



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>

निबन्धित पावती डार्क द्वारा/By R.P.A.D

DIN-20240164WT0000000D2D

फा.सं./F.No. GST/15-06/OA-AE/2022

आदेश की तारीख/Date of Order: - 24.01.2024

जारी करने की तारीख/Date of Issue :- 24.01.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 71/ADC/ LD /GST/2023-24**

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

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

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

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

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

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

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रूपये (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 वताओ सूचना/ Proceeding initiated against Show Cause Notice No. GEXCOM/AE/INV/GST/3387/2021-AE-II O/o-COMMR-CGST-Ahmedabad (N) dated 31.03.2022 issued to M/s Shreeji Metazine LLP., having GSTIN 24ACMFS2977G1ZQ, 18, BOL Industrial Estate, Sanand, Ahmedabad, Gujarat-382213.



## **BRIEF FACTS OF THE CASE**

1. M/s Shreeji Metazine LLP, 18, BOL Industrial Estate, Sanand, Ahmedabad (hereinafter referred to as "M/s. Shreeji" or "the noticee" for the sake of brevity) are a Limited Liability Partnership firm. They are mainly engaged in the supply of automobile parts for motor vehicles falling under Chapter Heading 8708. They are registered with Goods and Service Tax Department and holding GSTIN 24ACMFS2977G1ZQ. The said activities undertaken by M/s. Shreeji qualify as taxable supply in terms of Section 2(108) of the Central Goods and Service Tax Act, 2017 read with the definition of 'Goods' as given under Section 2(52) read with Section 7(1) of the Central Goods and Service Tax Act, 2017 *ibid*.

2. Information gathered by Anti Evasion, CGST, Ahmedabad North indicated that M/s Shreeji had not filed their GSTR-3B Returns for the period from October-2018 to February-2019, also they had not been discharging their Goods and Service Tax (hereinafter referred to as "GST") liability. Therefore, by not discharging their tax liability and non-filing of GSTR-3B returns, M/s. Shreeji for the said period, had failed to comply with the provisions of Section 39 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act, 2017') read with Rule 61 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as "CGST Rules, 2017") and Section 39 of the Gujarat Goods and Service Tax Act, 2017 (hereinafter referred to as Gujarat GST Act, 2017) read with Rule 61 of the Gujarat Goods and Service Tax Rules, 2017 (hereinafter referred to as "Gujarat GST Rules, 2017") and Section 20 of the Integrated Goods and Service Tax Act, 2017 (hereinafter IGST Act, 2017).

3.1 Acting on the above information, an inquiry was initiated against M/s. Shreeji, under the provisions of the CGST Act, 2017. Accordingly, a search in the factory premises of M/s Shreeji or verification of records was carried out by officers of Anti Evasion, CGST, Ahmedabad North at 18, BOL Industrial Estate, Sanand, Ahmedabad for procuring the necessary documents for inquiry. During inspection, a Panchnama dated 07-03-2019 was also drawn at principal place of business of M/s. Shreeji.

3.2 During visit at M/s. Shreeji's premises on 07-03-2019, various records were examined and it was noticed that M/s. Shreeji had collected CGST, GGST and IGST from their clients/customers but not deposited the same to the Government exchequer during the period from October-2018 to February-2019 and they had also not filed their GSTR-3B returns for the said period. During visit to the factory premises, no responsible person was found available and after making contact with plant head Shri Firoz Shaikh, the person available in the factory premises informed the Central GST Officers that their accountant / consultant would submit all relevant details related to GSTR-3B etc. by 08.03.2019. A statement of Shri Firoz Shaikh, Plant Manager of the noticee, was recorded on 18.03.2019.

4.1 In subsequent period, M/s. Shreeji had filed all these GSTR-3B returns. The GSTR-3B returns filing status noticed from GST Portal is as tabled below:-

Month	Due date of filing GSTR-3B	Actual Date of filing of GSTR-3B	No. of days delay
October-2018	20.11.2018	07-03-2019	107 days
November-2018	20.12.2018	07-03-2019	77 days
December-2018	20-01-2019	15-03-2019	54 days

January-2019	22-02-2019	24-04-2019	61 days
February-2019	20-03-2019	24-04-2019	35 days

4.2 From the GSTR-3B, filed for the period from October-2018 to February-2019, it was revealed that M/s. Shreeji was liable to pay GST amounting to Rs.5,88,19,144/- (CGST Rs.2,83,19,799/- + SGST Rs.2,33,97,181/- + IGST Rs.71,02,164/-) but filed all these returns only on or after the date of visit of their premises i.e. on or after 07-03-2019 by the officers from CGST Department. Hence, till the date of visit the noticee had not filed GSTR-3B for the month of October-2018 and November-2018 and for the remaining months i.e. for the months from December-2018 to February-2019, they filed GSTR-3B between 15-03-2019 to 24-04-2019. The details of payment of GST for the said period are as per table given below:-

(Amt. in Rs.)

Month	Taxable Value	Tax payable				Tax paid through (Cash +ITC)			
		CGST	SGST	IGST	Total	CGST	SGST	IGST	Total
Oct-2018	50914232	5838796	5838796	1764507	13442099	7356704	5838796	246599	13442099
Nov-2018	27493993	3012547	3012547	1144088	7169182	3554562	3012547	602073	7169182
Dec-2018	54951905	4128993	4128993	4869652	13127638	6991688	4128993	2006957	13127638
Jan-2019	40123972	4428515	4428515	1862995	10720025	4428515	4428515	1862995	10720025
Feb-2019	53807049	5988330	5988330	2383540	14360200	5988330	5988330	2383540	14360200
<b>Total</b>	<b>227291151</b>	<b>23397181</b>	<b>23397181</b>	<b>12024782</b>	<b>58819144</b>	<b>28319799</b>	<b>23397181</b>	<b>7102164</b>	<b>58819144</b>

5.1 As per the provisions of Sections 39(1) of CGST Act, 2017 and the Gujarat GST Act, 2017, read with Section 20 of the IGST Act, 2017, M/s. Shreeji had to file their GSTR 3B returns before the 20th day of each month or the extended time period, as tabulated above. Further, as per the provisions of Sections 39(7) of the CGST Act, 2017 and the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017, the supplier had to pay tax not later than the last date on which they were required to file their returns.

5.2 Further, as per the provisions of Sections 49(3) and 49(4) of the CGST Act, 2017 and the Gujarat GST Act, 2017 read with the provisions of Section 5(1) of the Integrated Goods and Services Act, 2017 ('IGST Act') and Rule 85(3), Rule 86 and Rule 87 of the CGST Rules, 2017 and Rule 85(3), Rule 86 and Rule 87 of the Gujarat GST Rules, 2017, the supplier had to pay tax either through their electronic credit ledger or through their electronic cash ledger.

5.3 It appeared that M/s. Shreeji had failed to file the stipulated GSTR-3B returns on time for the period from October-2018 to February-2019 and accordingly they had not discharged their GST liability of Rs.5,88,19,144/- for the said period though they had collected the said GST from their customers. Shri Firoz Shaikh, Plant Manager of M/s. Shreeji admitted that their firm had defaulted in payment of their GST liability for the period October-2018 to February-2019 and assured to pay the outstanding GST with interest and penalty. Hence, it appeared that M/s. Shreeji is required to pay GST amounting to Rs.5,88,19,144/- along with interest under Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and penalty under Section 74 of CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017.

5.4 It further appeared that M/s. Shreeji had filed GSTR-3B return for October-2018 on 07-03-2019, for November-2018 on 07-03-2019, December-2018 on 15-03-2019, January-2019 on 24-04-2019 and February-2019 on 24-04-2019. All these GSTR-3B returns were filed by them only after initiation of inquiry and visit of their premise on 07-03-2019 by officers from Anti-Evasion, CGST, Ahmedabad North. On scrutiny of these GSTR-3B filed for October-2018 to February-2019, it is observed that M/s. Shreeji had discharged their GST liabilities of Rs. Rs.5,88,19,144/- (through CGST Rs.2,83,19,799/- + SGST Rs.2,33,97,181/- + IGST Rs.71,02,164/-) and hence the same are required to be appropriated against the outstanding demand.

5.5 It further appeared that M/s. Shreeji had not paid interest on such delayed in payment of GST of Rs.5,88,19,144/-. Hence, it appeared that interest of Rs.19,01,467/-, as per applicable rate i.e. @ 18%, was required to be recovered from M/s. Shreeji under the provisions of Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and read with Section 20 of the IGST Act, 2017. The details of calculation of interest is as per table below:-

(Amt. in Rs.)

Month	Total GST payable				No. of Days delay	Interest payable			
	CGST	SGST	IGST	Total		CGST	SGST	IGST	Total
Oct-2018	5838796	5838796	1764507	13442099	107	308096	308096	93108	709301
Nov-2018	3012547	3012547	1144088	7169182	77	114394	114394	43444	272233
Dec-2018	4128993	4128993	4869652	13127638	54	109956	109956	129679	349591
Jan-2019	4428515	4428515	1862995	10720025	61	133219	133219	56043	322482
Feb-2019	5988330	5988330	2383540	14360200	35	103360	103360	41141	247861
<b>Total</b>	<b>23397181</b>	<b>23397181</b>	<b>12024782</b>	<b>58819144</b>		<b>769026</b>	<b>769026</b>	<b>363415</b>	<b>1901467</b>

5.6 It further appeared that out of total interest liabilities of Rs.19,01,467/-, M/s. Shreeji had paid interest of Rs.4,21,898/- (CGST Rs.78,648 + SGST of Rs.2,63,314 + IGST of Rs.79,935) vide Electronic Cash Ledger Entry No. DC2403220297986 dated 26.03.2022 (DRC-03 dated 26.03.2022), hence the same needed to be appropriated against the demand of interest.

5.7 It appeared that M/s. Shreeji had collected GST but not deposited the same to the Government Exchequer during the period from October-2018 to February-2019 till the initiation of inquiry by the CGST department. If the investigation had not been initiated by Anti Evasion, CGST, Ahmedabad North and search of M/s. Shreeji's premises were not conducted, they would not have deposited the same to the Government exchequers, causing loss to the Govt. exchequer.

5.8 On scrutiny of the documents/ records submitted by M/s. Shreeji, it was revealed that they had not filed GSTR-3B returns for the period of October-2018 to February-2019 till the initiation of the inquiry by CGST Department and hence suppressed the taxable turnover. Accordingly, it appeared that despite having knowledge of CGST Acts and Procedures, the act of fraud, mis-declaration or suppression by M/s. Shreeji shows the contravention of provisions with intent to evade payment of GST on the part of M/s. Shreeji. Therefore, it appeared that Section 74 of the CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 is invocable in the present case. Further, it appeared for their act of non-payment of outstanding GST liability for the period from October-2018 to February-2019,

as discussed hereinabove, make them liable to penal action under the provisions of Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017.

5.9 During further course of investigation of the case, from the data collected from the GST Portal, it was revealed that M/s. Shreeji, during the period from April-2021 to December-2021, had made delay in filing many GSTR-3B Returns and resultantly they had made delay in discharging their GST liabilities for these months. For such delayed in payment of GST, they were required to pay interest on GST paid through Electronic Cash Ledger. The details are as per table below:-

**Details of interest calculation on cash component of GST paid for late filing of GST returns for the period May-21 to December-2021**

(Amt. in Rs.)

Sl. No.	Period	Due date of filing	Return filed on	No. of days delay	Tax paid in cash				Interest payable @18% on delay payment of cash			
					CGST	SGST	IGST	Total	CGST	SGST	IGST	Total
1	May-21	05-07-2021	08-07-2021	3	458828	458828	13395	931051	679	679	20	1377
2	Jun-21	20-07-2021	02-08-2021	13	0	42444	0	42444	0	272	0	272
3	Jul-21	20-08-2021	28-09-2021	39	535567	535567	63120	1134254	10300	10300	1214	21815
4	Aug-21	20-09-2021	30-09-2021	10	185844	185844	2526	374214	916	916	12	1845
5	Sep-21	20-10-2021	03-11-2021	14	387178	408108	0	795286	2673	2818	0	5491
6	Nov-21	20-12-2021	04-01-2022	15	168095	189734	0	357829	1243	1404	0	2647
7	Dec-21	20-01-2022	07-02-2022	18	80077	111825	0	191902	711	993	0	1703
				<b>Total</b>	<b>1815589</b>	<b>1932350</b>	<b>79041</b>	<b>3826980</b>	<b>16523</b>	<b>17382</b>	<b>1246</b>	<b>35151</b>

6.1 As per the provisions of Sections 39(1) of CGST Act, 2017 and the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017, M/s. Shreeji had to file their GSTR 3B returns before the 20th day of each month or the extended time period, as tabulated above. Further, as per the provisions of Sections 39(7) of the CGST Act, 2017 and the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017, the supplier had to pay tax not later than the last date on which they were required to file their returns.

6.2 Further, as per the provisions of Sections 49(3) and 49(4) of the CGST Act, 2017 and the Gujarat GST Act, 2017 read with the provisions of Section 5(1) of the Integrated Goods and Services Act, 2017 ('IGST Act') and Rule 85(3), Rule 86 and Rule 87 of the CGST Rules, 2017 and Rule 85(3), Rule 86 and Rule 87 of the Gujarat GST Rules, 2017, the supplier had to pay tax either through their electronic credit ledger or through their electronic cash ledger.

6.3 Whereas, it appeared that M/s. Shreeji had not paid interest on such delayed in payment of GST of Rs.38,26,980/- through Electronic Cash Ledger. Hence, it appeared that interest of Rs.35,151/-, as per table above, as per applicable rate i.e. @ 18%, is required to be recovered from them under the provisions of Section 50 (1) of the CGST Act, 2017 read with Section 50 (1) of the Gujarat GST Act, 2017 and read with Section 20 of the IGST Act, 2017.

7. In light of the facts discussed hereinabove and the material facts and evidences available on records, it appeared that M/s. Shreeji had contravened

the following provisions of the CGST Act, 2017 read with Gujarat GST Act, 2017 and IGST Act, 2017:-

- (i) Section 9 of the CGST Act, 2017 read with Section 9 of Gujarat GST Act, 2017 and Section 5 of IGST Act, 2017 in as much as they failed to pay the appropriate GST on supply of taxable goods made by them to their customers/clients, with intent to evade payment of tax;
- (ii) Section 12 of CGST Act, 2017 read with Section 12 of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 in as much as they had failed to pay GST on goods at the time of supply of taxable goods;
- (iii) Section 15 of the CGST Act, 2017 read with Section 15 of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 in as much as they suppressed the actual value of the taxable supplies made by them, with an intent to evade payment of tax;
- (iv) Section 35 of the CGST Act, 2017 read with Section 35 of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 in as much as they failed to maintain a true and correct account of outward supplies made by them and of the outward tax payable by them, with an intent to evade payment of tax;
- (v) Section 39 of the CGST Act, 2017 read with Section 39 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 and also read with Rule 61, Rule 85(3) and Rule 87 of the CGST Rules, 2017 and Rule 61, Rule 85(3) and Rule 87 of the Gujarat GST Rules, 2017 in as much as they failed to file the GSTR-3B returns as well as to pay GST; within the prescribed due dates;
- (vi) Section 49(8) of the CGST Act, 2017 read with Section 49(8) of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 in as much as they failed to discharge their tax liability, with an intent to evade payment of tax;
- (vii) Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 in as much as they failed to pay interest as per applicable rate on delay payment of tax;
- (viii) Section 59 of the CGST Act, 2017 read with Section 59 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 in as much as they failed to self-assess their tax liability with an intent to evade payment of tax;
- (ix) Section 74 of the CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 in as much as their wilful act of suppression and mis-declaration of facts with sole intention to evade GST.

8.1. Regarding applicability of interest, provisions of Section 50(1) and 50(2) of the CGST Act, 2017 and Section 50(1) and 50(2) of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 are applicable.

8.2 From the above facts, it appeared that the supplier had contravened the provisions of Sections 39(7) of the CGST Act, 2017 read with Section 20 of the IGST Act and provision of Section 39(7) of the Gujarat GST 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 Gujarat GST Rules, 2017 by not making GST payments within the prescribed due dates.

8.2 It appeared from their GSTR-3B returns filed for the period from October-2018 to February-2019, as detailed in above tables, that M/s. Shreeji had

delayed the payment of tax. It was evident from above table, that M/s. Shreeji had filed GSTR-3B return for October-2018 on 07-03-2019, for November-2018 on 07-03-2019, December-2018 on 15-03-2019, January-2019 and February-2019 on 24-04-2019. All these GSTR-3B returns were filed by M/s. Shreeji only after initiation of inquiry under Section 74 of the CGST Act, 2017 by visit of their premise on 07-03-2019 by officers from Anti-Evasion, CGST, Ahmedabad North. Hence, it appeared that interest Rs.19,01,467/-, as per applicable rate i.e. @ 18%, as calculated in table above, is required to be recovered from M/s. Shreeji under the provisions of Section 50 (1) of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and read with Section 20 of the IGST Act, 2017. It further appeared that M/s. Shreeji had paid interest of Rs.4,21,898/- (CGST Rs.78,648 + SGST of Rs.2,63,314 + IGST of Rs.79,935) vide Electronic Cash Ledger Entry No. DC2403220297986 dated 26.03.2022 (DRC-03 dated 26.03.2022), hence, the same needed to be appropriated against the demand of interest.

8.3 It further appeared from their GSTR-3B returns file for the months, as detailed in table above, that M/s. Shreeji had delayed the payment of tax made through their electronic cash ledger, as discussed in detailed in para supra. The delay in number of days and the interest liable to be paid on the cash component is tabulated in table above. Accordingly, it appeared that the noticee had not paid applicable interest of Rs.35,151/- (CGST Rs.16,523/- + SGST Rs.17,382/- + IGST Rs.1,246/-), as detailed in table above, as prescribed under the proviso to Section 50(1) of the CGST Act, 2017 read with Section 50 (1) of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017. Hence the same appeared to be recoverable from the noticee.

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 read with Section 20 of the IGST Act, 2017, respectively, 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 and Section 20 of the IGST Act, 2017 for failure to pay tax, failure to self assess the tax liability for the period from October-2018 to February, 2019 and for non-compliance of various provisions of the act leading to penalty under the said sections referred above.

10.1 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”*

10.2 It appeared from the facts that emerged during the course of investigation of M/s Shreeji Metazine LLP that they appeared to have suppressed their actual tax liability for the period from October-2018 to February-2019. The facts regarding evasion of GST came into light due to investigation carried out by the CGST, Anti Evasion, Ahmedabad North, Ahmedabad. Had the present investigation not been initiated by CGST, Anti-Evasion, Ahmedabad North, against M/s. Shreeji, they would have continued with their modus of non-payment of GST by not filing GSTR-3B on a regular basis. This clearly appears to be done intentionally in order to suppress their actual tax liability and thereby evading GST. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore the intent to evade payment of tax cannot be established by peering into the minds of the tax payer but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s. Shreeji, it showed their intent to evade payment of GST by an act of omission in as much as M/s. Shreeji, though being well aware of the unambiguous provisions of the CGST 2017 and Rules made thereunder, failed to discharge GST. Had the investigation of the noticee was not initiated, these facts would not have come to light. Hence, it appeared from the paras discussed above, 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 is applicable to the present case.

11. It further appeared that Section 6 of Gujarat State GST Act, 2017 provides for cross empowerment of officer of Central Tax to act as Proper Officers against the noticee which are assigned to the State Tax Officers. In the instant case of M/s Shreeji Metazine LLP, by virtue of the above mentioned 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.

12. The above said GST liabilities of M/s. Shreeji Metazine LLP have been worked out on the basis of GSTR-1/GSTR-3B Returns filed by the noticee in the GSTN Portal and data/information in this regards made available by them during the course of investigation of the case by the CGST, Anti Evasion, Ahmedabad North. Thus, the present notice relates exclusively to the information available on records regarding non-filing / late filing of GSTR-3B by the noticee and thereby non-payment of tax / late payment of tax by them.

13.1. Based upon the available records available it appeared that M/s Shreeji Metazine LLP had not discharged their GST liability of Rs.5,88,19,144/- (CGST Rs.2,33,97,181/- + SGST Rs.2,33,97,181/- + IGST Rs.1,20,24,782/-) for the period from October-2018 to February-2019. After initiation of investigation by the Anti-Evasion Wing, CGST, Ahmedabad North, M/s. Shreeji had fully discharged their GST liability for the period from October-2018 to February-2019 to the tune of Rs.5,88,19,144/-.

13.2. It appeared that M/s. Shreeji, during the period from October-2018 to February-2019 had evaded payment of GST and after initiation of investigation M/s. Shreeji had discharged that same as detailed in table earlier. Since, M/s. Shreeji had delayed in payment of outstanding GST of Rs. 5,88,19,144/- for the period from October-2018 to February-2019, they were required to pay interest of Rs.19,01,467/- as per applicable rate of 18% on such delayed payment of tax, as worked out in table earlier. Hence, the same is required to be recovered from them under provisions of Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017.

13.3. It further appeared that out of total interest liabilities of Rs.19,01,467/-, they have paid interest of Rs.4,21,898/- (CGST Rs.78,648 + SGST of Rs.2,63,314 + IGST of Rs.79,935) vide Electronic Cash Ledger Entry No. DC2403220297986 dated 26.03.2022 (DRC-03 dated 26.03.2022) hence the same needs to be appropriated against the demand of interest.

13.4 Further, on scrutiny of the documents/records made available by the noticee, it was revealed that they had not filed GSTR-3B returns for the period of October-2018 to February-2019 and hence suppressed taxable turnover. Accordingly, it appeared M/s. Shreeji had suppressed the facts to the department, therefore, Section 74 of CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 was required to be invoked in the present case. Further, it appeared for their act of non-payment of outstanding GST liability of Rs.5,88,19,144/-, for the period from October-2018 to February-2019, as discussed hereinabove, made them liable to penal action under the provisions of Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017.

13.5 During further course of investigation of the case, from the data collected from the GST Portal, it was revealed that M/s. Shreeji, during the period from April-2021 to December-2021, had made delay in filing many GSTR-3B Returns and resultantly they had made delay in discharging their GST liabilities for these months. For such delayed in payment of GST, they were required to pay interest on GST paid through Electronic Cash Ledger.

13.6 It appeared that M/s. Shreeji had not paid interest of Rs.35,151/- on such delayed in payment of GST of Rs.38,26,980/- through Electronic Cash Ledger. Hence, it appeared interest of Rs.35,151/-, is required to be recovered from M/s. Shreeji under the provisions of Section 50 (1) of the CGST Act, 2017 read with Section 50 (1) of the Gujarat GST Act, 2017 and read with Section 20 of the IGST Act, 2017 as discussed in detail in forgoing paras.

14. Intimation of tax ascertained as being payable under section 73(4) of the CGST Act, 2017 in Form GST DRC-01A was issued to M/s. Shreeji advising them to pay applicable interest under Section 50 of the CGST Act, 2017 read with Section 50 of Gujarat State GST Act, 2017 and penalty under Section 74(5) of the Act, ibid, on or before 28.03.2022 to avoid show cause notice proposed to be issued under Section 74(1) of Act, ibid. M/s. Shreeji vide letter dated 28.03.2022 submitted their reply to GST DRC-01A. From their letter, it appeared that they had paid interest of Rs.4,21,898/- vide electronic cash ledger entry no. DC2403220297986 dated 26.03.2022 (DRC-03 dated

26.03.2022) against their interest liabilities of Rs.19,01,467/- for the period October-2018 to February-2019, as discussed in table earlier, hence the same is required to be appropriated against the demand of interest. Further, they had contested issue, however, it appeared that the same did not merit consideration.

15. Therefore, M/s Shreeji Metazine LLP, 18, BOL Industrial Estate, Sanand, Ahmedabad were called upon to show cause to the Additional Commissioner, CGST, AhmedabadNorth, having his office at 1st Floor, Custom House, Near All India Radio, Ashram Road, Navrangpura Ahmedabad-380009 within 30 days of the receipt of this Show Cause Notice as to why:-

18. Accordingly, Show Cause Notice F.No.GEXCOM/AE/INV/GST/3387/2021-AE-I/O/o-COMMR-CGST-Ahmedabad (N) dated 31.03.2022 (having CBIC-DIN 20220364WT000000AF44) was issued to M/s. Shreeji, asking them to show cause as to why:-

- (i) The GST amounting to Rs. 5,88,19,144/- (Rupees Five Crores Eighty Eight Lakhs Nineteen Thousand One Hundred Forty Four only) (CGST Rs.2,33,97,181/- + SGST Rs. 2,33,97,181/- + IGST Rs.1,20,24,782/-) 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 and Section 20 of the IGST Act, 2017.
- (ii) The GST amounting to Rs.5,88,19,144/- (Rupees Five Crores Eighty Eight Lakhs Nineteen Thousand One Hundred Forty Four only) (CGST Rs.2,83,19,799/- + SGST Rs. 2,33,97,181/- + IGST Rs.71,02,164/-) paid through ITC and cash, should not be appropriated against their outstanding GST liability as per para (i) above.
- (iii) Interest of Rs.19,01,467/- (Rupees Nineteen Lakh One Thousand Four Hundred Sixty Seven (CGST Rs.7,69,026/- + SGST Rs.7,69,026/- + IGST Rs.3,63,415/-), as per applicable rate of 18% calculated for the amount of GST of Rs.5,88,19,144/- paid by them (as per para (i)) above and as calculated in Table-C to the Show Cause Notice), should not be demanded and recovered from them under the proviso to Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017;
- (iv) Interest amounting to 4,21,898/- (Rupees Four Lakh Twenty One Thousand Eight Hundred Ninety Eight Only) (CGST Rs.78,648/- + SGST Rs.2,63,314/- + IGST Rs.79,935/-), paid through Electronic Cash Ledger Entry No. DC2403220297986 dated 26.03.2022 (DRC-03 dated 26.03.2022), should not be appropriated against their outstanding demand of interest as per para (iv) above.
- (v) Interest of Rs.35,151/- (Rupees Thirty Five Thousand One Hundred Fifty One Only) (CGST Rs.16,523/- + SGST Rs. 17,382/- + IGST Rs.1,246/-) calculated on delayed payment of GST through Cash amounting to Rs.38,26,980/- (CGST Rs.18,15,589/- + SGST Rs.19,32,350/- + IGST Rs.79,041/-), as per Table-D above, should not be demanded and recovered from under the proviso to Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017;

- (vi) Penalty should not be imposed upon them under Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 for non-payment of GST amount of Rs. 5,88,19,144/- as per para (i) above.
- (vii) Penalty should not be imposed upon them under Section 122(2) (b) read with Section 122 (2)(b) of the Gujarat GST Act, 2017 of the CGST Act, 2017 for reason of fraud or wilful misstatement or suppression of facts to evade tax.

### **DEFENCE REPLY**

10. M/s. Shreeji submitted their reply to the SCN vide their submission vide their letter 28.03.2022 (received on 29.03.2022) and also submitted further reply on 25.07.2022.

11. In their reply dated 28.03.2022, M/s. Shreeji have, inter alia, stated that:-

- Section 74 is applicable where any taxable person has not paid or short paid or erroneously refunded or Input Tax Credit has been wrongly availed or utilized by reason of fraud or any willful mis-statement or suppression of facts to evade tax.
- They had already filed GSTR-1 and GSTR-3B till February 2022 and the present notice should be covered under Section 73.
- At the time of inspection, they had not filed returns for the month of October 2018 to February 2019 and subsequently they had filed all the returns and also paid tax on outward supply. In the panchanama, it is clearly mentioned that they had not filed the returns from October 2018 to February 2018, however, no instance of fraud, willful misstatement or suppression of facts noticed by the authority to evade tax.
- At the time of search, their plant manager provided the departmental authorities all the information which was available with him at that point of time.
- In their opinion, their case is case of assessment of non-filers and as per Circular No. 129/48/2019 24<sup>th</sup> December 2019, department is required to follow standard operating procedure in case of non-filers.
- Proceedings initiated under Section 67 shall not be deemed to be considered as proceedings under Section 73 or 74. As per proviso of Section 50(1), interest liability on gross tax liability applies only when proceedings were initiated under Section 73 or 74.
- As per Section 73(1), where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

- In their opinion, interest u/s 50(1) on gross tax liability is leviable only when they had not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, however, on the date of receipt of notice, no tax remained unpaid or short-paid and hence, they are not required to pay interest on gross tax liability.
- As per Section 73(8), where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded. They paid interest on next tax liability within time period given u/s 73(8), hence, they were not required to pay any penalty.

12. M/s. Shreeji submitted additional written submission on 25.07.2022. The same is discussed briefly in subsequent paras.

12.1 M/s. Shreeji contended that demand of tax by invoking extended period of limitation under Section 74 of the CGST Act, 2017 is bad-in-law in absence of ingredients of Section 74 of the CGST Act, 2017. Outstanding GST liability from October 2018 was shown as payable in the books of accounts maintained by them in Tally Software. All the details of transaction based on which the demand of tax is proposed are available on records. Only due to acute financial crunch, they were not able to pay tax and file GSTR-3B returns. They further stated that late filing of return does not amount to suppression of fact and for determining the term "suppression" there should be deliberate intention to evade tax, but they had filed delayed returns because of financial issues and not with respect to tax evasion. They also stated that there is separate legal provision in law for delayed filing of return and they had paid interest and late fee as applicable according to law. They also relied upon the following case laws in support of their contention:-

- M/s. Bismee India Enterprises vs Commissioner of Central Excise & S.T., Kanpur, 2018 (10) TMI 1560 – CESTAT ALLAHABAD.
- m/S. Naresh Kumar & Co. Pvt. Ltd. vs Union of India [2014 (35) STR 506 (Cal.)]
- Commissioner of Central Excise vs Bajaj Auto Ltd. [(2010) 13 SCC 117 = 2010 (260) E.L.T. 17 (S.C.)]
- M/s. Anand Nishikawa Co. Ltd. [(2005) 7 SCC 749 Supreme Court]

12.2 They stated that calculation of interest of Rs.19,01,467/- has been calculated on total GST payable for the period from October 2018 to February 2019. They contended that as per proviso to Section 50(1) of the CGST Act, 2017, interest on tax is to be computed only on the portion of tax which is paid by debiting the electronic cash ledger except in situation where returns were filed after commencement of proceedings under Section 73 or Section 74 of the CGST Act, 2017. In their case, they had filed all pending returns for the period from October 2018 to February 2019 on or before 24.04.2019 and the Show Cause Notice has been issued on 31.03.2022. They had paid all the due taxes along with applicable interest almost 2 years before commencement of proceedings under Section 73 or Section 74 of the CGST Act, 2017. They also relied upon case law pertaining to M/s. Refex Industries Ltd. vs Asstt. Commissioner of CGST & C. Ex., Chennai [2020 (34) G.S.T.L. 558 (Mad.)] in this regard.

12.3 As regards demand of interest of Rs35,151/- for the period from May 2021 to December 2021, they stated that they had paid interest of Rs.5,051/- and Rs.12,220/- (Total Rs.17,271/-) for the tax period of May 2021 and July 2021 and they would pay remaining interest of Rs.17,880/- within few days.

12.4 They stated that non-payment of GST was due to financial hardship and all the details of transactions were available on records. There was no intention on their part to suppress and evade GST. Only due to financial crunch they were not able to pay taxes and file GSTR-3B within due dates. They relied upon the following case laws in support of their contention:-

- M/s. Aqua Master Clean vs CGST Ahmedabad 2015 (7) TMI 968 - CESTAT Ahmedabad.
- Sri Kalki Enterprises vs CGST & CE Chennai [Final Order No. 42768-42769/ 2018 dated 23.10.2018]
- M/s. Hajela Brushes Pvt. Ltd. v/s. Commissioner, Central tax and Central Excise, Kanpur [2020-TIOL-1044-CESTAT-ALL]
- M/s.. Hindustan Steel Ltd. v/s State of Orissa [AIR 1970 (SC) 253]

12.5 They further contended that penalty under section 122(2)(b) of the CGST Act, 2017 cannot be imposed on the assessee as Section 75(13) of the CGST Act, 2017 stipulates that no penalty can be imposed under any other provisions of the Act if penalty is proposed under Section 73 or 74 of the CGST Act, 2017, for the same act or omission.

#### **PERSONAL HEARING**

13. In the instant case, Personal Hearing was given to M/s. Shreeji on 12.12.2023. Shri Kushal Rathi, Chartered Accountant and authorized representative of M/s. Shreeji, appeared and re-iterated written submission submitted by them on 25.07.2022 and requested to decide the SCN on merits.

#### **DISCUSSION AND FINDINGS**

14. 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 M/s. Shreeji and find that issues involved in the present show cause notice are (1) non-payment of GST for the period from October 2018 to March 2019 due to non-filing of GSTR-3B returns and (2) Non-payment of interest due to late filing of GSTR-3B returns for the period from May 2021 to December 2021. Thus, I am going to discuss issues one by one and examine the M/s. Shreeji's response to reach a conclusion in the matter.

#### **15. Non-payment of GST for the period from October 2018 to March 2019 due to non-filing of GSTR-3B returns**

15.1 I find that during search proceedings, it was found that M/s Shreeji had collected GST from their customers/clients, however, they had not deposited the same to the Government exchequer during the period from October-2018 to February-2019 and they had also not filed their GSTR-3B returns for the said period. Subsequent to search, M/s. Shreeji filed GSTR-3B returns for the above period as detailed in Table-A of the Show Cause Notice within the prescribed

due dates. As per sales registers, it was found that they made total outward supplies of Rs. 56,81,57,241/- with corresponding GST of Rs. 8,60,03,558/-. The month-wise details of GST paid for the above period as detailed in Show Cause Notice are as follows:-

Month	Taxable Value	Tax payable				Tax paid through (Cash +ITC)			
		CGST	SGST	IGST	Total	CGST	SGST	IGST	Total
Oct-2018	50914232	5838796	5838796	1764507	13442099	7356704	5838796	246599	13442099
Nov-2018	27493993	3012547	3012547	1144088	7169182	3554562	3012547	602073	7169182
Dec-2018	54951905	4128993	4128993	4869652	13127638	6991688	4128993	2006957	13127638
Jan-2019	40123972	4428515	4428515	1862995	10720025	4428515	4428515	1862995	10720025
Feb-2019	53807049	5988330	5988330	2383540	14360200	5988330	5988330	2383540	14360200
<b>Total</b>	<b>227291151</b>	<b>23397181</b>	<b>23397181</b>	<b>12024782</b>	<b>58819144</b>	<b>28319799</b>	<b>23397181</b>	<b>7102164</b>	<b>58819144</b>

15.2. On going through the records, I find that M/s. Shreeji had filed GSTR-3B returns for the above period only after search was conducted at their premises. I also find that the returns were filed after due dates for filing these GSTR-3B returns. Due dates for filing GSTR-3B returns for the above period and actual date of filing for the above period, as given in Table-A of the Show Cause Notice is given below:-

Month	Due date of filing GSTR-3B	Actual Date of filing of GSTR-3B	No. of days delay
October-2018	20.11.2018	07-03-2019	107 days
November-2018	20.12.2018	07-03-2019	77 days
December-2018	20-01-2019	15-03-2019	54 days
January-2019	22-02-2019	24-04-2019	61 days
February-2019	20-03-2019	24-04-2019	35 days

15.3. I further find that Shri Firoz Shaikh, Plant Manager of M/s Shreeji in his statement dated 18.03.2019 has stated that they had not filed GSTR 3B for the period October 2018 onwards and not paid GST liability due to financial crunch. I also find that in their written submission, M/s. Shreeji have neither disputed late filing of returns nor the amount of GST liability. Accordingly, I do not delve much into the quantification of liability or late filing of GSTR-3B returns.

15.4 I find that the present Show Cause Notice has been issued by invoking provisions of Section 74 of the CGST Act, 2017. Provisions of Section 74 ibid are applicable where tax has not paid been or short-paid by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax. Accordingly, I find that the provisions can be invoked where there is element of fraud, or any wilful-misstatement or suppression of facts to evade tax. In the Show Cause Notice, it has been alleged that M/s. Shreeji had suppressed their actual tax liability for the period from October 2018 to February 2019, which came to light due to investigation carried out by the CGST, Anti Evasion, Ahmedabad North and had there been no investigation, they would have continued with their modus of non-payment of GST by not filing GSTR-3B on regular basis. Accordingly, it needs to be determined as to whether there is element of "suppression" in the present case before proceeding further. The term "suppression" has been defined in Explanation 2 of Section 74 ibid. The same is reproduced below for ready reference:-

*"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."*

15.5 On going through the above definition of "suppression", I find that a taxpayer is said to have done "suppression" when he or she fails to declare information which is required to be declared in return. I find that as per Section 39 of the CGST Act, 2017, a taxpayer is statutorily required to file GSTR-3B returns, wherein, details of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars are to be given. I find that M/s. Shreeji did not file GSTR-3B returns for the period from October 2018 to February 2019 till inquiry was initiated against them. Accordingly, I find that they have committed act of "suppression" as defined in Explanation 2 of the Section 74 of the CGST Act, 2017. Accordingly, I find that in order to suppress their taxable income from the department, M/s Shreeji had not filed the GST Returns for the period from above period within stipulated time. The facts about collecting and not depositing GST was detected only after inquiry was initiated against M/s. Shreeji by the officers of Anti-Evasion Section of CGST Ahmedabad North Commissionerate. I find that M/s Shreeji had intentionally done this act to suppress their actual tax liability and thereby evading GST. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore the intent to evade payment of tax cannot be established by peering into the minds of the tax payer but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s Shreeji, it shows their intent to evade payment of GST by an act of omission in as much as M/s Shreeji though being well aware of the provisions of the CGST 2017 and Rules made thereunder failed to disclose to the department at any point of time their tax liability on which GST was collected but not paid by them by way of not filing their GSTR-3B for the period from October 2018 to February 2019, before initiation of the present inquiry.

15.5. 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.

15.5. Therefore, I find that M/s Shreeji has willfully suppressed the above facts with intent to evade payment of GST and the extended period of limitation of five years under Section 74 of CGST ACT 2017 read with Section 74 of Gujarat GST ACT 2017 read with Section 20 of the IGST Act 2017 is applicable in present case. Accordingly, I find that M/s. Shreeji is liable to pay GST of Rs. 5,88,19,144/- (Rupees Five Crore Eighty Eight Lakh Nineteen Thousand One Hundred Forty Four only) (CGST Rs.2,33,97,181/- + SGST Rs. 2,33,97,181/- + IGST Rs.1,20,24,782/-) for the period from October, 2018 to February 2019 and same is required to recovered from M/s Shreeji by invoking extended period of five years under Section 74 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.



15.6. In view of the material evidences available on records and as discussed above, I find that M/s. Shreeji have also contravened following provisions of CGST Act, 2017 read with Gujarat GST Act, 2017 and IGST Act, 2017:-

- (i) Section 9 of the CGST Act, 2017 read with Section 9 of Gujarat GST Act, 2017 and Section 5 of IGST Act, 2017 in as much as they failed to pay the appropriate GST on supply of taxable goods made by them to their customers/clients, with intent to evade payment of tax;
- (ii) Section 12 of CGST Act, 2017 read with Section 12 of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 in as much as they have failed to pay GST on goods at the time of supply of taxable goods;
- (iii) Section 15 of the CGST Act, 2017 read with Section 15 of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 in as much as they suppressed the actual value of the taxable supplies made by them, with an intent to evade payment of tax;
- (iv) Section 35 of the CGST Act, 2017 read with Section 35 of the Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017 in as much as they failed to maintain a true and correct account of outward supplies made by them and of the outward tax payable by them, with an intent to evade payment of tax;
- (v) Section 39 of the CGST Act, 2017 read with Section 39 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 and also read with Rule 61, Rule 85(3) and Rule 87 of the CGST Rules, 2017 and Rule 61, Rule 85(3) and Rule 87 of the Gujarat GST Rules, 2017 in as much as they failed to file the GSTR-3B returns as well as to pay GST within the prescribed due dates;
- (vi) Section 49(8) of the CGST Act, 2017 read with Section 49(8) of Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 in as much as they failed to discharge their tax liability, with an intent to evade payment of tax;
- (vii) Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and Section 20 of IGST Act, 2017 in as much as they failed to pay interest as per applicable rate on delay payment of tax;
- (viii) Section 59 of the CGST Act, 2017 read with Section 59 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 in as much as they failed to self-assess their tax liability with an intent to evade payment of tax;
- (ix) Section 74 of the CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017 in as much as their wilful act of suppression and mis-declaration of facts with sole intention to evade GST.

15.7 I also find that M/s Shreeji had discharged their GST liability of Rs. 5,88,19,144/- and filed the GSTR-3B Returns for the period from October, 2018 to February. Therefore, said amount is required to be appropriated against demand of Rs. 5,88,19,144/- as discussed above.

15.8. Now, I proceed to decide the applicability of interest. I find that under Section 49 and Section 50 of the CGST Act, 2017 read with Rule 87 of the CGST Rules, 2017 and the corresponding entry of Gujarat State Goods and Services Tax Act, 2017 (hereinafter referred to as 'SGST Act, 2017' for sake of brevity), it has been clearly stipulated that the taxpayer is required to pay interest at notified rates for delay payment of GST, 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) is to be calculated in such manner as may be prescribed. Manner of calculation of interest has been prescribed in Rule 88B of the CGST Rules, 2017. The said rule was inserted vide Notification No. 14/2022-CT dated. 05.07.2022 with effect from 01.07.2017. The said rule is reproduced below for ease of reference:-

*"Rule 88B. Manner of calculating interest on delayed payment of tax.-*

*(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with 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, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.*

*(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.*

*(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.*

*Explanation.-For the purposes of this sub-rule, -*

*(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.*

*(2) the date of utilisation of such input tax credit shall be taken to be, -*

*(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or*

*(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases."*

15.9. The above rule clearly stipulates that except where return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger. I find that in their written submission, M/s. Shreeji have contended that proceedings under Section 67 cannot be considered as proceedings under Section 73 or Section 74. I find that Section 73 and 74

provide for issuance of Show Cause Notice where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized. Provisions of Section 74 are invoked where there is element of fraud or any wilful-misstatement or suppression of facts. To ascertain whether there is non-payment or short-payment of tax, Section 67 empowers officers to carry out search or inspection. Accordingly, I find that actions under Section 67 are taken for determination of non-payment or short-payment for proceedings under Section 73 or Section 74 of the CGST Act, 2017. Accordingly, the proceedings were initiated to ascertain non-payment or short-payment on the part of M/s. Shreeji. M/s. Shreeji have not disputed the fact that the returns were filed after search was conducted at their premises in their written submission or during the course of personal hearing. Accordingly, in view of the provisions of Rule 88B of the CGST Rules, 2017 read with Section 50 of the CGST Act, 2017, I find that M/s. Shreeji are liable to pay interest on entire amount of tax paid by them, including tax paid using Input Tax Credit. M/s. Shreeji are required to pay interest for the period of delay in filing the said return beyond the due date in accordance with the above provisions. Accordingly, M/s. Shreeji are liable to pay interest of Rs.19,01,467/- (CGST Rs.7,69,026/-, SGST Rs.7,69,026/- and IGST Rs.3,63,415/-) as detailed in Table-C of the Show Cause Notice and reproduced below:-

Month	Total GST payable				No. of Days delay	Interest payable			
	CGST	SGST	IGST	Total		CGST	SGST	IGST	Total
Oct-2018	5838796	5838796	1764507	13442099	107	308096	308096	93108	709301
Nov-2018	3012547	3012547	1144088	7169182	77	114394	114394	43444	272233
Dec-2018	4128993	4128993	4869652	13127638	54	109956	109956	129679	349591
Jan-2019	4428515	4428515	1862995	10720025	61	133219	133219	56043	322482
Feb-2019	5988330	5988330	2383540	14360200	35	103360	103360	41141	247861
<b>Total</b>	<b>23397181</b>	<b>23397181</b>	<b>12024782</b>	<b>58819144</b>		<b>769026</b>	<b>769026</b>	<b>363415</b>	<b>1901467</b>

15.10. I find that M/s. Shreeji have paid interest of Rs. 4,21,898/- (Rupees Four Lakh Twenty One Thousand Eight Hundred Ninety Eight Only) (CGST Rs.78,648/- + SGST Rs.2,63,314/- + IGST Rs.79,935/-) vide Electronic Cash Ledger Entry No. DC2403220297986 dated 26.03.2022 (DRC-03 dated 26.03.2022). Interest paid by them is required to be appropriated against the interest payable by them.

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

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

15.13. In the Show Cause Notice, it has also been proposed to impose penalty under Section 122(2)(b) of the CGST Act 2017. However, as per provisions of

subsection 13 of Section 75 of CGST Act 2017, where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. Accordingly, I refrain from imposing penalty under 122(2)(b) and Section of the CGST Act 2017.

**16. Non-payment of interest of Rs.35,151/- due to late filing of GSTR-3B returns for the period from May 2021 to December 2021.**

16.1. From the material available on record, I find that M/s. Shreeji had filed returns for the above period beyond due dates for the period from May 2021 to December 2021 and interest as given in Table-D of the Show Cause Notice is payable thereon. The said table is reproduced below for ease of reference:-

Sl. No.	Period	Due date of filing	Return filed on	No. of days delay	Tax paid in cash				Interest payable @18% on delay payment of cash			
					CGST	SGST	IGST	Total	CGST	SGST	IGST	Total
1	May-21	05-07-2021	08-07-2021	3	458828	458828	13395	931051	679	679	20	1377
2	Jun-21	20-07-2021	02-08-2021	13	0	42444	0	42444	0	272	0	272
3	Jul-21	20-08-2021	28-09-2021	39	535567	535567	63120	1134254	10300	10300	1214	21815
4	Aug-21	20-09-2021	30-09-2021	10	185844	185844	2526	374214	916	916	12	1845
5	Sep-21	20-10-2021	03-11-2021	14	387178	408108	0	795286	2673	2818	0	5491
6	Nov-21	20-12-2021	04-01-2022	15	168095	189734	0	357829	1243	1404	0	2647
7	Dec-21	20-01-2022	07-02-2022	18	80077	111825	0	191902	711	993	0	1703
				Total	1815589	1932350	79041	3826980	16523	17382	1246	35151

16.2. I find that in their written submission received on 25.07.2022, M/s. Shreeji have stated that they have paid interest of Rs.17,271/- (Rs.5,051/- and Rs.12,220/-) in GSTR-3B returns filed for the period of May 2021 and July 2021 and further stated that they would pay remaining interest of Rs.17,880/- within few days. Accordingly, I find that they have not disputed payment of interest of Rs.35,151/-. Hence, I do not delve much on this issue.

16.3 On going through GSTR-3B returns for the period of May 2021 and July 2021, I find that M/s. Shreeji have paid interest of Rs. 5,051/- (IGST Rs.73, CGST – Rs.2,489 and SGST Rs. 2,489) in the GSTR-3B for the month of May 2021 and interest of Rs. 12,220/- (CGST – Rs.6,110/- and SGST Rs.6,110/-). Accordingly, interest of Rs. 17,271/- (IGST Rs.73, CGST – Rs. 8,599 and SGST Rs. 8,599) paid by M/s. Shreeji is required to be appropriated against the interest of Rs.35,151/- payable by them.

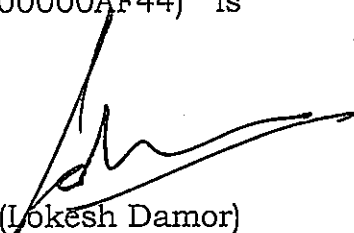
17. In view of the above discussion and findings, I pass the order as under:-

**- ORDER -**

- (i) I confirm the demand of GST amounting of Rs. 5,88,19,144/- (Rupees Five Crores Eighty Eight Lakhs Nineteen Thousand One Hundred Forty Four only) (CGST Rs.2,33,97,181/- + SGST Rs. 2,33,97,181/- + IGST Rs.1,20,24,782/-) and order to recover the same from M/s. Shreeji under Section 74(9) of the CGST Act, 2017 read with Section 74 (9) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act;

- (ii) As the GST amount of Rs. 5,88,19,144/- (Rupees Five Crores Eighty Eight Lakhs Nineteen Thousand One Hundred Forty Four only) (CGST Rs.2,33,97,181/- + SGST Rs. 2,33,97,181/- + IGST Rs.1,20,24,782/-) has already been paid by M/s. Shreeji, I order to appropriate the same against the confirmed demand at (i) above;
- (iii) I order to recover interest of Rs. Rs.19,01,467/- (Rupees Nineteen Lakh One Thousand Four Hundred Sixty Seven (CGST Rs.7,69,026/- + SGST Rs.7,69,026/- + IGST Rs.3,63,415/-) on (i) above by holding the liability of interest on confirmed demand under Section 50(1) of the Central Goods and Services Tax Act, 2017 read with Rule 88B of the CGST Rules, 2017, Section 50(1) of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017;
- (iv) I order to appropriate interest of Rs. 4,21,898/- (Rupees Four Lakh Twenty One Thousand Eight Hundred Ninety Eight Only) (CGST Rs.78,648/- + SGST Rs.2,63,314/- + IGST Rs.79,935/-), paid through Electronic Cash Ledger Entry No. DC2403220297986 dated 26.03.2022 (DRC-03 dated 26.03.2022) paid by M/s Shreeji against the interest liability as referred to in (iii) above;
- (v) I order to recover interest of Rs.35,151/- (Rupees Thirty Five Thousand One Hundred Fifty One Only) (CGST Rs.16,523/- + SGST Rs. 17,382/- + IGST Rs.1,246/-) calculated on delayed payment of GST through Cash amounting to Rs.38,26,980/- (CGST Rs.18,15,589/- + SGST Rs.19,32,350/- + IGST Rs.79,041/-), as per Table-D of the Show Cause Notice and as detailed at Para 16 of this order, under Section 50(1) of the Central Goods and Services Tax Act, 2017 read with Rule 88B of the CGST Rules, 2017, Section 50(1) of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017;
- (vi) I order to appropriate interest of Rs. 17,271/- (IGST Rs.73, CGST – Rs. 8,599 and SGST Rs. 8,599) paid by M/s Shreeji against the interest liability as referred to in (v) above;
- (vii) I impose penalty of Rs. 5,88,19,144/- (CGST Rs.2,33,97,181/- + SGST Rs. 2,33,97,181/- + IGST Rs.1,20,24,782/-) on M/s. Shreeji under Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017, however, if M/s. Shreeji pay 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 this order, all proceedings in respect of this notice shall be deemed to be concluded in accordance with the provisions of Section 74(11) of the CGST Act, 2017 read with Section 74(11) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017;
- (viii) I do not impose penalty under Section 122(2)(b) of the CGST Act, 2017 read with Section 122(2)(b) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017;

26. Accordingly, the Show Cause Notice No. GEXCOM/AE/INV/GST/3387/2021-AE-I/ O/o-COMMR-CGST-Ahmedabad (N) dated 31.03.2022 (having CBIC-DIN 20220364WT000000AF44) is disposed off in above terms.

  
(Lokesh Damor)  
Additional Commissioner,  
Central Excise & CGST,  
Ahmedabad North.  
Date:24.01.2024

BY SPEED POST/ BY HAND

F.No. GST/15-06/OA-AE/2022

To  
M/s. Shreeji Metazine LLP  
(GSTIN: 24ACMFS2977G1ZQ)  
18, BOL Industrial Estate,  
Sanand, Ahmedabad-382 213.  
Gujarat

Copy to:-

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-III (Sanand), Ahmedabad North.
3. The Superintendent, Range-V, Division-III (Sanand), CGST & Central Excise, Ahmedabad North, with a request to create Form GST DRC-07 electronically in terms of DSR Advisory no.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
4. State Tax Officer, Ghatak 11, Range 3, Division 1, 2<sup>nd</sup> Floor, Block-B, M S Building Bhavan-2, Near Gurukul, Vastrapur, Ahmedabad, for information.
- ✓ 5. The Superintendent (System), CGST & Central Excise, Ahmedabad North for uploading the order on website.
6. Guard File.