is liable for appropriate against aforesaid demand.

28 I find that the amount of GST worked out due to ineligible exemptions as discussed in per para 23 to 27 is reproduced below:-

TABLE U

Sr No	Details/Head	SALES A/C incl. vehicle hire charge	establishment charges	Total taxable value	CGST	SGST	IGST	Total GST
1	Diploma College (L.E.) College, Morbi)	2204512	399838	2604350	234392	234392	0	468784
2	Hostel for weaker section of society	12893417	1547268	14440685	1299662	1299662	0	2599324
4	SEZ	16685991	2002318	18688309	0	0	3363896	3363896
4	Pure service	2853999	342479	3196478	287683	287683	0	575366
5	Taxable shown as exempted	45588	5471	51059	4595	4595	0	9191
	TOTAL	34683507	4297374	38980881	1826332	1826332	3363896	7016561

29. I find that said facts emerged during the course of investigation only and M/s GISFS has suppressed their actual tax liability by claiming ineligible exemptions. The facts regarding evasion of GST by claiming ineligible exemptions came into light due to investigation conduct by DGGI, Ahmedabad. Had the present investigation not been initiated by DGGI, Ahmedabad against M/s GISFS, they would have continued with their modus of claiming ineligible exemptions on a regular basis. This clearly done intentionally in order to suppress their actual tax liability and thereby evading GST. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore the intent to evade payment of tax cannot be established by peering into the minds of the tax payer but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s GISFS it shows their intent to evade payment of GST by an act of omission in as much as M/s GISFS though being well aware of the provisions of the CGST 2017 and Rules made there under failed to disclose to the department at any point of time their tax liability on which they had claimed ineligible exemptions for evading GST on certain taxable supplies made by them during the period from July 2017 to October 2018.

30 The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of

honesty of taxpayer; therefore, the governing statutory provisions create a liability on taxpayer when any provision is contravened or there is a breach of trust placed on the payer.

31. In view of the material evidences available on records and as discussed above, I find that said assessee has also contravened following provisions of CGST ACT 2017 and IGST ACT 2017:-

- (i) Section 9 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they failed to pay the appropriate GST on supply of taxable services made by them to their customers /clients with an intent to evade payment of Tax.
- (ii) Section 15 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they have suppressed the taxable value of the supplies by claiming wrong exemption under said Notification with an intent to evade payment of Tax;
- (iii) Section 49 (8) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they failed to discharge their tax liability with an intend to evade payment of tax;
- (iv) Section 59 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they failed to self assess their tax liability with an intend to evade payment of tax.

32. Therefore, I find that M/s GISFS has willfully suppressed the above facts with intent to evade payment of GST and the extended period of limitation of five years under Section 74 of CGST ACT 2017 read with Section 74 of Gujarat GST ACT 2017 read with Section 20 of the IGST Act 2017 is applicable in present case. Accordingly, I find that M/s GISFS is liable to pay GST of Rs 70,16,561/- (as mentioned in above table) for the period April, 2018 to October, 2018 and same is required to recovered from M/s GISFS by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.

33. I also find that M/s GISFS is liable to pay interest on GST of Rs 70,16,561/- under the provisions of Sections 50(1)&(2) of the Central Goods and Services Tax Act, 2017:-

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

1[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

34. Now, coming to next limb regarding imposition of penalty under the provisions of Section 74(1). I find from facts of case elaborated above, M/s GISFS has willfully suppressed the above facts with intent to evade payment of GST and the extended period of limitation of five years under Section 74 of CGST ACT 2017 read with Section 74 of Gujarat GST ACT 2017 read with Section 20 of the IGST Act 2017 is applicable in present case. Therefore, M/s GISFS is liable for penalty under the provisions of Section 74(1) of the CGST Act, 2017.

*Section 74 (1) Where it appears to the proper officer that **any tax has not been paid** or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised **by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax**, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a **penalty equivalent to the tax specified in the notice.***

35. Looking to the facts of the case and discussion as above, the nonpayment of tax has been soundly established in the instant case under Section 74 of the Act. Accordingly, M/s GISFS has made themselves liable for penalty under section 74(1) of the Act.

36. In the Show Cause Notice, it has also been proposed to impose penalty under Section 122(1)(iii) and Section 122(2)(a) of the CGST Act 2017. However, as per provisions of subsection 13 of Section 75 of CGST Act 2017, where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. Accordingly, I refrain from imposing penalties under Section 122(1)(iii) and Section 122(2)(a) of the CGST Act 2017.

37. As discussed in para 22 to 27, total GST worked out due to non payment of tax for the period April 2018 to October 2018 and ineligible exemptions claimed for the period July 2017 to October 2018 is reproduced below:-

GST liability for the period April-Oct 2018(collected but not paid)

TABLE V

Month	SALES A/C	Establishment Charges	Vehicle Hire Charges	Total Taxable Value	CGST 9%	SCGST 9%	IGST 18%	Total GST
Apr-18	74714034	8621775	0	83335809	6270256	6270256	9382	12549894
May18	71708469	8605035	0	80313504	5998784	5998784	9382	12006950
Jun-18	71956163	8635872	0	80592035	6019261	6019261	9382	12047904
Jul-18	71791346	8580202	0	80371548	6136297	6136297	0	12272594
Aug-18	72508948	8626965	0	81135913	6198658	6198658	0	12397316

Sep-18	72565622	8784008	0	81349630	6135437	6135437	0	12270874
Oct-18	72419180	8639622	0	81058802	6229013	6229013	0	12458026
TOTAL	507663762	60493479	0	568157241	42987706	42987706	28146	86003558

**Additional GST liability due to wrongly claimed exemption for the period
July 2017 to October 2018.**

TABLE W

Sr. No	Details/Head	SALES A/C incl. vehicle hire charge	establishment charges	Total taxable value	CGST	SGST	IGST	Total GST
1	Diploma College (L.E.) College, Morbi)	2204512	399838	2604350	234392	234392	0	468784
2	Hostel for weaker section of society	12893417	1547268	14440685	1299662	1299662	0	2599324
4	SEZ	16685991	2002318	18688309	0	0	3363896	3363896
4	Pure service	2853999	342479	3196478	287683	287683	0	575366
5	Taxable shown as exempted	45588	5471	51059	4595	4595	0	9191
	TOTAL	34683507	4297374	38980881	1826332	1826332	3363896	7016561

Grand Total

TABLE X

GRAND TOTAL	Total Taxable Value	CGST	SGST	IGST	Total GST
	607138122	44814038	44814038	3392042	93020119

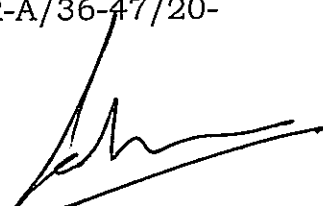
38. In view of the discussions and findings at above paras, I pass the following order:

ORDER

- i. I confirm the demand of Rs. 8,60,03,558/- (CGST — Rs. 4,29,87,706/- SGST — Rs. 4,29,87,706/- and IGST — Rs. 28,146/-) [Rupees Eight Crore Sixty Lakh Three Thousand Five Hundred Fifty Eight Only) for period April, 2018 to October, 2018 and order to recover the same from M/s GISFS under Section 74(9) of the CGST Act, 2017 read with Section 74 (9) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017;
- ii. I confirm the demand of Rs. 70,16,561/- (CGST of Rs. 18,26,332/-, SGST of Rs. 18,26,332/- and IGST of Rs. 33,63,896/-) [Rupees Seventy Lakhs Sixteen Thousand Five Hundred and Sixty One Only] on wrongly claimed exemptions on the outward supplies made during the period from July 2017 to October 2018 and order to recover the same from M/s GISFS under Section 74(9) of the CGST Act, 2017 read with Section 74(9) of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act 2017;

- iii. I appropriate The GST amount of Rs. 8,60,03,185/- (CGST — Rs. 4,29,87,521/- SGST — Rs. 4,29,87,521/- and IGST — Rs. 28,143/-) paid during investigation and reflected in their GSTR 3Bs against their GST liability mentioned at Sr. No. (i) above.
- iv. I appropriate The GST amount of Rs. 9,190/- (CGST — Rs. 4,595/- SGST — Rs. 4,595/-) paid vide DRC 03 having ARN No.-AD240522017654C dated 31.05.2022 against their GST liability mentioned at Sr. No. (ii) above.
- v. I confirm the demand of interest at applicable rates and order to recover the same from M/s GISFS under Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act 2017 in respect of the demand at Sr. No. (i) and (ii) above;
- vi. I appropriate the interest amount of Rs. 7,076/- (CGST — Rs. 3,538/- SGST — Rs. 3,538/-) paid vide DRC 03 having ARN No.-AD240522017654C dated 31.05.2022 against their interest liability mentioned at Sr. No. (v) above.
- vii. I impose penalty of Rs. 9,30,20,119/- [Rupees Nine Crore Thirty Lakh Twenty Thousand One Hundred Nineteen Only] and order to recover the same from M/s GISFS under Section 74(9) of the CGST Act 2017 read with Section 74(9) of the Gujarat State GST Act, 2017 for non-payment of GST liabilities mentioned at Sr. No. (i) and (ii) above;
- viii. I do not impose penalty under Section 122(1)(iii) of the CGST Act 2017 read with Section 122(1)(iii) of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017
- ix. I do not impose penalty under Section 122 (2)(b) of the CGST Act 2017. read with Section 122 (2)(b) of the Gujarat State GST Act, 2017 read with Section 20 of the IGST Act, 2017.
- x. I further order that in terms Section 74(11) of CGST Act 2017, if M/s GISFS pays the tax amount and interest thereon under section 50(as determined at S.N. (i) to (vi) above) and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of this notice shall be deemed to be concluded.

39. Accordingly, the Show Cause Notice F.No. DGGI/AZU/GR-A/36-47/20-21 dated 25.02.2021 is disposed off in above terms.


(Lokesh Damor)
Additional Commissioner,
Central GST & CE,
Ahmedabad North
Date 10.01.2024

F.NO.GST/15-226/OA/2020
By RPAD/MAIL

To,
M/s Gujarat Industrial Security Force Society,
GSTIN 24AAAAG0372L1ZW,
5th Floor, F Block, Bahumali Bhavan,
Manjushree Mill Compound, Nr. Girdharnagar Bridge,
Asarwa, Ahmedabad

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The Joint Director, DGGI, Ahmedabad Zonal Unit, 6th& 7th Floor, I the Address Building, Near Sola Flyover, Sola, Ahmedabad.
3. The DC/AC, Central GST & Central Excise, Div- II Ahmedabad North.
4. The Superintendent, Range-I, Division-II, Central GST & Central Excise, Ahmedabad North **for generating and uploading DRC- 07 on the portal in terms of DSR advisory No.01/2018 dated 26.10.2018 and Instruction No. 04/2023-GST dated 23.11.2023.**
- ✓5. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
6. Guard File.