


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>3579</p> <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. GST/15-48/OA/2023

DIN- 20240164WT0000337670  
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. 65/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, अंबावाडी, 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। उम 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. VI/1(b)-763/C-V/AP-32/GST/20-21 issued to M/s Gujarat Industrial Security Force Society, 5<sup>th</sup> 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, O-1, New Mental Hospital Campus, Meghani Nagar, Ahmedabad Civil Hospital, Ahmedabad, Gujarat-380 016 (Now at 5<sup>th</sup> Floor, 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 registered with GST Department and holding GSTIN 24AAAAG0372L1ZW. 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.

2. During the course of GST audit for the period from July-2017 to March-2019, the following 04 objections have been raised vide Final Audit Report ADT-02 No.GST-21 dated 06.07.2021 wherein the taxpayer shown their disagreement with the objections. All these 04 audit objections are elaborated as below:-

**3. Non-payment of interest on delay payment of GST for the period July-2017 to March-2018 and November, 2018 to March-2019 for outward supplies:-**

3.1 During the course of GST audit for the period July-2017 to March-2019, while scrutiny of GSTR-3B, GSTR-9/9C and Electronic Cash Ledger of the period under reference, it was observed that M/s GISFS had made delay in payment of GST for the audit period as under:-

Year	Month.	Tax paid in Cash				Due date of payment	Tax Paid on	No. of days delay	Interest @18%			
		IGST	CGST	SGST	Total				IGST	CGST	SGST	Total
2017-18	July	0	6337779	6337779	12675558	2017-08-28	2017-11-02	66	0	206282	206282	412563
	August	0	6294448	6294448	12588896	2017-09-20	2017-11-02	43	0	133477	133477	266954
	September	0	6275674	6275674	12551348	2017-10-20	2018-06-20	243	0	752049	752049	1504099
	October	0	5925141	5925141	11850282	2017-11-20	2018-06-20	212	0	619461	619461	1238923
	November	0	6158405	6158405	12316810	2017-12-20	2018-06-25	187	0	567923	567923	1135846
	December	0	5990607	5990607	11981214	2018-01-22	2018-06-25	154	0	454958	454958	909916
	January	0	6118706	6118706	12237412	2018-02-20	2018-06-28	128	0	386233	386233	772466
	February	0	6007347	6007347	12014694	2018-03-20	2018-06-28	100	0	296253	296253	592505
	March	0	5936904	5936904	11873808	2018-04-20	2018-06-28	69	0	202017	202017	404035
		<b>Total(a)</b>	0	55045011	55045011	110090022				0	3618653	3618653

Year	Month	Tax paid in Cash				Due date of payment	Tax Paid on	No. of days	Interest @18%			
		IGST	CGST	SGST	Total				IGST	CGST	SGST	Total
2018-19	November	0	6177593	6177593	12355186	20-12-2018	12-01-2019	23	0	70069	70069	140138
	December	0	6349989	6349989	12699978	20-01-2019	16-02-2019	27	0	84551	84551	169101
	January	0	5092616	5154995	10247611	22-02-2019	08-03-2019	14	0	35160	35591	70751
	February	0	5198053	5198053	10396106	20-03-2019	30-03-2019	10	0	25634	25634	51268
	March	0	4750394	4750394	9500788	23-04-2019	06-05-2019	13	0	30455	30455	60909
	Total (b) (Nov to Mar)	0	27568645	27631024	55199669					0	245868	246299

**3.2** In this regard, it is observed 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.

**3.3** However, M/s GISFS vide letter GISFS/GST Audit/960/2021 dated 31st May, 2021 stated that they did not agree with the objection raised by the audit and accordingly not paid the demand.

**3.4** Whereas, as per the provisions of Sections 39(1) of the Central Goods and Services Act, 2017 ('CGST Act') and the Gujarat State Goods and Services Tax Act, 2017 ('SGST Act') (collectively 'Act'), the supplier had to file their GSTR 3B returns before the 20<sup>th</sup> day of each month or the extended time period, as tabulated above. Further, as per the provisions of Sections 39(7) of the Act, the supplier had to pay tax not later than the last date on which they were required to furnish their returns.

**3.5** Whereas, it appeared from their electronic liability register that the supplier had delayed the payment of tax made through their electronic cash ledger for the months from July 2017 to March 2019. The delay in number of days and the interest liable to be paid on the cash component for the period July-2017 to March-2018 and November-2018 to March-2019 is tabulated above. For the period from April-2018 to October-2018, the Directorate General of Goods and Services Tax Intelligence, Zonal Unit, Ahmedabad has already issued show cause notice bearing file no. DGGI/AZU/Gr 'A'/36-47/2021-21 dated 25.02.2021 for non payment of tax, hence the said period was excluded from current audit under reference for demanding interest for delay in payment of tax.

**3.6.** Whereas, Sections 50(1) and 50(2) of the Central Goods and Services Tax Act, 2017 and Section 50(1) and 50(2) of the State Goods and Service Tax Act, 2017 reads as under:

*"(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:*

*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"*

**3.7** From the above table, it appeared that the supplier had delayed the payment of tax debited through their electronic cash ledger for the months from July 2017 to March 2018 and from November 2018 to March 2019. The number of days by which the payment has been delayed and the interest payable are tabulated above. The details of payments made through IGST, CGST and SGST are shown separately.

**3.8** From the above facts, it appeared that the supplier had contravened the provisions of Sections 39(7) of the Central Goods and Services Tax Act, 2017 read with provision of Section 39(7) of the State Goods and Service Tax Act, 2017 and the provisions of Rules 85(3) and Rule 87 of the CGST Rules, 2017 and the provision of Rule 85(3) and Rule 87 of the SGST Rules, 2017 by not making payments for the months from July 2017 to March 2018 and November 2018 to March 2019, within the prescribed due dates. By delaying the payment of tax for the above months, it appeared that they were liable to pay total interest amounting to **Rs 77,29,473/- (Rs 38,64,521/- for CGST + Rs 38,64,952/- for SGST)**, under the provisions of Sections 50(1) of the Central Goods and Services Tax Act, 2017 and Section 50(1) of the State Goods and Service Tax Act, 2017.

**4. Non-payment of GST on outward supplies made to Organizations providing Services under Article 243 of Constitution by claiming exemption as Pure Service for the period November-2018 to March-2019:**

**4.1** During the course of audit, it was further 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'*) by claiming exemption as Pure Services under Sl. No.3 of Notification No.12/2017-CT dated 28-06-2017:

- (i) Baroda-GWSSB P. H. Health Sub Division
- (ii) Gnagar GWSSB
- (iii) Gnagar Jal Seva Training Inst. Sec 15
- (iv) AHD Ahmedabad Municipal Corporation

**4.2** Organisations mentioned at Sr. No. (i) & (ii) above are under "Gujarat Water Supply & Sewerage Board". Further, Organisation mentioned at Sl. No.(iv) is under Ahmedabad Municipal Corporation of Government of Gujarat. Further "Gandhinagar Jal Seva Training Inst. Sec 15" (GJTI) mentioned at Sr. No. (iii) above is a Unit of Gujarat Water Supply & Sewerage Board of Narmada Water Supply Water Resources & Kalpsar Department Government of Gujarat.

4.3 Thus, from the above, it appeared that these organizations are Gujarat State Government bodies 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. It appeared that M/s GISFS had not rendered any service in relation to any function entrusted to a Panchayat or Municipality under article 243 of the Constitution and they have provided only Security services to these Organisations. Therefore, it appeared that the exemption claimed by M/s GISFS did not available to them. For ease of reference, the relevant portion of the said notification is reproduced 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**

<b>Sl. No.</b>	<b>Chapter, Section, Heading, Group or Service Code (Tariff)</b>	<b>Description of Services</b>	<b>Rate (Per Cent)</b>	<b>Condition</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
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.	<b>Nil</b>	<b>Nil</b>

4.4 Whereas, it appeared that M/s GISFS had provided only security services to these organisations and they 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 does not appear to be justified. Hence, it appeared that the security services provided to the above organisations did not meet the criteria of exemption mentioned at Sr. No. 3 of

Notification No. 12/2017-Central Tax (Rate) and hence the security services provided by M/s GISFS to these organisations are liable to be taxed under GST.

4.5 Whereas, it further appeared that during the course of audit of M/s GISFS, a Query Memo dated 18.05.2021 was issued from F. No.VI/1(b)-763/C-V/AP-32/GST/20-21 to M/s GISFS requesting them to pay total Rs.10,23,924/-, alongwith applicable rate of interest and penalty. However, M/s GISFS vide letter GISFS/GST Audit/960/2021 dated 31<sup>st</sup> May, 2021 stated that they did not agree with the objection raised by the audit and accordingly not paid the demand made vide said query memo.

4.6 GST liability of M/s GISFS on account of the wrongly claimed of exemption, as discussed in para supra, during the period from November-2018 to March-2019 is worked out to be Rs.10,23,924/- as per Annexure- "A" to the Show Cause Notice. Based on said Annexure, the month-wise GST liability is worked out as under:

Month	Sales A/c.	Establishment Charges	Total Taxable Value	CGST @9%	SGST @9%	Total GST
Nov-18	317926	38151	356077	32047	32047	64094
Dec-18	314926	37791	352717	31745	31745	63490
Jan-19	316341	37961	354302	31887	31887	63774
Feb-19	317287	38074	355361	31982	31982	63965
Mar-19	3812505	457500	4270005	384300	384300	768601
<b>Total</b>	<b>5078985</b>	<b>609477</b>	<b>5688462</b>	<b>511962</b>	<b>511962</b>	<b>1023924</b>

4.7 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 9 of Gujarat State GST Act, 2017 in as much as they appear to have 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 by claiming wrong exemption under Sr. No. 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017;
- (ii) Section 15 of the CGST Act, 2017 read with Section 15 of the Gujarat State GST Act, 2017 in as much as they appear to 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 49 (8) of Gujarat State GST Act, 2017 in as much as they appear to have 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 59 of the Gujarat State GST Act, 2017 in as much as they appear to have failed to self assess their tax liability with an intend to evade payment of tax.

**4.8** Whereas, it appeared that M/s GISFS had evaded GST by claiming ineligible exemption benefit under Sr. No.3 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 during the period from November-2018 to March-2019. It appeared for their willful act of suppression and mis-declaration of facts with sole intention to evade GST, the extended period of five years as provided in Section 74 of CGST Act, 2017 read with Section 74 of the Gujarat State GST Act, 2017 is invocable for demanding the GST evaded by them during the period from November-2018 to March-2019 in the subject matter. Accordingly, GST of Rs.10,23,924/- (CGST of Rs.5,11,962/- and SGST of Rs.5,11,962/-) [Rupees Ten Lakh Twenty Three Thousand Nine Hundred Twenty Four only) evaded by M/s GISFS during the period from November-2018 to March-2019, on account of such ineligible exemption claimed as detailed in Annexure-'A' to this show cause notice, appeared to be recoverable from them by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat State GST Act, 2017. It further appeared that M/s GISFS is also liable to pay applicable interest under Section 50 of the CGST Act, 2017 read with Section 50 of Gujarat State GST Act, 2017.

**4.9** It further appeared that all the above mentioned acts of contravention constitute an offence of the nature as described under the provisions of Section 122 (2)(b) of the CGST Act, 2017 read with Section 122 (2)(b) of the Gujarat State GST Act, 2017 rendering themselves liable to penalty under Section 74 and Section 122 of the CGST Act, 2017 read with Section 74 and Section 122 of the Gujarat State GST Act, 2017 for failure to pay tax, failure to self assess the tax liability and for non-compliance of various provisions of the act leading to penalty under the said sections referred above.

**5. Non-payment of GST on outward supplies made to Diploma College by claiming exemption under Notification No. 12/2017-CT (Rate) for the period November-2018 to March-2019:**

**5.1** Whereas it is observed that services provided to an educational institution by security or cleaning or housekeeping services performed in such educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent are exempted under Sr. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. 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"*

**5.2** In this regard, a reference may also be made to Govt. of Gujarat, General Administration Department Resolution No. RVB-102011-U.O. 190K dated



15.05.2012. Vide the said Resolution, they have declared the Diploma courses conducted by the ITIs/ Polytechnics in the state of Gujarat to be equivalent to Class Xth or XIIth and hence the same would fall under the category of educational institutions as defined under Sr. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

**5.3** Whereas, during the course of audit, 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. 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 did not meet the criteria of exemption mentioned at Sr. No.66 of Notification No.12/2017-CT (Rate) and hence are taxable. Further, during the course of audit of M/s GISFS, a Query Memo dated 18.05.2021 was issued from F. No.VI/1(b)-763/C-V/AP-32/GST/20-21 to M/s GISFS requesting them to pay total GST of Rs.2,01,926/-, alongwith applicable rate of interest and penalty. However, M/s GISFS vide letter GISFS/GST Audit/960/2021 dated 31<sup>st</sup> May, 2021 stated that they did not agree with the objection raised by the audit and accordingly not paid the demand made vide said query memo.

**5.4** Whereas, as mentioned in foregoing paras, it appeared that the exemption claimed for the period i.e. from November, 2018 to March-2019 for providing security service to L. E. College, Morbi was not available to M/s GISFS and accordingly, the total GST of Rs.2,01,926/- appeared to be recoverable from them as per detailed in Annexure - "B" to the show cause notice. Based on said Annexure, the month-wise GST liability is worked out, as detailed in table below:

Month	Sales A/c.	Establishment Charges	Total Taxable Value	CGST @9%	SGST @9%	Total GST
Nov-18	177195	21263	198458	17861	17861	35722
Dec-18	185978	22317	208295	18747	18747	37494
Jan-19	182978	21957	204935	18444	18444	36888
Feb-19	227490	27299	254789	22931	22931	45862
Mar-19	227972	27357	255329	22980	22980	45960
<b>Total</b>	<b>1001613</b>	<b>120193</b>	<b>1121806</b>	<b>100963</b>	<b>100963</b>	<b>201926</b>

**5.5** 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 9 of Gujarat State GST Act, 2017 in as much as they appear to have 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 by claiming wrong exemption under Sr. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017;

- (ii) Section 15 of the CGST Act, 2017 read with Section 15 of the Gujarat State GST Act, 2017 in as much as they appear to 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 49 (8) of Gujarat State GST Act, 2017 in as much as they appear to have 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 59 of the Gujarat State GST Act, 2017 in as much as they appear to have failed to self assess their tax liability with an intend to evade payment of tax.

**5.6** Whereas, it appeared that M/s GISFS had evaded GST by claiming ineligible exemption benefit under Sr. No.66 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 during the period from November-2018 to March-2019. It appeared for their willful act of suppression and mis-declaration of facts with sole intention to evade GST, the extended period of five years as provided in Section 74 of CGST Act, 2017 read with Section 74 of the Gujarat State GST Act, 2017 is invocable for demanding the GST evaded by them during the period from November-2018 to March-2019 in the subject matter. Accordingly, GST of Rs.2,01,926/- (CGST of Rs.1,00,963/- and SGST of Rs.1,00,963/-) [Rupees Two Lakh One Thousand Nine Hundred Twenty Six only) evaded by M/s GISFS during the period from November-2018 to March-2019, on account of such ineligible exemption claimed as detailed in Annexure- 'B' to this show cause notice is require to be recoverable from them by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat State GST Act, 2017. It further appeared that M/s GISFS is also liable to pay applicable interest under Section 50 of the CGST Act, 2017 read with Section 50 of Gujarat State GST Act, 2017.

**5.7** It further appeared that all the above mentioned acts of contravention constitute an offence of the nature as described under the provisions of Section 122 (2)(b) of the CGST Act, 2017 read with Section 122 (2)(b) of the Gujarat State GST Act, 2017 rendering themselves liable to penalty under Section 74 and Section 122 of the CGST Act, 2017 read with Section 74 and Section 122 of the Gujarat State GST Act, 2017 for failure to pay tax, failure to self assess the tax liability and for non-compliance of various provisions of the act leading to penalty under the said sections referred above.

**6. 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 November-2018 to March-2019:**

**6.1** During the course of audit, 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. On inquiry, it was verbally explained by them that the security services provided to SEZs are Zero Rated Supply made under LUTs without payment of IGST. It is further observed that 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.

**6.2** It is also observed that the 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."

**6.3** Whereas it appeared that during the course of audit, M/s GISFS were failed to produce LUT and the endorsements issued by the specified officers of the SEZs. Hence, it appeared that in absence of LUT and 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 does not appear to be eligible to them and accordingly it appeared that the IGST is required to be recovered from M/s GISFS along with applicable interest and penalty, as detailed in table below:

Month	Sales A/c.	Establishment Charges	Total Taxable Value	IGST @18%	CGST @9%	SGST @9%	Total GST
Nov-18	1314630	157755	1472385	265029	0	0	265029
Dec-18	1314630	157755	1472385	265029	0	0	265029
Jan-19	1314630	157755	1472385	265029	0	0	265029
Feb-19	1314630	157755	1472385	265029	0	0	265029
Mar-19	1313630	157635	1471265	264828	0	0	264828
<b>Total</b>	<b>6572150</b>	<b>788655</b>	<b>7360805</b>	<b>1324944</b>	<b>0</b>	<b>0</b>	<b>1324944</b>

**6.4** 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 appear to have 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 by claiming wrong exemption under Sr. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017;

- (ii) Section 15 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 in as much as they appear to 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 appear to have 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 appear to have failed to self assess their tax liability with an intend to evade payment of tax.
- (v) Section 16 of the IGST Act, 2017 read with Section 54 of the CGST Act, 2017 and Rule 89(1) of the CGST Rules, 2017 made applicable to Inter-State Supplies under Section 20 of the IGST Act, 2017 in as much as they failed to follow the procedure laid down under the said act in respect of supplies made a SEZ Developer or a SEZ Unit.

**6.5** Whereas, it appeared that M/s GISFS have evaded IGST by claiming ineligible exemption under Section 16 (1)(b) of IGST Act, 2017 read with Section 16 (2) and Section 16(3) of the IGST Act, 2017 during the period from November-2018 to March-2019. It appeared for their willful act of suppression and mis-declaration of facts with sole intention to evade GST, the extended period of five years as provided in Section 74 of CGST Act, 2017 read with Section 20 of IGST Act, 2017 is invocable for demanding the IGST evaded by them during the period from November-2018 to March-2019 in the subject matter. Accordingly, IGST of Rs.13,24,944/- [Rupees Thirteen Lakh Twenty Four Thousand Nine Hundred Forty Four only) evaded by M/s GISFS during the period from November-2018 to March-2019, on account of such ineligible exemption claimed as detailed in Annexure-'C' to this show cause notice, appeared to be recoverable from them by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017. It further appeared that M/s GISFS is also liable to pay applicable interest under Section 50 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.

**6.6** It further appeared that all the above mentioned acts of contravention constitute an offence of the nature as described under the provisions of Section 122 (2) (b) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 rendering themselves liable to penalty under Section 74 and Section 122 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 for failure to pay tax, failure to self assess the tax liability and for non-compliance of various provisions of the act leading to penalty under the said sections referred above.

**7.** Whereas, the legal provisions of interest as defined under Section 50 of CGST, 2017 read with Section 50 of Gujarat State GST, Act, 2017 and Section 20 of IGST Act, 2017 as reproduced below:

**Interest on delayed payment as detailed under Section 50 of the CGST Act 2017 :**

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

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

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

8. Further, legal provisions for extended period of limitation, as defined under Section 74 of CGST Act, 2017 and Section 74 of the Gujarat State GST Act, 2017 and Section 20 of the IGST Act, 2017 and penalties, as defined under Section 74 and Section 122 of CGST Act, 2017 read with Section 74 and Section 122 of Gujarat State GST Act, 2017 and Section 20 of the IGST Act, 2017, are reproduced below:

**Suppression of facts or mis-statement as defined under Section 74 of the CGST Act, 2017 :**

*“74. (1) Where it appeared to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized 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.*

*(2) to (6) .....*

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent of such tax within thirty days of issue of the notice all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall after considering the representation if any made by the person chargeable with tax determine the amount of tax interest and penalty due from such person and issue an order.*

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per

cent. of such tax within thirty days of communication of the order all proceedings in respect of the said notice shall be deemed to be concluded.

*Explanation 1.— For the purposes of section 73 and this section—*

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons and such proceedings against the main person have been concluded under section 73 or section 74 the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

*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.”*

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

“122. (1) ---

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded or where the input tax credit has been wrongly availed or utilised—

(a) .....

(b) for reason of fraud or any willful misstatement or suppression of facts to evade tax shall be liable to a penalty equal to ten thousand rupees or the tax due from such person whichever is higher.

(3) —

**9.** Whereas, it appeared 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 thereunder 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 74 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”*

10. It is seen from the facts emerged during the course of audit of M/s GISFS that they appear to have suppressed their actual tax liability by claiming ineligible exemptions. The facts regarding evasion of GST by claiming ineligible exemptions came into light due to audit conduct by CGST, Audit, Ahmedabad. Had the present investigation not been initiated by CGST Audit, Ahmedabad against M/s GISFS, they would have continued with their modus of claiming ineligible exemptions on a regular basis. This clearly appeared 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 they had claimed ineligible exemptions for evading GST on certain taxable supplies made by them during the period from November-2018 to March-2019. Had the audit of M/s GISFS not been conducted by CGST Audit, Ahmedabad, these facts would not have come to light.

11. It appeared that M/s GISFS have failed to declare their taxable income towards providing the taxable supplies made by them, as elaborated in details in paras above, and have claimed ineligible exemptions for evading GST. It appeared that M/s GISFS has adopted the modus of claiming ineligible exemptions in case of certain taxable supply made by them to above organisations. It appeared that these supplies did not meet the exemption criteria as stipulated under the law. Further, it appeared that this amounts to wilful suppression of facts with the deliberate intent to evade payment of GST. The evasion of GST for the period from November-2018 to March-2019 on the entire income received towards making taxable supplies by M/s GISFS came to the noticed of the department only due to audit of their records was carried out by CGST, Audit, Ahmedabad. It appeared that such exemptions are required to be denied to M/s GISFS and GST liabilities, for the period from November-2018 to March-2019 on account of such ineligible exemption, are required to be recovered from them as worked out and tabulated in foregoing paras with applicable rate of interest and penalty, as discussed in foregoing paras, by invoking extended period of limitation of five years 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.

12. In the instant case of M/s GISFS, by virtue of the Section 6 of the Gujarat State GST Act, the Central Tax Officers are authorized to be Proper Officers under the said Act. All the Sections of CGST Act, 2017 are pari-materia to Gujarat State GST Act, 2017 and Vice-Versa.

13. Accordingly, Show Cause Notice No. F.No. VI/1(b)-763/C-V/AP-32/GST/20-21 dated 15.07.2021 was issued to M/s Gujarat Industrial Security Force Society, 5<sup>th</sup> Floor, F Block, Bahumali Bhavan, Manjushree Mill Compound, Nr. Girdharnagar Bridge, Asarwa, Ahmedabad called upon to show cause as to why:

- (i) interest amounting to Rs 77,29,473/- (Rs 38,64,521/- for CGST + Rs 38,64,952/- for SGST) for delay in payment of tax of Rs.16,52,89,691/- (CGST Rs.8,26,13,656 and SGST Rs. 8,26,76,035/-) for period i.e. July-2017 to March-2018 and for period from November-2018 to March-2019 should not be demanded and recovered from them under the provisions of Sections 50(1) of the Central Goods and Services Tax Act, 2017 and Section 50(1) of the State Goods and Service Tax Act, 2017;
- (ii) the exemptions claimed on the outward supplies made to Organisations providing services under Article 243 of Constitution for the amount of Rs. 56,88,462/-, during the period from November-2018 to March-2019, should not be treated as taxable income and applicable GST of Rs. 10,23,924/- (CGST of Rs. 5,11,962/- and SGST of Rs. 5,11,962/-) [Rupees Ten Lakh Twenty Three Thousand Nine Hundred Twenty Four Only] as detailed in Annexure-'A' 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;
- (iii) the exemptions claimed on the outward supplies made to Diploma College for the amount of Rs.11,21,806/-, during the period from November-2018 to March-2019, should not be treated as taxable income and applicable GST of Rs. 2,01,926/- (CGST of Rs. 1,00,963/- and SGST of Rs. 1,00,963/-) [Rupees Two Lakh One Thousand Nine Hundred Twenty Six 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;
- (iv) the exemptions claimed on the outward supplies made to Special Economic Zone (SEZ's) for the amount of Rs. 73,60,805/-, during the period from November-2018 to March-2019, should not be treated as taxable income and applicable IGST of Rs. 13,24,945/- [Rupees Thirteen Lakh Twenty Four Thousand Nine Hundred Forty Five Only] as detailed in Annexure-'C' to this notice should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017;
- (v) 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 on the GST liability mentioned at Sr. No. (ii) and (iii) above;
- (vi) interest at applicable rates should not be demanded and recovered from them under Section 50 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 on the GST liability mentioned at Sr. No. (iv) above;
- (vii) penalty should not be imposed upon them under Section 74 of the CGST Act 2017 read with Section 122 (2)(b) of the CGST Act, 2017 read with Section 74 of the Gujarat State GST Act, 2017 and read with Section 122(2)(b) of the Gujarat State GST Act, 2017 for non-payment of GST liabilities mentioned at para (ii) and (iii) above;



- (viii) penalty should not be imposed upon them under Section 74 of the CGST Act 2017 read with Section 122 (2)(b) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 for non-payment of GST liabilities mentioned at para (iv) above;

### **DEFENCE REPLY**

14. M/s Gujarat Industrial Security Force Society vide their letter dated 25.02.2022 submitted their reply to the SCN wherein they stated that:-

(i) For demand of interest of Rs. 77,29,473/- for the period July 2017 to march 2018 and November 2018 to March 2019, 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. Further, they submitted that only since GST was suddenly introduced from July 2017, in the process of shift from the Service Tax regime the Noticee could not file their returns in time, for this relevant period and defaulted in filing of their Returns but not in payment of the tax at all. The applicable CGST & SGST always was paid in time for this entire period as applicable. It is submitted that the Chart shown on Internal Page 3 of the Show cause notice (SCN), the Column of due date of payment, is compared with actual payment, which is entirely wrong. As the Column of actual date of payment, is for actual date of filing their GST Returns and not actual date of payment of tax. Hence the basic error has crept in this demand, since the date of filing of return, is wrongly taken as the date of actual payment of tax, which is entirely wrong and incorrect.

(ii) (a) For demand of Rs. 10,23,924/- for security services provided to GWSSB, (Gujarat Water supply Boards) amounting to taxable services of Rs.56,88,462/- for the period from November 2018 to March 2019, 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. 2,01,926/- for providing security services to LE College Morbi, for the period November 2018 to March 2019 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. 13,24,944/- raised on outward supplies to Special Economic Zones, by claiming exemption under S.16 (1) (b) of the IGST Act 2017 for November 2018 to March 2019, 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.

### **PERSONNEL HEARING**

15. 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 25.02.2022 and requested to decide the SCN on merits.

### **DISCUSSION AND FINDINGS**

16. 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. Firstly, I find that said notice dated 15.07.2021 is transferred by jurisdictional Assistant Commissioner, CGST. Div-II, Ahmedabad North on the basis of Para 8 of Circular 31/05/2018-GST dated 09.02.2018 which is reproduced below:-

*“In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).”*

In this regard, I find that as a SCN dated 15.02.2021 amounting to Rs. 9,30,20,119/- has been issued to said assessee i.e. M/s Gujarat Industrial Security Force Society on similar issue. Therefore, I proceed to decide present notice dated 15.07.2021 on the basis of para 8 of Circular 31/05/2018-GST dated 09.02.2018.

17. On recapitulating, I find that the issue involved in the present show cause notice is nonpayment of interest on delay payment of GST for the period July-2017 to March-2018, November, 2018 to March-2019 and wrong availment of various exemption notifications. 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 interest on delay payment of GST for the period July-2017 to March-2018 and November, 2018 to March-2019 for outward supplies:-**

17.1. I find that during the course of GST audit for the period July-2017 to March-2019, it was observed that M/s GISFS had late filed their GSTR 3B and accordingly made delay in payment of GST for the period July-2017 to March-2018 and November, 2018 to March-2019 as under:-

Year	Month	Tax paid in Cash				Due date of payment	Tax Paid on	No. of days delay	Interest @18%			
		IGST	CGST	SGST	Total				IGST	CGST	SGST	Total
2017-18	July	0	6337779	6337779	12675558	2017-08-28	2017-11-02	66	0	206282	206282	412563
	August	0	6294448	6294448	12588896	2017-09-20	2017-11-02	43	0	133477	133477	266954
	September	0	6275674	6275674	12551348	2017-10-20	2018-06-20	243	0	752049	752049	1504099
	October	0	5925141	5925141	11850282	2017-11-20	2018-06-20	212	0	619461	619461	1238923
	November	0	6158405	6158405	12316810	2017-12-20	2018-06-25	187	0	567923	567923	1135846
	December	0	5990607	5990607	11981214	2018-01-22	2018-06-25	154	0	454958	454958	909916
	January	0	6118706	6118706	12237412	2018-02-20	2018-06-28	128	0	386233	386233	772466
	February	0	6007347	6007347	12014694	2018-03-20	2018-06-28	100	0	296253	296253	592505
	March	0	5936904	5936904	11873808	2018-04-20	2018-06-28	69	0	202017	202017	404035
	Total (a)	0	55045011	55045011	110090022				0	3618653	3618653	7237306

Year	Month	Tax paid in Cash				Due date of payment	Tax Paid on	No. of days	Interest @18%			
		IGST	CGST	SGST	Total				IGST	CGST	SGST	Total
2018-19	November	0	6177593	6177593	12355186	20-12-2018	12-01-2019	23	0	70069	70069	140138
	December	0	6349989	6349989	12699978	20-01-2019	16-02-2019	27	0	84551	84551	169101
	January	0	5092616	5154995	10247611	22-02-2019	08-03-2019	14	0	35160	35591	70751
	February	0	5198053	5198053	10396106	20-03-2019	30-03-2019	10	0	25634	25634	51268
	March	0	4750394	4750394	9500788	23-04-2019	06-05-2019	13	0	30455	30455	60909
		Total (b) (Nov to Mar)	0	27568645	27631024	55199669				0	245868	246299

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. Further, they submitted that department has wrongly calculated due date of payment as date of filing of GSTR returns and it should be actual date of payment i.e. date deposit of challans.

17.2. I have gone through copy of challans, party's submission and find that as per the provisions of Sections 39(1) of the Central Goods and Services Act, 2017 ('CGST Act') and the Gujarat State Goods and Services Tax Act, 2017 ('SGST Act') (collectively 'Act'), the supplier has to file their GSTR 3B returns before the 20<sup>th</sup> day of each month or the extended time period. Further, as per the provisions of Sections 39(7) of the Act, the supplier has to pay tax not later than the last date on which they were required to furnish their returns i.e. the date of payment of tax to the government is the date of filing of GSTR-3B in which there is payment of tax liability. 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.

17.3. Further, I find that Tax liability gets discharged only upon filing of GSTR 3B return, the last date of which is 20<sup>th</sup> 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.

**17.4.** 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.”

**17.5** 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:*

*<sup>1</sup>[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.*

**17.6.** Therefore, M/s GISFS has contravened the provisions of Sections 39(7) of the Central Goods and Services Tax Act, 2017 read with provision of Section 39(7) of the State Goods and Service Tax Act, 2017 and the provisions of Rules 85(3) and Rule 87 of the CGST Rules, 2017 and the provision of Rule 85(3) and Rule 87 of the SGST Rules, 2017 by not making payments for the months from July 2017 to March 2018 and November 2018 to March 2019, within the prescribed due dates. Thus, I hold that, M/s GISFS is liable to pay total interest amounting to **Rs 77,29,473/- (Rs 38,64,521/- for CGST + Rs 38,64,952/- for SGST)**, under the provisions of Sections 50(1) of the Central Goods and Services Tax Act, 2017 and Section 50(1) of the State Goods and Service Tax Act, 2017.

**(B) Non-payment of GST on outward supplies made to Organizations providing Services under Article 243 of Constitution by claiming exemption as Pure Service for the period November-2018 to March-2019:-**

**18.1** I find that during the course of audit, it was observed that M/s GISFS had provided security services to (i) Baroda-GWSSB P. H. Health Sub Division, (ii) Gnagar GWSSB, (iii) Gnagar Jal Seva Training Inst. Sec 15 and (iv) AHD Ahmedabad Municipal Corporation which are Gujarat State Government bodies 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 has provided only Security services to these Organisations which are not in relation to any function entrusted to a Panchayat or Municipality under article 243 of the Constitution. Therefore, exemption claimed by M/s GISFS are not available to them

**18.2** Further, these organizations are Gujarat State Government bodies 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. It appeared that M/s GISFS had not rendered any service in relation to any function entrusted to a Panchayat or Municipality under article 243 of the Constitution and they have provided only Security services to these Organisations. Therefore, exemption claimed by M/s GISFS mentioned at Sr. No. 3 of Notification No. 12/2017-Central Tax (Rate) are not available to them. GST liability of M/s GISFS on account of the wrongly claimed of exemption, as discussed in para supra, during the period from November-2018 to March-2019 is worked out to be Rs.10,23,924/- as per Annexure- "A" to the Show Cause Notice. Based on said Annexure, the month-wise GST liability is worked out as under:

(Amt. in Rs.)

Month	Sales A/c.	Establishment Charges	Total Taxable Value	CGST @9%	SGST @9%	Total GST
Nov-18	317926	38151	356077	32047	32047	64094
Dec-18	314926	37791	352717	31745	31745	63490
Jan-19	316341	37961	354302	31887	31887	63774
Feb-19	317287	38074	355361	31982	31982	63965
Mar-19	3812505	457500	4270005	384300	384300	768601
<b>Total</b>	<b>5078985</b>	<b>609477</b>	<b>5688462</b>	<b>511962</b>	<b>511962</b>	<b>1023924</b>

**18.3** 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 and (iv) AHD Ahmedabad Municipal Corporation are fully exempted.

**18.4** 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 and (iv) AHD Ahmedabad Municipal Corporation 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:-

<b>Sl. No.</b>	<b>Chapter, Section, Heading, Group or Service Code (Tariff)</b>	<b>Description of Services</b>	<b>Rate (Per Cent)</b>	<b>Condition</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
1	..	..	..	..
2	..	..	..	..
3	Chapter 99	<b>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.</b>	<b>Nil</b>	<b>Nil</b>

18.5 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."*

18.6 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.

18.7 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.

18.8 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.

**18.9** 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.

**18.10** 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.

**18.11** 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).

**18.12** 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.56,88,462/- for the period from November 2018 to March 2019 and thereby evaded applicable GST of Rs.10,23,924/- (CGST of Rs.5,11,962/- and SGST of Rs.5,11,962/-). Further, I find that said facts emerged during the course of audit 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 audit conduct by CGST, Audit, Ahmedabad. Had the present investigation not been initiated by CGST Audit, 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 November-2018 to March-2019.

**18.13** 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.

**18.14** In view of the material evidences available on records and as discussed above, I find that said assessee has contravened following provisions of CGST ACT 2017 and SGST ACT 2017.

- (i) Section 9 of the CGST Act, 2017 read with Section 9 of Gujarat State GST Act, 2017 in as much as they have 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 by claiming wrong exemption under Sr. No. 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017;
- (ii) Section 15 of the CGST Act, 2017 read with Section 15 of the Gujarat State GST 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 49 (8) of Gujarat State GST Act, 2017 in as much as they have 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 59 of the Gujarat State GST Act, 2017 in as much as they have failed to self assess their tax liability with an intend to evade payment of tax.

**18.15** In view of the above, I find that GST of Rs.10,23,924/- (CGST of Rs.5,11,962/- and SGST of Rs.5,11,962/-) 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 74 of the Gujarat State GST Act, 2017. Now, I would like to discuss the applicability of interest. I find that M/s GISFS has not paid tax of Rs.10,23,924/- as discussed above, therefore said assessee is liable to pay interest under provisions of Section 50(1) of the CGST Act, 2017:-

*Section 50. Interest on delayed payment of tax.-*

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

*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”*

**18.16** Now, Coming to next limb regarding imposition of penalty under the provisions of Section 74(1) read with Section 122(2) of the CGST Act, 2017. I find from facts of case elaborated in the notice that the demand of tax not paid of Rs.10,23,924/- (CGST of Rs.5,11,962/- and SGST of Rs.5,11,962/-) has been proposed by invoking the provisions of Section 74(1) of the CGST Act, 2017 and penalty has been proposed under the provisions of Section 122(2)(b) of the CGST Act, 2017. Before going ahead, it would be pertinent to look into

the provisions of Section 122(2)(b) of CGST Act, 2017 first, the same is reproduced as under:-

*“Section 122 (2):- Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-*

*(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;*

*(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher. “*

**18.17** On plain reading of the above provisions, it is evident that clause (b) of the Section 122(2) of the Act, speaks about the penalty commensurate to Section 74 of the Act for contraventions of provisions of the Act. Further, it is also evident that quantum of penalty equal to ten thousand or the tax due from such person, whichever is higher, for reason of fraud or any wilful misstatement or suppression of facts to evade tax. Looking to the facts of the case and discussion as above, the non payment of 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 the provisions of Section 122(2)(b) of the CGST Act, 2017.

**(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 November-2018 to March-2019:**

**19.1** I find that during the course of audit, 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 November, 2018 to March-2019 did not meet the criteria of exemption mentioned at Sr. No.66 of Notification No.12/2017-CT (Rate) and hence are taxable. Total GST of Rs.2,01,926/- appeared to be recoverable from them as per detailed in Annexure – “B” to the show cause notice. Based on said Annexure, the month-wise GST liability is worked out, as detailed in table below:

Month	Sales A/c.	Establishment Charges	Total Taxable Value	CGST @9%	SGST @9%	Total GST
Nov-18	177195	21263	198458	17861	17861	35722
Dec-18	185978	22317	208295	18747	18747	37494
Jan-19	182978	21957	204935	18444	18444	36888

Feb-19	227490	27299	254789	22931	22931	45862
Mar-19	227972	27357	255329	22980	22980	45960
<b>Total</b>	<b>1001613</b>	<b>120193</b>	<b>1121806</b>	<b>100963</b>	<b>100963</b>	<b>201926</b>

19.2 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.

19.3 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.

19.4 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:

<b>Sl. No.</b>	<b>Chapter, Section, Heading, Group or Service Code (Tariff)</b>	<b>Description of Services</b>	<b>Rate (Per Cent)</b>	<b>Condition</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
66	Chapter 9992	<p><b>Services provided —</b></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;</p>	Nil	Nil

		<i>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.</i>		
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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.

**19.5** 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).

**19.6** 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. 11,21,806/- for the period from November 2018 to March 2019 and thereby evaded applicable GST of Rs.2,01,926/- (CGST of Rs. 1,00,963/- and SGST of Rs. 1,00,963/-). Further, I find that said facts emerged during the course of audit 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 audit conduct by CGST, Audit, Ahmedabad. Had the present investigation not been initiated by CGST Audit, 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 November-2018 to March-2019.

**19.7** 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.

**19.8** In view of the material evidences available on records and as discussed above, I find that said assessee has contravened following provisions of CGST ACT 2017 and SGST ACT 2017.

- (i) Section 9 of the CGST Act, 2017 read with Section 9 of Gujarat State GST 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 by claiming wrong exemption under Sr. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017;
- (ii) Section 15 of the CGST Act, 2017 read with Section 15 of the Gujarat State GST 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 49 (8) of Gujarat State GST Act, 2017 in as much as they have 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 59 of the Gujarat State GST Act, 2017 in as much as they have failed to self assess their tax liability with an intend to evade payment of tax.

**19.9** In view of the above, I find that GST of Rs.2,01,926/- (CGST of Rs. 1,00,963/- and SGST of Rs. 1,00,963/-) 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 74 of the Gujarat State GST Act, 2017. Now, I would like to discuss the applicability of interest. I find that M/s GISFS has not paid tax of Rs. 2,01,926/- as discussed above, therefore said assessee is liable to pay interest under provisions of Section 50(1) of the CGST Act, 2017:-

*Section 50. Interest on delayed payment of tax.-*

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

*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"*

**19.10** Now, Coming to next limb regarding imposition of penalty under the provisions of Section 74(1) read with Section 122(2) of the CGST Act, 2017. I find from facts of case elaborated in the notice that the demand of tax not paid of Rs.2,01,926/- (CGST of Rs. 1,00,963/- and SGST of Rs. 1,00,963/-) has been proposed by invoking the provisions of Section 74(1) of the CGST Act, 2017 and penalty has been proposed under the provisions of Section 122(2)(b) of the CGST Act, 2017. Before going ahead, it would be pertinent to look into the provisions of Section 122(2)(b) of CGST Act, 2017 first, the same is reproduced as under:-

*"Section 122 (2):- Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-*

*(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;*

*(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher. "*

**19.11** On plain reading of the above provisions, it is evident that clause (b) of the Section 122(2) of the Act, speaks about the penalty commensurate to Section 74 of the Act for contraventions of provisions of the Act. Further, it is also evident that quantum of penalty equal to ten thousand or the tax due from such person, whichever is higher, for reason of fraud or any wilful misstatement or suppression of facts to evade tax. Looking to the facts of the case and discussion as above, the non payment of 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 the provisions of Section 122(2)(b) of the CGST Act, 2017.

**(D) 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 November-2018 to March-2019:**

**20.1** I find that during the course of audit, 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. On inquiry, it was verbally explained by them that the security services provided to SEZs are Zero Rated Supply made under LUTs without payment of IGST. However, M/s GISFS were failed to produce LUT and the endorsements issued by the specified officers of the SEZs required 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.

**20.2** Hence, it appeared that in absence of LUT and 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 not available to them and accordingly it appeared that the IGST is required to be recovered from M/s GISFS along with applicable interest and penalty, as detailed in table below:

(Amt. in Rs.)

Month	Sales A/c.	Establishment Charges	Total Taxable Value	IGST @18%	CGST @9%	SGST @9%	Total GST
Nov-18	1314630	157755	1472385	265029	0	0	265029
Dec-18	1314630	157755	1472385	265029	0	0	265029
Jan-19	1314630	157755	1472385	265029	0	0	265029
Feb-19	1314630	157755	1472385	265029	0	0	265029
Mar-19	1313630	157635	1471265	264828	0	0	264828
<b>Total</b>	<b>6572150</b>	<b>788655</b>	<b>7360805</b>	<b>1324944</b>	<b>0</b>	<b>0</b>	<b>1324944</b>

**20.3** 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.

**20.4** 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. 73,60,805/- 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.*

**20.5** 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."

**20.6** 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 these documents at time of audit 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*".

**20.7** Hence, said noticee has failed to provide the necessary documentary evidence i.e. LUT and endorsement to demonstrate that such security services provided by the them are approved by the Specified Officer of the SEZ. In absence of LUT and 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%.

**20.8** 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. 73,60,805/- for the period from November 2018 to March 2019 and thereby evaded IGST of Rs. 13,24,944/-. Further, I find that said facts emerged during the course of audit 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 audit conduct by CGST, Audit, Ahmedabad. Had the present investigation not been initiated by CGST Audit, 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 November-2018 to March-2019.

**20.9** 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.

**20.10** In view of the material evidences available on records and as discussed above, I find that said assessee has 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 IGST on supply of taxable services made by them to their customers /clients with an intent to evade payment of Tax by claiming wrong exemption;
- (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 have 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 have failed to self assess their tax liability with an intend to evade payment of tax.
- (v) Section 16 of the IGST Act, 2017 read with Section 54 of the CGST Act, 2017 and Rule 89(1) of the CGST Rules, 2017 made applicable to Inter-State Supplies under Section 20 of the IGST Act, 2017 in as much as they failed to follow the procedure laid down under the said act in respect of supplies made a SEz Developer or a SEZ Unit.

**20.11** In view of the above, I find that IGST of Rs. 13,24,944/- 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. Now, I would like to discuss the applicability of interest. I find that M/s GISFS has not paid tax of Rs. 13,24,944/- as discussed above, therefore said assessee is liable to pay interest under provisions of Section 50(1) of the CGST Act, 2017 read with Section 20 of IGST Act:-

*Section 50. Interest on delayed payment of tax.-*

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

*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"*

**20.12** Now, coming to next limb regarding imposition of penalty under the provisions of Section 74(1) read with Section 122(2) of the CGST Act, 2017. I find from facts of case elaborated in the notice that the demand of tax not paid of Rs. 13,24,944/- has been proposed by invoking the provisions of Section 74(1) of the CGST Act, 2017 and penalty has been proposed under the provisions of Section 122(2)(b) of the CGST Act, 2017. Before going ahead, it would be pertinent to look into the provisions of Section 122(2)(b) of CGST Act, 2017 first, the same is reproduced as under:-

*"Section 122 (2):- Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-*

*(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;*

*(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher. "*

**20.13** On plain reading of the above provisions, it is evident that clause (b) of the Section 122(2) of the Act, speaks about the penalty commensurate to Section 74 of the Act for contraventions of provisions of the Act. Further, it is also evident that quantum of penalty equal to ten thousand or the tax due from such person, whichever is higher, for reason of fraud or any wilful misstatement or suppression of facts to evade tax. Looking to the facts of the case and discussion as above, the non payment of 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 the provisions of Section 122(2)(b) of the CGST Act, 2017.

**21.** In view of the discussions and findings at Para 17, 18, 19 & 20, I pass the following order:

#### ORDER

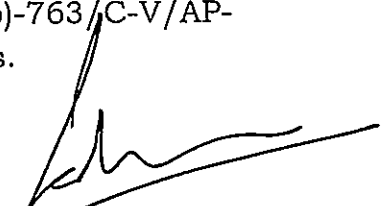
- (i) I confirm the demand of interest amounting to Rs 77,29,473/- (Rs 38,64,521/- for CGST + Rs 38,64,952/- for SGST) for delay in payment of tax of Rs.16,52,89,691/- (CGST Rs.8,26,13,656/- and SGST Rs. 8,26,76,035/-) for period i.e.July-2017 to March-2018 and for period from November-2018 to March-2019 and order to recover the same from M/s GISFS under the provisions of Sections 50(1) of

the Central Goods and Services Tax Act, 2017 and Section 50(1) of the State Goods and Service Tax Act, 2017;

- (ii) I confirm the demand of Rs. 10,23,924/- (CGST of Rs. 5,11,962/- and SGST of Rs. 5,11,962/-) [Rupees Ten Lakh Twenty Three Thousand Nine Hundred Twenty Four Only] on wrongly claimed exemptions on the outward supplies made to Organisations providing services under Article 243 of Constitution during the period from November-2018 to March-2019 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;
- (iii) I confirm the demand of Rs. 2,01,926/- (CGST of Rs. 1,00,963/- and SGST of Rs. 1,00,963/-) [Rupees Two Lakh One Thousand Nine Hundred Twenty Six Only] on wrongly claimed exemptions on the outward supplies made to L.E. College, Morbi during the period from November-2018 to March-2019 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;
- (iv) I confirm the demand of Rs. 13,24,945/- [Rupees Thirteen Lakh Twenty Four Thousand Nine Hundred Forty Five Only] on wrongly claimed exemptions on the outward supplies made to Special Economic Zone (SEZ's) during the period from November-2018 to March-2019 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;
- (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 in respect of the demand at Sr. No. (ii) and (iii) above;
- (vi) 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 20 of the IGST Act, 2017 in respect of the demand at at Sr. No. (iv) above;
- (vii) I impose penalty of Rs. 10,23,924/- [Rupees Ten Lakh Twenty Three Thousand Nine Hundred Twenty Four Only] and order to recover the same from M/s GISFS under Section 74(9) of the CGST Act 2017 read with Section 122 (2)(b) of the CGST Act, 2017 read with Section 74(9) of the Gujarat State GST Act, 2017 and read with Section 122(2)(b) of the Gujarat State GST Act, 2017 for non-payment of GST liabilities mentioned at para (ii).
- (viii) I impose penalty of Rs. 2,01,926/- [Rupees Two Lakh One Thousand Nine Hundred Twenty Six Only] and order to recover the same from M/s GISFS under Section 74(9) of the CGST Act 2017 read with Section 122 (2)(b) of the CGST Act, 2017 read with Section 74(9) of the Gujarat State GST Act, 2017 and read with Section 122(2)(b) of the Gujarat State GST Act, 2017 for non-payment of GST liabilities mentioned at para (iii).

- (ix) I impose penalty of Rs. 13,24,945/- [Rupees Thirteen Lakh Twenty Four Thousand Nine Hundred Forty Five Only] and order to recover the same from M/s GISFS under Section 74(9) of the CGST Act 2017 read with Section 122 (2)(b) of the CGST Act, 2017 read with Section 20 of IGST Act, 2017 for non-payment of GST liabilities mentioned at para (iv).
- (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.

22. Accordingly, the Show Cause Notice F.No. VI/1(b)-763/C-V/AP-32/GST/20-21 dated 15.07.2021 is disposed off in above terms.

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

F.NO.GST/15-48/OA/2023  
By RPAD/MAIL

Date 10.01.2024

To,  
M/s Gujarat Industrial Security Force Society,  
GSTIN 24AAAAG0372L1ZW,  
5<sup>th</sup> 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 DC/AC, Central GST & Central Excise, Div- II Ahmedabad North.
3. 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.**
- ✓ 4. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
5. Guard File.