



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. GST/15-264/OA/2021

DIN- 20230764WT000001590D  
आदेश की तारीख/Date of Order :- 20.07.2023  
जारी करने की तारीख/Date of Issue :- 20.07.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

**मूल आदेश संख्या / Order-In-Original No. 22/JC/ LD /GST/2023-24**

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर 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 बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. DGGI/AZU/Gr.A/36-28/2021-220 dated 29.06.2021 issued to M/s Arth Infrastructure, Plot 9A, Radhey Plotting, Nr Gujarat High Court, Nr. Chandan Party Plot, Sola, Ahmedabad-380060.



## BRIEF FACTS OF THE CASE

M/s Arth Infrastructure, Plot 9A, Radhey Ploting, Nr Gujarat High Court, Nr. Chandan Party Plot, Sola, Ahmedabad, Gujarat-380060 is a partnership firm engaged in Works Contract Service such as Construction of roads, strengthening and resurfacing of various roads to Gram Panchayats, etc. as a Sub-Contractor in Gujarat. The aforesaid assessee is registered with Range-III Division-VII Ahmedabad North CGST Commissionerate (WT0703) and having GSTIN 24AAPFA6090B1ZN from 01.07.2017.

2. An inquiry against M/s Arth Infrastructure had been initiated by Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit Ahmedabad (herein after referred to as "DGGI-AZU" for the sake of brevity) for non-filing of GSTR-1 and GSTR-3B returns for the period from Jan-2019 to May-2019 and for non-payment of GST to Government exchequer during this period: A team of the officers had visited the principal place of business of the firm i.e. "Plot 9A, Radhey Ploting, Nr Gujarat High Court, Nr Chandan Party Plot, Sola, Ahmedabad, Gujarat-380060" on 10.07.2019 under authorization of Inspection (issued under Section 67(1) of the Central Goods and Services Tax Act 2017) dated 05.07.2019 issued for inspection of the relevant documents / records of the assessee.

3. During inspection, on enquiring about the activity of the firm, it was revealed that M/s Arth Infrastructure is engaged in Works Contract Service such as Construction of roads, strengthening and resurfacing of various roads to Gram Panchayats, etc. as a Sub-Contractor in Gujarat. Further they were collecting GST (CGST and GGST) from their clients/customers but not depositing the same to the Government exchequer during the period from January-2019 to May-2019 and also not filed their GSTR-1 and GSTR-3B returns.

4.1 During the inspection, M/s. Arth Infrastructure had accepted that they had not filed the GSTR-1 and GSTR-3B returns from January-2019 to May-2019 and submitted the following documents vide their letter numbers Nil dated 10.07.2019 and 29.07.2019;

- Sales Ledger (Jan-2019 to May-2019) alongwith copy of invoices/RA bills
- Purchase Ledger (Jan-2019 to May-2019) alongwith copy of invoices
- Transportation Expense ledger for the period from Jan-2019 to May-2019

4.2 On Scrutiny of the Sales Register and respective Invoices submitted by M/s Arth Infrastructure vide their letters dated 10.07.2019 and 29.07.2019, it was revealed that M/s Arth Infrastructure had collected GST from their customers/clients. However, they had failed to deposit the same to the government exchequer and also had failed to file their GSTR-1 and GSTR-3B returns for the period from January -2019 to May-2019. Based on the documents submitted by the assessee, their GST liability was worked out to be ₹ 3,04,47,388/-for the period from Jan-2019 to May-2019 as detailed below in Table-A:

## Details of Sales from January-2019 to May-2019 (Month wise):

TABLE-A								(Amount in ₹)	
Month	Taxable supply As per Sales Ledger (Outward supplies) (In ₹)	GST Liability As per Sales Ledger (Outward supplies) @ CGST 6% & SGST 6% (In ₹)		Taxable supply As per Expense Ledger (Inward supplies liable to reverse charge) (In ₹)	GST Liability As per Expense Ledger (Inward supplies liable to reverse charge) @ CGST 2.5% & SGST 2.5% (In ₹)		Total GST Liability (Outward and inward Supplies) (In ₹)		
		CGST	SGST		CGST	SGST			
Jan-19	45649208	2738953	2738953	7854907	196373	196373	5870652		
Feb-19	49563528	2973812	2973812	5555612	138890	138890	6225404		
Mar-19	148047005	8882820	8882820	7507630	187691	187691	18141022		
Apr-19	0	0	0	1521969	38049	38049	76098		
May-19	0	0	0	2684231	67106	67106	134212		
Total	243259741	14595585	14595585	25124349	628109	628109	30447388		

4.3. After initiation of the inquiry (i.e. Inspection on 10.07.2019), the taxpayer M/s Arth Infrastructure had paid the duty for the months from January-2019 to May-2019 which is calculated at ₹ 3,04,47,388 /-(as per GSTR-3B returns), details of which are given in Table-B:

Table-B										(Amount in ₹)	
Month' Year	Due date of filing of GSTR-1 returns	Date on GSTR-1 returns filed	Due date of filing of GSTR-3B returns	Date on GSTR-3B returns filed	Taxable Value as per GSTR-3B	Total GST payable per GSTR-3B	Paid through CASH per GSTR-3B	Paid through ITC per GSTR-3B	Total GST paid per GSTR-3B		
Jan-19	11.02.19	11.07.19	22.02.19	11.07.19	53504115	5870652	392746	5477906	5870652		
Feb-19	11.03.19	11.07.19	20.03.19	11.07.19	55119140	6225404	926040	5299364	6225404		
Mar-19	13.04.19	31.07.19	23.04.19	31.07.20	155554635	18141022	12873380	5267642	18141022		
Apr-19	11.05.19	22.08.19	20.05.19	18.09.19	1521969	76098	76098	0	76098		
May-19	11.06.19	22.08.19	20.06.19	24.09.19	2684231	134212	134212	0	134212		
					268384090	30447388	14402476	16044912	30447388		

5.1 M/s Arth Infrastructure (24AAPFA6090B1ZN) is a partnership firm and engaged in Works Contract Service such as Construction of roads, strengthening and resurfacing of various roads to Gram Panchayats, etc. as a Sub-Contractor in Gujarat. The aforesaid assessee is registered with Range-III, Division-VII, Ahmedabad North CGST Commissionerate (WT0703) and having GSTIN-24AAPFA6090B1ZN from 01.07.2017. The services provided by the firm M/s Arth Infrastructure are classifiable under HSN / SAC 9954 which attracts GST @12% (6% CGST and 6% SGST).

5.2. M/s Arth Infrastructure had not discharged their GST liability and not filed GSTR-1 and GSTR-3B returns for the period from January-2019 to May-2019. The office of M/s. Arth Infrastructure was visited by the officers of DGGI-AZU, Ahmedabad on 10.07.2019 and inspection of the relevant records was carried out. M/s. Arth Infrastructure had submitted Sales and Purchase Registers vide their letter dated 10.07.2019 and 29.07.2019. On Scrutiny of the documents submitted by M/s. Arth Infrastructure vide their letters dated 10.07.2019 and 29.07.2019, it was noticed that M/s. Arth Infrastructure had collected GST amount from their clients but not deposited the same to the government exchequer during the period from January-2019 to May-2019 and also not filed the corresponding GST returns viz. GSTR-1 and GSTR-3B.

5.3 Further, M/s Arth Infrastructure had not discharged their GST liability for the period from January-2019 to May-2019 and had not filed GSTR-1 and GSTR-3B returns. During the period from January-2019 to May-2019, they have made net taxable supplies of ₹ 24,32,59,741/- involving GST amount of ₹ 2,91,91,170/- and total inward supply on which RCM is applicable is amounting to ₹ 2,51,24,349/- involving RCM liability amounting to ₹ 12,56,218/- as detailed in Table-A of para 4.2 above. Thus, total GST liability of M/s Arth Infrastructure for the period from January-2019 to May-2019 is ₹ 3,04,47,388/-.

5.4. Subsequent to initiation of the enquiry by DGGI - AZU, the noticee had paid their GST liability and filed their GSTR-1 and GSTR-3B returns as detailed in Table-C for the period from Jan-2019 to May-2019. The total GST along with date of filing for respective months' GSTR-1M and GSTR-3B by M/s. Arth Infrastructure on the taxable supplies made by them during the period from Jan-2019 to May-2019, are given as under in Table-C:

TABLE-C (Amount in ₹)						
Month' Year	Date of filing of GSTR-1M	Taxable value in GSTR-1M	Total Tax	Date of filing of GSTR-3B	Taxable value in GSTR-3B	Total Tax
Jan-19	11.07.19	45649208	5477906	11.07.19	53504115	5870652
Feb-19	11.07.19	49563528	5947624	11.07.19	55119140	6225404
Mar-19	31.07.19	148047005	17765640	31.07.19	155554635	18141022
Apr-19	22.08.19	0	0	18.09.19	1521969	76098
May-19	22.08.19	0	0	24.09.19	2684231	134212
		243259741	29191170		268384090	30447388

\*Difference in the value/tax shown in the GSTR-1M and GSTR-3B returns are due to inward supply received by M/s Arth Infrastructure on which RCM is applicable.

5.5 After initiation of inquiry, M/s Arth Infrastructure had paid total outstanding GST liability (as per GSTR-3B) as shown in Table-D below:

TABLE-D		(Figures in ₹)							
Month	Outward supply Taxable Value and Inward supplies liable to reverse charge	CGST	SGST	Total Tax payable (In ₹)	Paid in Cash (In ₹)	Paid through ITC (In ₹)	Total (In ₹)	Late fee paid (In ₹)	Interest Paid (In ₹)
1	2	3	4	5=3+4	6	7	8=6+7	9	10
Jan-19	53504115	2935326	2935326	5870652	392746	5477906	5870652	7550	0
Feb-19	55119140	3112702	3112702	6225404	926040	5299364	6225404	6950	0
Mar-19	155554635	9070511	9070511	18141022	12873380	5267642	18141022	5650	469124
Apr-19	1521969	38049	38049	76098	76098	0	76098	4950	0
May-19	2684231	67106	67106	134212	134212	0	134212	6050	0
Total	268384090	15223694	15223694	30447388	14402476	16044912	30447388	31150	469124

6.1 Levy and Collection as defined under Section 9(1) of the CGST Act 2017 is as under:

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

Further similar provisions exist in Section 9 (1) of the GGST Act 2017.

By virtue of the above provision M/s Arth Infrastructure was under obligation to pay the GST (CGST + SGST) at applicable rate on supply of services as mentioned at Para-4.2 above to government exchequer.

6.2 The time to pay the tax on supply of taxable services is stipulated in Section 13 of the CGST Act 2017 is as under:

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

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

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

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

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

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

- (i) The supply shall be deemed to have been made to the extent it is covered by the invoice or as the case may be the payment;*
- (ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account whichever is earlier.*

Further similar provisions exist in Section 13 of GGST Act 2017.

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

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

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

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

- (a) any taxes duties cesses fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
- (c) incidental expenses including commission and packing charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of or before delivery of goods or supply of services;*
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and*
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*

The value of supply of services shall be the transaction value which is the price actually paid or payable for the said supply where the supplier and the recipient of the supply are not related and the price is the sole consideration of

supply. In the instant case, M/s Arth Infrastructure has collected but not paid GST to government exchequer and also have resorted to suppression of their taxable income by not intimating their taxable income to the department by way of non-filing of the statutory returns or otherwise in order to evade GST. Thus, they appear to have contravened the provisions of section 15 of the CGST Act 2017 read with section 15 of the Gujarat GST Act.

6.4 Section 37 of the CGST Act 2017 is as under:

*"37. (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:*

*Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:*

6.4.1 Rule 59 of the CGST Rules 2017 read with Rule 59 of the GGST Rules 2017 stipulates that the service provider should file a monthly return GSTR-1 giving details of outward supplies. Rule 59 of CGST Rules 2017 reads as:

*59. Form and manner of furnishing details of outward supplies. -*

*(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act 2017 required to furnish the details of outward supplies of goods or services or both under section 37 shall furnish such details in FORM GSTR-1 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.*

Therefore, in terms of section 37 of the CGST Act 2017 read with Rule 59 of the CGST Rules 2017 and similar provisions of GGST Act, 2017, M/s Arth Infrastructure was required to file the GSTR-1 returns for the period from Jan-2019 to May-2019 on time. However, it appears that they knowingly failed to file the GSTR-1 returns for the above said period.

6.5 Section 39 of the CGST Act 2017 read with Section 39 of the GGST Act, 2017 lays down that every registered person should file a return giving details of the outward supply made by them, inward supply received by them, including the ITC available with them. Section 39 of the CGST Act 2017 reads as under:

*"39. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.*



(2) to (6) ...

*Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.*

*(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.*

*(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.*

6.5.1 Rule 61 of the CGST Rules 2017 as amended reads as:

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

From conjoint reading of Section 39 of CGST Act 2017 read with Rule 61 of the CGST Rules 2017 and Section 39 of GGST Act, 2017 read with Rule 61 of the GGST Rules, it appears that M/s Arth Infrastructure should have filed GSTR-3/GSTR-3B returns for the period Jan-2019 to May-2019 on time, however, they have knowingly failed to file the stipulated GSTR-3B returns within the due dates.

6.6 Section 49 of the CGST Act 2017 is as under:

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

*(2) ....*

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

*(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.*

*(5) .....*

*(6) .....*

- (7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.
- (8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order namely;
- (a) self-assessed tax and other dues related to returns of previous tax period;
  - (b) self-assessed tax and other dues related to the return of the current tax period;
  - (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

It appeared that M/s Arth Infrastructure having knowingly failed to pay the tax in gross contravention of Section 49 of the CGST Act 2017 read with Section 49 of the GGST Act 2017.

6.7 Self-Assessment as defined under Section 59 of the CGST Act 2017 is as under:

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

Further, similar provisions exist in Section 59 of the GGST Act, 2017. In terms of section 59 of the CGST Act, 2017 read with section 59 of the GGST Act, 2017, M/s Arth Infrastructure has to self-assess the GST liability for the period January-19 to May-2019 and to file the stipulated returns as per section 39 of CGST Act, 2017 and read with GGST Act, 2017.

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

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

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

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

Further as per Section 112 of the Finance Act, 2021(No. 13 of 2021):In Section 50 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1<sup>st</sup> day of July, 2017, namely:—

*"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 payable on that portion of the tax which is paid by debiting the electronic cash ledger.”

Similarly, vide Notification No. 16/2021-Central Tax dated 01.06.2021, In exercise of the powers conferred by sub-section (2) of section 1 of the Finance Act, 2021 (13 of 2021) (hereinafter referred to as the said Act), the Central Government hereby appoints the 1<sup>st</sup> day of June, 2021, as the date on which the provisions of section 112 of the said Act shall come into force.

Further, similar provisions exist in Section 50 of the Gujarat GST Act, 2017. M/s Arth Infrastructure had failed to discharge their GST liability in due time and have furnished GSTR-3B returns much after the due dates stipulated as per the provisions of section 39 of the CGST Act, 2017 read with GGST Act, 2017. Hence, they have to pay interest on the entire tax amount under Section 50 of the CGST Act, 2017 read with Section 50 of the GGST Act, 2017.

6.9 Penal action for Suppression of facts or mis-statement as defined under Section 74 of the CGST Act 2017 is as under:

*“74. (1) Where it appears to the proper officer that any **tax has not been paid** or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful-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.*

Further, similar provisions exist in Section 74 of the GGST Act, 2017.

6.10 Penalty for certain offences as detailed under Section 122 of the CGST Act 2017 read is as under:

*“122. (1) Where a taxable person who—*

*(i) & (ii) .....*

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

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

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

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

(a) .....

(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.”

Further, similar provisions exist in Section 122 of the GGST Act, 2017.

### **Outcome of the investigations**

In view of discussions in the foregoing paragraphs and the evidences brought on record the findings of the investigations are as follows:

7.1 M/s Arth Infrastructure, Plot 9A, Radhey Ploting, Nr Gujarat High Court, Nr Chandan Party Plot, Sola, Ahmedabad, Gujarat-380060 is a partnership firm engaged in works contract service such as construction of road, strengthening and resurfacing of various roads to Gram Panchayats, etc. as a sub-contractor in Gujarat. The assessee is registered with Range-III, Division-VII, Ahmedabad North CGST Commissionerate (WT0703), and having GSTIN 24AAPFA6090B1ZN from 01.07.2017.

7.2 The services provided by the firm M/s Arth Infrastructure are classifiable under HSN / SAC 9954 which attracts GST @ 12% (6% CGST and 6% GGST). Further, they were collecting CGST and GGST from their clients/customers but not depositing the same to the government exchequer during the period from January-2019 to May-2019 and also not filed their GSTR-3B and GSTR-1 returns.

7.3 Accordingly, the Office of M/s Arth Infrastructure was visited by the Officers of DGGI, ZU, Ahmedabad on 10.07.2019 under authorisation of Inspection (issued under Section 67(1) of the Central Goods and Services Tax Act 2017) dated 05.07.2019 and inspection of relevant records was carried out. M/s Arth Infrastructure has submitted Sales and Purchase Register vide their letters dated 10.07.2019 and 29.07.2019. From the scrutiny of the documents submitted by M/s Arth Infrastructure vide their letter dated 10.07.2019 and 29.07.2019, it appears that M/s Arth Infrastructure had collected GST amount but not paid the same amount to the government exchequer during the period from January-2019 to May-2019 and also not filed the corresponding GST Returns viz. GSTR-1 and GSTR-3B.

7.4 Further from the scrutiny of the ledger / records submitted by the assessee vide their letter dated 10.07.2019 and 29.07.2019 during the period from Jan-2019 to May-2019, it appears that they had made net taxable supplies of ₹ 24,32,59,741/- involving GST amount of ₹ 2,91,91,170/- and

total inward supply on which RCM is applicable is amounting to ₹ 2,51,24,349/- involving RCM amount to ₹ 12,56,218/- as detailed in Table A of para 4.2 of this Show Cause Notice.

## 8. Suppression of facts

8.1 The scheme of Central Goods and Services Tax Act, 2017 and Gujarat Goods and Service Tax Act, 2017 rests on voluntary compliance by an assessee entrusted with the responsibility to pay the GST and file the statutory returns within the stipulated dates. As such, the original hypothesis with which one starts out is that the Assessee would be complying with the law in all earnestness and with assiduousness that is warranted of a responsible tax payer. Interference of departmental officers is generally not required as a matter of routine, but only as exceptions and that too when there is specific information or reason to believe that the tax liability is not correctly being discharged.

8.2 The action of disclosure itself is ordinarily limited to the details contained in the periodical return filed by the assessee and the onus to determine facts and issues relevant to the correct ascertainment and discharge of GST levy remains with the supplier of taxable goods or services or both. If such facts on the basis of which an independent and proper evaluation can be made is kept away from the department due to an act of omission or commission by the assessee responsible to pay the tax, this would constitute a situation where the first proviso to section 74 of the CGST Act, 2017 read with section 74 of the GGST Act, 2017 can reasonably be invoked.

8.3 First proviso to section 74 of the CGST Act, 2017 states that

*"Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of:*

1. *fraud, or*
2. *any wilful-misstatement or*
3. *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."*

8.4 Fraud is as the Merriam-Webster dictionary explains it to be, an act of misrepresenting. Punctuation forms part of the statute and, even if the reader has to be wary of older Acts, in which punctuation was inserted after enactment by the printer, the punctuation of modern statutes must be given the significance it has to the ordinary user of the English language.

8.5 Thus very clearly, in the CGST Act, 2017 read with GGST Act, 2017, the use of the word 'or' after each of the expressions fraud, any willful mis-statement, suppression of facts to evade tax implies that the presence of any one of the elements along with the intention to suppress is enough to invoke and sustain the invocation of the first provision of section-74. It appears that a suppression of facts can happen even in the absence of a fraudulent

intention or a willful mis-statement, but where suppression has happened and out of a conscious decision, extended period is to be invoked.

8.6 So far as 'suppression of facts' is concerned, the phrase implies that withholding of information is suppression of facts; P. Ramanatha Aiyar's Concise Law Dictionary (1997 Edition Reprint 2003- page 822) explains it to mean the situation where [if] *there is an obligation to speak*, [failure to do so] *will constitute the "suppression of fact"* and distinguishes this situation from where *there is no obligation to speak*, *silence cannot be termed "suppression"*.

8.7 Further, as per "Explanation 2" to Section 74 of the CGST Act, 2017 read with Section 74 of the GGST Act, 2017, suppression has been defined as under:

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

8.8 The assessee had an obligation to comply with the statutory provisions of CGST Act, 2017 read with GGST Act, 2017 and to furnish the information as required there under:-

- i) In terms of section 37 of the CGST Act, 2017, read with Rule 59 of the CGST Rules, 2017 & read with Notification No. 32/2018-CT dated 10.08.2018, Notification No. 12/2019-CT dated 07.03.2019 & Notification No. 17/2019-CT dated 10.04.2019 & similar provisions of GGST Act, 2017, M/s Arth Infrastructure was required to file the GSTR-1 returns in time and they have to show the correct and actual value of their outward supplies.
- ii) In terms of Section 39 of CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017 & read with Notification No. 34/2018-CT dated 10.08.2018, Notification No. 09/2019-CT dated 20.02.2019 and Notification No. 19/2019-CT dated 22.04.2019 & similar provisions of GGST Act, 2017, M/s Arth Infrastructure was required to file GSTR-3B returns within the stipulated due dates.
- iii) In terms of Section 59 of the CGST Act, 2017 read with Section 59 of the GGST Act, 2017, M/s Arth Infrastructure was required to self-assess the taxes payable under CGST Act, 2017 and GGST Act, 2017 and furnish a return for each tax period as specified under section 39 of CGST Act, 2017 read with GGST Act, 2017.
- iv) In terms of Section 49 of the CGST Act, 2017 read with Section 49 of the GGST Act, 2017, M/s Arth Infrastructure was required to pay the tax by debiting its electronic cash ledger or electronic credit ledger within the stipulated due dates.

8.9 Thus, the aforementioned, statutory provisions of CGST Act, 2017 and GGST Act, 2017 cast an obligation upon the assessee to assess and pay the correct amount of GST and to file their periodical returns.

8.10 All these facts narrated above go to show that the assessee had suppressed the facts, by non-compliance of the obligations cast upon them by the statutory provisions. The suppression of the facts clearly gives one a clear conclusion that the assessee had the sole intention to evade the tax. It is imperative to mention here that intent is a state of mind which can only be inferred from the actions or their lack thereof.

8.11 In deciding whether the provision is directory or mandatory, one has to ascertain whether the power is coupled with a duty of the person to whom it is given to exercise it. If so, then it is imperative. Generally, the intention of the legislature is expressed by mandatory and directory verbs such as 'may', 'shall' and 'must'. The words 'may', 'shall' and 'must' should initially be deemed to have been used in their natural and ordinary sense. 'Shall'- in the normal sense imports command. It is well settled that the use of the word 'shall' does not always mean that the enactment is obligatory or mandatory. It depends upon the context in which the word 'shall' occurs and the other circumstances. Unless an interpretation leads to some absurd or inconvenient consequences or contradicts with the intent of the legislature the court shall interpret the word 'shall' in mandatory sense. Must- is doubtlessly a word of command. It is observed that in the context of sections 59, 49, 37, 39 of the CGST ACT, 2017 read with GGST Act, 2017, through the use of the word 'shall', it is made mandatory for every person liable to pay GST to engage in action that is laid down in these sections. It is one of the rules of construction that a provision is not mandatory unless non-compliance with it is made penal. Mandatory provisions should be fulfilled and obeyed exactly, whereas in case of provisions of directory enactments substantial compliance is satisfiable.

8.12 It is important to recapitulate that this matter has arisen out of Scrutiny and Verification conducted on the records of the assessee by the Officers of the DGGI, AZU. Had they not conducted their action of scrutiny/ verification, this evasion of tax would not have been unearthed. There is nothing on record which has been averred to or indicated by the assessee to show that the material fact relating to its act of omission and commission was made known to the department till the results of scrutiny/ verification were available.

8.13 It is seen from the facts that have emerged during the investigation of the instant case that M/s Arth Infrastructure have knowingly failed to file the stipulated returns and knowingly suppressed the actual value of the services supplied by them and thereby have knowingly failed to correctly self-assess the tax payable with an intent to evade payment of proper tax. In order to suppress their taxable income from the department, they had not filed the GST Returns for the period from Jan-2019 to May-2019. The facts about collecting and not depositing GST were detected only when the department (DGGI) initiated the present investigation. This clearly appears to be done intentionally in order to suppress their actual tax liability for evading GST.

8.14 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 Arth Infrastructure, it shows their intent to evade payment of

GST by an act of omission in as much as M/s Arth Infrastructure though being well aware of the unambiguous provisions of the CGST, 2017 read with GGST Act, 2017 and Rules made thereunder, failed to disclose to the department at any point of time, their tax liability on which GST was collected but not paid by them, by way of not filing their GST Returns viz. GSTR-1 & GSTR-3B for the period from January-2019 to May-2019 before initiation of the present investigation. This amounts to wilful suppression of facts with the deliberate intent to evade payment of GST. The total evasion of GST for the period from January-2019 to May-2019 on the entire income received towards making taxable supplies by M/s Arth Infrastructure came to the knowledge of the DGGI only due to specific investigations carried out as spelt out earlier. Therefore, the demand of tax not paid / short paid as envisaged under proviso to Section 74 of the CGST Act, 2017 read with Section 74 of the GGST Act, 2017 appears to be invocable to demand GST for the period from January-2019 to May-2019.

8.15 Therefore, it appeared that M/s Arth Infrastructure have wilfully suppressed the above facts with an intent to evade payment of GST and accordingly the extended period of limitation of five years as envisaged under Section 74 of the CGST Act, 2017 read with section 74 of the GGST Act, 2017, for the demand and recovery of GST (CGST, GGST) as quantified in the subsequent paras is applicable in the instant case.

9. It was also revealed during the investigation that M/s Arth Infrastructure had collected GST in the invoices raised by them and had collected tax from their customers/clients but had failed to deposit the same to the Government Exchequer. Hence such tax collected but not paid by them is required to be demanded from them under Section 74 of the CGST Act 2017 read with section 74 of the GGST Act, 2017.

10.1 M/s Arth Infrastructure had collected but not discharged their GST liability for the period from January-2019 to May-2019 which was worked out to be ₹3,04,47,388/- as shown in Table-E:

Details of supply from Jan-2019 to May-2019 (month wise):

Table-E				Amount in ₹
Month	Outward supply Taxable Value and Inward supplies liable to reverse charge(In ₹)	CGST (in ₹)	SGST (in ₹)	Total Tax payable (in ₹)
1	2	3	4	5=3+4
Jan-19	53504115	2935326	2935326	5870652
Feb-19	55119140	3112702	3112702	6225404
Mar-19	155554635	9070511	9070511	18141022
Apr-19	1521969	38049	38049	76098
May-19	2684231	67106	67106	134212
Total	268384090	15223694	15223694	30447388

10.2 From the above table, it appeared that M/s. Arth Infrastructure during the period from January-2019 to May-2019 have Outward Supply



Taxable Value and Inward supplies liable to reverse charge of ₹26,83,84,090/-. On the said amount, they have collected but not deposited GST of ₹3,04,47,388/-(CGST-₹1,52,23,694/- + SGST - ₹1,52,23,694/-) [Rupees Three Crore Four Lakh Forty Seven Thousand Three Hundred Eighty Eight only]. The said amount is required to be recovered from them under Section 74 (1) of the CGST Act, 2017 read with Section 74 (1) of the Gujarat GST Act, 2017 alongwith applicable 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 the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017. The GST amount of ₹3,04,47,388/- (CGST-₹1,52,23,694/- and SGST- ₹1,52,23,694/-) paid through ITC and cash, as discussed here-in-above by M/s. Arth Infrastructure during investigation, needs to be appropriated against their outstanding GST liability.

10.3 In light of the facts discussed hereinabove and the material evidences available on records, it is further revealed that M/s. Arth Infrastructure has contravened the following provisions of the CGST Act, 2017 read with GGST Act, 2017:

- (i) Section 9 of the CGST Act 2017 read with Section 9 of GGST 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 intent to evade payment of Tax;
- (ii) Section 13 of the CGST Act 2017 read with Section 13 of GGST Act, 2017 in as much as they failed to pay the appropriate GST on supply of taxable services made by them in time as per the provision stipulates that the payment of Goods and Services Tax payable on supply of the goods should be either the date of issue of invoice or the date of receipt of payment whichever is earlier. Accordingly, M/s Arth Infrastructure was under obligation to make payment of GST at the time as stipulated in section 13 of the CGST Act 2017 read with Section 13 of GGST Act, 2017;
- (iii) Section 15 of the CGST Act 2017 read with Section 15 of GGST Act, 2017 in as much as they suppressed the tax liability by not declaring the same in their periodical returns in time with an intent to evade payment of Tax.
- (iv) Section 37 of the CGST Act 2017 read with Rule 59 of the CGST Rules 2017 and similar provisions of GGST Act 2017 in as much as they failed to file the GSTR-1 returns for the period from Janaury-2019 to May-2019 with an intent to evade payment of Tax.
- (v) Section 39 of the CGST Act 2017 read with Rule 61 of the CGST Act 2017 and similar provisions of GGST Act 2017 in as much as they failed to file GSTR-3 returns for the period from Janaury-2019 to May-2019 with an intent to evade payment of tax.
- (vi) Section 49(8) of the CGST Act 2017 read with Section 49(8) of the GGST Act, 2017 in as much as they failed to discharge their tax liability with an intent to evade payment of tax;
- (vii) Section 59 of the CGST Act, 2017 read with Section 59 of the GGST Act, 2017 in as much as they failed to self-assess their tax liability with an intent to evade payment of tax;

11. Further, all above acts of contravention constitute an offence of the nature as described under the provisions of Section 39, 49, 59, Section 122(1)(iii) and 122(2)(b) of the CGST Act 2017 read with similar provisions of

GGST Act, 2017 rendering themselves liable to penalty under Section 74 and/or Section 122 of the CGST Act 2017 read with similar provisions of GGST Act, 2017 for failure to file the statutory GST Returns, duly discharging the tax liability, failure to pay tax, failure to self-assess the tax liability, collected but not paid GST and non-compliance of various provisions of the act leading to penalty under Section 122 of the CGST Act 2017 read with Section 122 of the GGST Act, 2017 as referred here-in-above.

12. M/s Arth Infrastructure were communicated the details of tax, interest and penalty due to them vide Part-A of DRC-01A on 03.06.2021 under Rule 142(1A) of the CGST Rules 2017. M/s Arth Infrastructure submitted the reply in Part-B of DRC-01A on 09.06.2021 stating that they had paid the total interest liability as per Section 50 of the CGST Act, 2017 amounting to ₹ 7,36,970/-, out of which ₹ 4,69,124/- was paid through GSTR-3B of March 2019 and balance interest of ₹ 2,67,846/- through DRC-03 on 08.06.2021. Further, they had submitted that there is no tax evasion or fraud or willful mis-statement or suppression of facts or wrong availment/utilization of input tax credit or malafide intension and therefore section 74 of the CGST Act, 2017 is not applicable in their case and there was no adverse finding during the inspection of the DGGI team at their premises. The returns and tax were pending for the last five months as their payments were not released from the Government departments. Furthermore, they had paid the full amount of tax through GSTR-3B (from 11.07.2019 to 24.09.2019) and also paid applicable interest for the period Jan-2019 to May 2019 and they are requested to not to levy the penalty u/s 74(5) of the CGST Act, 2017. They are requested to drop the proceedings and not to issue the Show Cause Notice under Section 74(1) of CGST Act, 2017. M/s. Arth Infrastructure had paid the aforesaid interest liability on the portion of the tax which is paid by cash for the period from Jan-2019 to May-2019.

Further as per Section 112 of the Finance Act, 2021 (No. 13 of 2021) :In Section 50 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:—

“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 payable on that portion of the tax which is paid by debiting the electronic cash ledger.”

But in view of discussion in Para 8, the noticee failed to declare their true taxable income and tax liability as required in the CGST Act, 2017 & GGST Act, 2017 to the department and therefore they had wilfully suppressed the facts with an intent to evade payment of GST and accordingly the present Show Cause Notice is being issued. Moreover, the reasons provided by the taxpayer are not acceptable as the assessee could have very well filed the GSTR-1 returns on time declaring his outward and inward supplies and their GST liabilities in their GSTR-1 within the stipulated time even if their payments were not released from the Government Departments.

13. The above said GST liabilities of M/s. Arth Infrastructure for the period from Jan-2019 to May-2019 have been worked out on the basis of data/information received from M/s Arth Infrastructure vide their letter dated

10.07.2019 and 29.07.2019. Thus, the present notice relates exclusively to the information available on record and limited to the period mentioned and is restricted only to the issue of non-filing of GSTR-1 and GSTR-3B in the said period.

14. Therefore, Show Cause Notice was issued to M/s Arth Infrastructure called upon to show as to why:-

- (i) the CGST amount of ₹ 1,52,23,694/- [Rupees One Crore Fifty Two Lakhs Twenty Three Thousand Six Hundred Ninety Four only], as detailed in Table A in para 4.2 to this notice, evaded on providing such taxable service during the period from Jan-2019 to May-2019 should not be demanded and recovered from them under Section 74(1) of the CGST Act, 2017;
- (ii) the GGST amount of ₹ 1,52,23,694/- [Rupees One Crore Fifty Two Lakhs Twenty Three Thousand Six Hundred Ninety Four only], as detailed in Table A in para 4.2 to this notice, evaded on providing such taxable service during the period from Jan-2019 to May-2019 should not be demanded and recovered from them under Section 74(1) of the GGST Act 2017;
- (iii) The total GST amount of ₹ 3,04,47,388/- (CGST ₹ 1,52,23,694/- + GGST ₹ 1,52,23,694/-) already deposited by the assessee should not be appropriated against the GST demand at Sr. No.14(i) & 14(ii) as above;
- (iv) Interest at applicable rates should not be demanded and recovered from them under Section 50 of the CGST Act 2017 read with Section 50 of Gujarat GST Act, 2017 on the GST liability mentioned at Sr. No. 14(i)&14(ii) above;
- (v) The interest amount of ₹ 7,36,970/- already deposited by the assessee should not be appropriated against the interest at Sr. No. 14(iv) as above;
- (vi) Penalty should not be imposed on them under Section 74(1) of the CGST Act 2017 read with Section 74(1) of Gujarat GST Act, 2017 for non-payment of GST amounts mentioned at Sr. No. 14(i) & 14(ii) above.
- (vii) Penalty should not be imposed on them under Section 122 (1)(iii) of the CGST Act 2017 read with Section 122 (1)(iii) of Gujarat GST Act, 2017 for collecting tax and not depositing to the Government beyond a period of three months from the date on which such payment becomes due;
- (viii) Penalty should not be imposed on them under Section 122(2)(b) of the CGST Act, 2017 read with similar provision of Gujarat GST Act, 2017 for reason of fraud or wilful misstatement or suppression of facts to evade tax;
- (ix) Late fees should not be recovered under Section 47 of CGST Act, 2017 read with Section 47 of GGST Act, 2017;

- (x) Late Fees amount of ₹ 31,150/- already deposited by the assessee should not be appropriated against the late fees amount at Sr. No. 14(ix) as above;

#### DEFENCE REPLY

15. The assessee vide letter dated 30.07.2021 submitted their reply to SCN wherein they stated that an Inspection was carried out on 10.07.2019 due to non filing of GSTR 1 and GSTR3B returns for the period Jan 2019 to May 2019 as the returns were overdue and pending for filing. During the inspections they handed over the sales bill from Jan 2019 to May 2019 on 10.07.2019 and the remaining details were submitted on 29.07.2019 as there was no accountant in their office. The main reason for non filing of GST returns was that there was no accountant during this period i.e. from Jan 2019 to May 2019. The DGGI team is also aware of this fact as they have observed during the visit for the inspection and it was also mentioned in the letter on 10.07.2019.

16. They further submitted that they have filed GSTR 1 and GSTR 3B for above said period Jan 19 to May 19 during the Month of July 19 and Sept 19 and paid full GST along with the interest and the late fees. The total interest liability as per Section 50 of the CGST Act, 2017 comes to Rs.7,36,970/- out of which Rs.4,69,124/- was paid through GSTR 3 B of Mar 19. They have paid balance interest of Rs.2,67,846/- through DRC on 08.06.2021 and the copy of DRC is attached. They have paid full amount of applicable interest for the period Jan 2019 to May 2019. They stated that no discrepancy or tax evasion was found by the DGGI team during the inspection on 10.07.2019.

17. They further submitted that there is no tax evasion or fraud or willful mis-statement or suppression of facts or wrong availment/utilization of input tax credit or malafide intention and therefore Section 74 of the CGST Act, 2017 is not applicable in their case. There were no adverse finding during the inspection of DGGI team at their premises. The returns and tax were pending for the last five months as their payments were not released from the Govt. Department. They are road contractors and doing the road construction of the Govt. department only. They are tax compliant and doing the business from last 20 years and there is/was no default in GST/Service Tax/VAT/Income-Tax

18. They have fully paid the amount of tax from 11.07.2019 to 24.09.2019 through GSTR 3 B and also paid applicable interest for the period Jan 19 to May 19 and hence it was requested to not to levy any penalty u/s.74(5) of the CGST Act, 2017. They have paid full tax, interest and late fees for the period from Jan 19 to May 19 i.e. CGST Rs.1,52,23,694/-, SGST Rs.1,52,23,694/- interest thereon Rs.7,36,970/- and the late fee of Rs.31,150/- voluntarily and requested to appropriate against the GST, interest and late fee. Hence no amount is payable towards the GST, interest and late fees. The issue left out in their case is only that whether penalty should be levied or not. They further stated that the main reason for non filing of GSTR 1 and GSTR 3B returns was

1. Non availability of accountant
2. They are doing the work of Government and payments were not released by the Govt. To them.

19. Due to above practical difficulty, there was delay in filing GST returns for the period Jan 19 to May 19. As there was no accountant, they were not able to file GSTR 1 for the above said periods. They should not be penalised for just because there is delay in the filing the GST returns. They have paid the full amount of the tax at the time of filing the GST returns and there was no short payment of taxes.

20. Further Para No.8.13 of SCN states that "the facts about collecting and not depositing GST were detected only when the Department (DGGI) initiated the present investigation. This clearly appears to be done intentionally in order to suppress their actual tax liability for evading tax." This finding in the SCN is baseless and misleading. The fact that they have not filed GST return and not paid the tax is already available on the GST portal and system and not detected due to the inspection. They have not filed the GST returns and not paid the tax for the reasons explained above. Had it would have been their malafide intention they would have filed NIL returns and the department would have revealed that the tax is payable and the assessee has evaded the tax. We have kept our returns pending due to financial difficulty and non availability of the accountant and later on they have filed all the returns within 6 months from the due date of filing of GST returns. Further in Para 13 of the SCN, it is clearly mentioned that "GST liability have been worked out on the basis of data/information received from M/s.Arth Infrastructure" which clearly means that there was no or additional findings by the department.

21. They also submitted that they have fully co-operated with the inspection team during the visit on 10.07.2019 and submitted the details at the later stage without any reminder. They have not evaded any tax or there is no misstatement or fraud or wilful suppression of the facts and hence penalty u/s. 74 of the CGST Act: 2017 should not be levied on them and requested to drop the SCN.

#### PERSONEL HEARING

22. Personnel Hearing was granted on 29.05.2023. Shri S.R.Sanghvi, CA, duly authorised representative, attended the P.H on behalf of the assessee and reiterated the written submission dt.30.07.2021 and requested that as there is no adverse found out during investigation, they may not be imposed with penalty.

#### DISCUSSION AND FINDINGS

23. I have carefully gone through the Show Cause Notice, reply to SCN and other submissions made by the assessee during the course of P.H.

24. On perusal of the above documents, I find that the issue to be decided is to whether the said tax payer is liable to pay GST amounting to Rs. 3,04,47,388/- (CGST Rs. 1,52,23,694/- + SGST Rs. 1,52,23,694/-) during the period from January 2019 to May 2019 along with interest and penalty for collecting CGST and SGST from their clients/ customers but not depositing the same to the Government exchequer during the period of January 2019 to May 2019 and also for not filing their GSTR-1M and GSTR-3B returns for the said period.

25. In the instant case, I find that an inquiry was initiated by DGGI, Zonal Unit, Ahmedabad that M/s Arth Infrastructure, engaged in Works Contract Service such as construction of roads, strengthening and resurfacing of various roads to Gram Panchayat etc as a sub contractor in Gujarat and were collecting but not discharging their GST liability and not filing GSTR 1 and GSTR 3 B returns for the period Jan 2019 to May 2019.

26. On Scrutiny of the Sales Register and respective Invoices submitted by M/s Arth Infrastructure vide their letters dated 10.07.2019 and 29.07.2019, it was revealed that M/s Arth Infrastructure had collected GST from their customers/clients. However, they had failed to deposit the same to the government exchequer and also had failed to file their GSTR-1 and GSTR-3B returns for the period from Jan-2019 to May-2019. Based on the documents submitted by the assessee, their GST liability was worked out to be ₹ 3,04,47,388/-for the period from Jan-2019 to May-2019.

27. After initiation of the inquiry (i.e. Inspection on 10.07.2019), the taxpayer M/s Arth Infrastructure had paid the duty for the months from January-2019 to May-2019 which is calculated at ₹3,04,47,388 /-(as per GSTR-3B returns),-details of which are given in Table-B:

Month' Year	Due date of filing of GSTR-1 returns	Date on GSTR-1 returns filed	Due date of filing of GSTR-3B returns	Date on GSTR-3B returns filed	Taxable Value as per GSTR-3B	Total GST payable per GSTR-3B	Paid through CASH per GSTR-3B	Paid through ITC per GSTR-3B	Total GST paid per GSTR-3B
Jan-19	11.02.19	11.07.19	22.02.19	11.07.19	53504115	5870652	392746	5477906	5870652
Feb-19	11.03.19	11.07.19	20.03.19	11.07.19	55119140	6225404	926040	5299364	6225404
Mar-19	13.04.19	31.07.19	23.04.19	31.07.20	155554635	18141022	12873380	5267642	18141022
Apr-19	11.05.19	22.08.19	20.05.19	18.09.19	1521969	76098	76098	0	76098
May-19	11.06.19	22.08.19	20.06.19	24.09.19	2684231	134212	134212	0	134212
					268384090	30447388	14402476	16044912	30447388

28. M/s Arth Infrastructure has filed the GSTR-3B Returns on various dated as detailed above and have discharged their liability of Rs. 3,04,47,388/- for period from Jan 2019 to May 2019 out of which Rs. 1,60,44,912/- was paid through ITC and Rs. Rs.1,44,02,476/- was paid in cash towards payment of their liability vide various challans.

29. It is also a fact that during the investigation of the instant case, the assessee in order to suppress their taxable income from the department, had not filed the GSTR-1 and GSTR-3B Returns timely under Section 37 and Section 39 of CGST Act 2017, respectively for the period from Jan 2019 to May 2019. The fact about collecting and not depositing GST was detected only when the department (DGGI) initiated the present investigation. 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 the assessee, it

shows their intent to evade payment of GST by an act of omission in as much as M/s. Arth Infrastructure though being well aware of the unambiguous provisions of the CGST, 2017 and Rules made there under, failed to disclose to the department at any point of time, their taxable income on which GST was collected but not paid by them, by way of not filing their GST Returns viz. GSTR-1 & GSTR-3B from Jan 2019 to May 2019 from Sept before initiation of the present investigation.

30. All these facts have not been denied by the assessee. On the other hand, they admitted the tax liability and paid the GST amounting to Rs.3,04,47,388/-. Investigation of the instant case that the assessee in order to suppress their taxable income from the department, had not filed the GSTR-1 and GSTR-3B Returns timely under Section 37 and Section 39 of CGST Act 2017, respectively for the period from Jan 2019 to May 2019. The collection of GST and not depositing the same was detected only after the department (DGGI) initiated the present investigation. As already stated above, 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. Parth Infrastrucutre, it shows their intent to evade payment of GST by an act of omission in as much as the assessee though being well aware of the unambiguous provisions of the CGST, 2017 and Rules made there under, failed to disclose to the department at any point of time, their taxable income on which GST was collected but not paid by them, by way of not filing their GST Returns viz. GSTR-1 & GSTR 3for Jan 2019 to May 2019 before initiation of the present investigation.

31. The assessee was communicated the details of duty, interest and penalty due to them vide Form GST DRC-01A Part A dated 03.06.2021, under Rule 142(1A) of the CGST Rule, 2017. I find that as per the statutory provisions of the GST, the assessee has to pay interest on the amount of GST evaded by them along with penalty. Therefore, I find that the show cause notice has been rightly proposed by the Department, demanding GST to the amount of Rs.3,04,47,388/-, proposing to appropriate the GST amount of Rs.3,04,47,388/- already paid by them, demanding interest and proposing penalties under various Section of CGST Act, 2017. Now, I would like to discuss the various provisions of law :-

The provisions of Section 7 of the CGST Act, 2017 stipulates as follows :

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

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

I find that the activity carried out by the said tax payer was supply of goods and liable to payment of GST. The provisions of Section 9 (1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 stipulates as follows :

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

32. I find that the said tax payer was under obligation to pay the Goods and Service Tax at applicable rate on supply of said goods/ services to their clients. The provisions of Section 12 of the CGST Act, 2017 read with Gujarat GST Act, 2017 stipulates the time to pay the tax on supply of goods and the provisions of Section 15 of the CGST Act, 2017 read with Gujarat GST Act, 2017 stipulates that the value of supply of goods shall be the transaction value. I find that the said tax payer was under obligation to pay the tax on the value of supply of goods within the stipulated time.

33. The provisions of Section 37 of the CGST Act, 2017 read with Gujarat GST Act, 2017, Section 39 of the CGST Act, 2017 read with Gujarat GST Act, 2017 along with Rule 59 of the CGST Rules, 2017 stipulates the taxpayers to furnish returns in such form and manner as may be prescribed. I find that the said tax payer was under obligation to furnish returns in the prescribed form and manner..

34. In view of the above provisions of law, I find that the said tax payer was engaged in Works Contract Service such as construction of roads, strengthening and re surfacing of various roads to Gram Panchayats etc as a sub contractor in Gujarat. The activity carried out by the said tax payer falls under the scope of supply as defined under Section 7 of the CGST Act, 2017. There is no dispute regarding this. Further, the said tax payer was under the obligation to pay Goods and Service Tax at the applicable rate on the supply of said goods to their clients as prescribed under the provisions of Section 9(1) of the CGST Act, 2017. Also, they were under obligation to make payment of GST at the time as stipulated in Section 12 of the CGST Act, 2017. Furthermore, they were under the obligation to furnish the details of outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and other particulars as prescribed under Section 37 and Section 39 of the CGST Act, 2017 and Rule 59 of the CGST Rules, 2017.

35. In the instant case, I find that the said tax payer had neither filed GSTR-1M return nor filed GSTR-3B return nor discharged their tax liability for the period from January 2019 to May 2019 (i.e. 5 months) as per the provisions of CGST Act / CGST Rules as mentioned in above mentioned para. I find that it was only after initiation of investigation proceedings against the said tax payer on 10.07.2019, the said tax payer had filed the GSTR-1M and GSTR-3B returns for the period from January 2019 to May 2019 on the dates as mentioned in the table above and discharged the GST liability of Rs.3,04,47,388/- for the said period. I find that the said tax payer



had filed GSTR-1M and GSTR-3B for the month from January 2019 to May 2019 in the month of July to August 2019 only. If this investigation had not been initiated by DGCEI, AZU and inspection of their premises were not conducted; then the taxpayer would not have deposited the same to the government exchequers, causing loss to Govt. exchequer. This shows that despite having knowledge of CGST Acts & Procedures, the act of fraud, mis-declaration or suppression by the taxpayer shows the contravention of provisions with intent to evade payment of GST.

36. It is also a fact that, the said tax payer in order to suppress their taxable income from the department, had not filed the GSTR-1 and GSTR-3B Returns timely as stipulated under Section 37 and Section 39 of CGST Act 2017, respectively for the period from January 2019 to May 2019. The fact about collecting and not depositing GST was detected only when the department initiated the present investigation. 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 the said tax payer, it shows their intent to evade payment of GST by an act of omission in as much as they though being well aware of the unambiguous provisions of the CGST Act, 2017 and Rules made there under, failed to disclose to the department at any point of time, their taxable income on which GST was collected but not paid by them, by way of not filing their GST Returns viz. GSTR-1M and GSTR-3B for the period January 2019 to May 2019 before initiation of the present investigation.

37. In reply to the show cause notice, M/s.Arth Infrastructure stated that there is no tax evasion or fraud or willful mis-statement or suppression of facts or wrong availment/utilization of input tax credit or malafide intention and therefore Section 74 of the CGST Act, 2017 is not applicable in their case. There were no adverse finding during the inspection of DGGI team at their premises. The returns and tax were pending for the last five months as their payments were not released from the Govt. Department. They are road contractors and doing the road construction of the Govt. department only. They are tax compliant and doing the business from last 20 years and there is/was no default in GST/Service Tax/VAT/Income-Tax

38. They have fully paid the amount of tax from 11.07.2019 to 24.09.2019 through GSTR 3 B and also paid applicable interest for the period January 2019 to May 2019 and hence it was requested to not to levy any penalty u/s.74(5) of the CGST Act, 2017. They have paid full tax, interest and late fees for the period from Jan 2019 to May 2019 i.e.CGST Rs.1,52,23,694/-, SGST Rs.1,52,23,694/- interest thereon Rs.7,36,970/- and the late fee of Rs.31,150/- voluntarily and requested to appropriate against the GST, interest and late fee. Hence no amount is payable towards the GST, interest and late fees. The issue left out in their case is only that whether penalty should be levied or not. They have not filed the GST returns and not paid the tax for the reasons explained above and was later paid the duty, interest, late fee and Returns as discussed above. Therefore the issue left out in their case is only that whether penalty should be levied or not.

39. In this connection, while going through the available documents and details of the case, I find that the assessee did not discharge their liability to pay GST in time. They also have not filed their GST1 \* GSTR3B in time with an intention to not to pay the duty and file the statutory returns. It is a fact that this non payment was came to the light only when the officers approached the assessee. The assessee paid the outstanding liability only after visit of the officers which explicitly shows that they were not intended to pay the GST collected from their clients with an intention to suppress the facts. In view of this explicit facts, it is clear that they have violated the provisions of the GST but not depositing the GST collected, by not filing the statutory returns in time. In the circumstances the assessee is liable to pay penalty for these lapses occurred from their side.

40. In view of the above, it appeared that the said tax payer had contravened the following provisions of the CGST Act, 2017:

- a. Section 9 of the CGST Act 2017 read with Section 9 of GGST 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 intent to evade payment of Tax;
- b. Section 13 of the CGST Act 2017 read with Section 13 of GGST Act, 2017 in as much as they failed to pay the appropriate GST on supply of taxable services made by them in time as per the provision stipulates that the payment of Goods and Services Tax payable on supply of the goods should be either the date of issue of invoice or the date of receipt of payment whichever is earlier. Accordingly, M/s Arth Infrastructure was under obligation to make payment of GST at the time as stipulated in section 13 of the CGST Act 2017 read with Section 13 of GGST Act, 2017;
- c. Section 15 of the CGST Act 2017 read with Section 15 of GGST Act, 2017 in as much as they suppressed the tax liability by not declaring the same in their periodical returns in time with an intent to evade payment of Tax.
- d. Section 37 of the CGST Act 2017 read with Rule 59 of the CGST Rules 2017 and similar provisions of GGST Act 2017 in as much as they failed to file the GSTR-1 returns for the period from Janaury-2019 to May-2019 with an intent to evade payment of Tax.
- e. Section 39 of the CGST Act 2017 read with Rule 61 of the CGST Act2017 and similar provisions of GGST Act 2017 in as much as they failed to file GSTR-3 returns for the period from Janaury-2019 to May-2019with an intent to evade payment of tax.
- f. Section 49(8) of the CGST Act 2017 read with Section 49(8) of the GGST Act, 2017in as much as they failed to discharge their tax liability with an intent to evade payment of tax;

23

g. Section 59 of the CGST Act, 2017 read with Section 59 of the GGST Act, 2017 in as much as they failed to self-assess their tax liability with an intent to evade payment of tax;

41. From the above facts, I hold that the said tax payer is liable to pay GST amounting to Rs. 3,04,47,388/- ( CGST Rs.1,52,23,694/- + SGST Rs. 1,52,23,694/-) for the period from January 2019 to May 2019. Therefore GST amounting to Rs. 3,04,47,388/- (CGST Rs.1,52,23,694/- + SGST Rs. 1,52,23,694/-) is liable to be recovered from the said tax payer under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 along with applicable interest under the provisions of Section 50 of the Act, *ibid*.

42. Every registered taxable person shall himself assess the taxes payable and furnish a return for each tax period. This means GST continues to promote self-assessment just like the Excise, VAT and Service Tax under current tax regime. Accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the tax payer; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. The collection of CGST, SGST and IGST from the clients of the said tax payer and not depositing the same to the government exchequer during the period from January 2019 to May 2019 and also not filing of GSTR-1M and GSTR-3B returns for the said period came to light during the course of investigation initiated by DGGI - AZU. Had the investigation not been initiated by DGGI - AZU and inspection of their premises not conducted, the matter would have not come to the notice of the department. Collection of tax from their clients and non-payment of tax is utter disregard to the requirements of law and the breach of trust deposited on them which is outright act of defiance of law by way of suppression, concealment & non-furnishing value of taxable service with intent to evade payment of tax. All the above facts of contravention on the part of the said assessee have been committed with an intention to evade the payment of tax by suppressing the facts. Therefore, GST amounting to Rs. 3,04,47,388/- (CGST Rs.1,52,23,694/- + SGST Rs. 1,52,23,694/-) for the period January 2019 to May 2019 is required to be recovered from them under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017.

43. Further, as per Section 50(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017, every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed is liable to pay the interest at the applicable rate of interest. Since the said tax payer had failed to pay their Tax liabilities in the prescribed time limit, I find that the said tax payer is liable to pay the said amount along with interest. Thus, the said Tax is required to be recovered from the said tax payer along with interest under Section 50(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017. I also find that the interest of Rs.7,36,970/- already deposited by the assessee is also required to be appropriated against the interest liability.

44. As far as imposition of penalty under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 as they failed to pay the tax with the intend to evade the same. It is seen from the facts that have emerged during the investigation of the instant case that M/s Arth Infrastructure have knowingly failed to file the stipulated returns and knowingly suppressed the actual value of the services supplied by them and thereby have knowingly failed to correctly self-assess the tax payable with an intent to evade payment of proper tax. In order to suppress their taxable income from the department, they had not filed the GST Returns for the period from Jan-2019 to May-2019. The facts about collecting and not depositing GST were detected only when the department (DGGI) initiated the present investigation. This clearly appears to be done intentionally in order to suppress their actual tax liability for evading GST.

45. 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 Arth Infrastructure, it shows their intent to evade payment of GST by an act of omission in as much as M/s Arth Infrastructure though being well aware of the unambiguous provisions of the CGST, 2017 read with GGST Act, 2017 and Rules made thereunder, failed to disclose to the department at any point of time, their tax liability on which GST was collected but not paid by them, by way of not filing their GST Returns viz. GSTR-1 & GSTR-3B for the period from January-2019 to May-2019 before initiation of the present investigation. This amounts to wilful suppression of facts with the deliberate intent to evade payment of GST. The total evasion of GST for the period from January-2019 to May-2019 on the entire income received towards making taxable supplies by M/s Arth Infrastructure came to the knowledge of the DGGI only due to specific investigations carried out as spelt out earlier. Therefore, the demand of tax not paid / short paid as envisaged under proviso to Section 74 of the CGST Act, 2017 read with Section 74 of the GGST Act, 2017 appears to be invocable to demand GST for the period from January-2019 to May-2019. It is also a fact that they had deliberately suppressed the value of goods supplied by them, with an intent to evade the proper payment of tax on its due date. These facts would not have come to light had the department not initiated inquiry against the said tax payer. The assessee had thus, willfully suppressed the actual provision of taxable value of goods supplied by them with an intent to evade the Tax. Hence, I find that this is a fit case to impose penalty equivalent to the tax under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017.

46. In this regard, I rely upon the decision of Larger Bench of Hon'ble Supreme Court in the case of UIO Vs Dharmendra Textile Processors -2008 (231)ELT 3(SC) and further clarification in the case of M/s Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C) wherein, it was, inter alia held that:

“23. The decision in Dharmendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no jurisdiction in quantifying the amount and penalty must be imposed equal to the duty determined under sub section (2) of Section 11 A. that is what Dharmendra Textile decides”. With the above observation, the Hon’ble Apex court held that mens rea is not an essential ingredient to impose penalty and there is no discretion available on quantum of penalty imposable under that section

47. As far as imposition of penalty under Section 122(2)(b) and 122(1)(iii) of the CGST Act, 2017 read with Section 122(2)(b) and 122(1)(iii) of the Gujarat GST Act, 2017 is concerned, I find that Section 75(13) of the CGST Act, 2017 stipulates that 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. Hence, I refrain from imposing any penalty under Section 122(2)(b) and 122(1)(iii) of the CGST Act, 2017 read with Section 122(2)(b) and 122(1)(iii) of the Gujarat GST Act, 2017.

48. In view of the above discussion and findings, I pass the following order :-

O R D E R

- (i) I confirm the demand of GST amount of Rs. 3,04,47,388/- (CGST Rs.1,52,23,694/- + SGST Rs. 1,52,23,694/-) (Rupees Three Crore Four Lakh Forty Seven Thousand Three Hundred Eighty Eight only) and order to recover the same from them under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;
- (ii) I order to appropriate the GST amount of Rs. 3,04,47,388/- (CGST Rs.1,52,23,694/- + SGST Rs. 1,52,23,694/-) (Rupees Three Crore Four Lakh Forty Seven Thousand Three Hundred Eighty Eight only) paid through ITC/Cash against the demand of GST liability as per para (i) above;
- (iii) I order to demand Interest at the appropriate rate and order to recover the same from them under Section 50 (1) of the CGST Act, 2017 read with Section 50 (1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017. Since, the assessee has paid the interest of Rs.7,36,970/-, I order to appropriate the same against the interest demanded.
- (iv) I impose a penalty of Rs. 3,04,47,388/- (Rupees Three Crore Four Lakh Forty Seven Thousand Three Hundred Eighty Eight only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017. In terms of sub section (11) of Section 74 ibid, 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.

- (v) Since a penalty under Section 74 is already imposed, I refrain from imposing any penalty under Section 122(2) (b) and read with Section 122(1)(iii) of the CGST Act, 2017, read with Section 122 (2)(b) and read with Section 122(1)(iii) of the Gujarat GST Act, 2017, read with Section 20 of IGST Act, 2017, in terms of Section 75 (13) of the CGST Act, 2017.
- (vi) I order to recover applicable late fee under Section 47 of CGST Act, 2017 read with Section 47 of GGST Act, 2017.
- (vii) I order to appropriate the late fee of Rs.31,150/- already deposited by the assessee against the late fee.

49. Accordingly the SCN No.DGGI/AZU/GR.A/36-28/2021-22 dated 29.06.2021 is disposed off.

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

BY SPEEDPOST/MAIL

F.No. GST/15-264/OA/2021

Dt. .07.2023

To  
M/s Arth Infrastructure,  
Plot 9A, Radhey Plotting, Nr Gujarat High Court,  
Nr.Chandan Party Plot, Sola,  
Ahmedabad, Gujarat-380060.

Copy to:

1. The Joint Director,  
Directorate General of Goods & Service Tax Intelligence, Zonal Unit, 6<sup>th</sup> & 7<sup>th</sup> Floor, - - The Adress Bldg., Near Sola Flyover, Science City Road, Sola, Ahmedabad-380060
2. The Commissioner, Central GST & Central Excise, Ahmedabad North.
3. The DC/AC, Central GST & Central Excise, Division- VII Ahmedabad North.
4. The Superintendent, Range-III, Division-VII, Central GST & Central Excise, Ahmedabad North with a request to create GST DRC 7 and upload the same alongwith OIO electronically in terms of DSR advisory No.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
5. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
6. Guard File.