



<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 & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. GST/15-64/OA/2022

DIN-20240364WT000000C28D

आदेश की तारीख/Date of Order: - 06.03.2024
जारी करने की तारीख/Date of Issue :- 06.03.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 91/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.

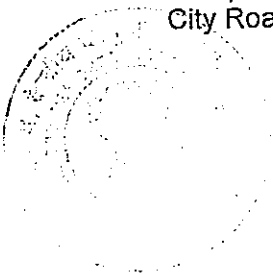
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (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 रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. GADT/TECH/SCN/GST/189/2022 dated 15.03.2023 issued to M/s Gayatri Construction Company, having GSTIN-24ABXPP1801E1ZQ, located at 508-509, 5, Vraj Valencia, Science City Road, S.G. Highway, Sola, Ahmedabad, Gujarat-380060.



BRIEF FACTS OF THE CASE,

M/s **Gayatri Construction Company**, a proprietorship firm, **holding** GSTN No.- 24ABXPP1801E1ZQ having their principal place of business located at 508-509, 5, Vraj Valencia, Science City Road, S. G. Highway, Sola, Ahmedabad, Gujarat-380060 (herein after referred as 'the said taxpayer' for the sake of brevity) are engaged in supply of work contract services of construction services and paying the GST at the rate of 18% as per provisions of CGST Act,2017 and rules made thereunder. The taxpayer has paid GST at the rate of 12% for the supply to the Department of Space (Space Applications Centre of ISRO) and for the supply relating to Support services to exploration, mining or drilling of petroleum crude or natural gas or both w.e.f. 01.10.2019.

INTRODUCTION OF THE CASE:-

2. GST Audit of the said taxpayer for the period July,2017 to March,2020 was conducted in the month of June, 2022 and pursuant to completion of Audit, Final Audit Report No.:- GST 548/2022-23 dated 20.09.2022 was issued to the said taxpayer. In the said Audit Report, the following GST Revenue Paras remained unsettled which are discussed in detail in subsequent paras. In this show cause notice all sections/ provisions of CGST Act, 2017 (hereinafter referred to as "the said Act") have been referred as 'pari materia' to the same parallel provisions under the Gujarat GST Act, 2017. Further, provisions of IGST Act, 2017 as made applicable vide Section 20 thereof in reference to applicability of provisions of CGST Act, 2017. The revenue paras detected are discussed in subsequent paras.

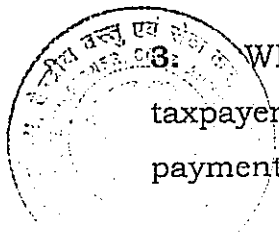
SCRUTINY AND ANALYSIS OF DOCUMENTS/RECORDS DURING AUDIT: -

2.1. Pursuant to completion of Audit, total 12 number of GST revenue paras were raised. The said Tax Payer have got 9 Revenue paras settled. GST Revenue Para No. 4, 11 & 12 remained unsettled which are discussed in detail in subsequent paras.

DISCUSSION OF UNSETTLED REVENUE PARAS :-

REVENUE PARA 04: NON-PAYMENT OF INTEREST ON LATE PAYMENT OF GST.

Whereas, during the course of audit, it has been observed that the taxpayer has filed some of the GSTR-3B returns delayed and thus made payment of GST after due dates. Therefore, they are required to pay the interest



as per Section 50(1) of CGST Act, 2017 on the portion of GST paid through Electronic Cash ledger as detailed below:

Table - 1

(Amount in Rs.)

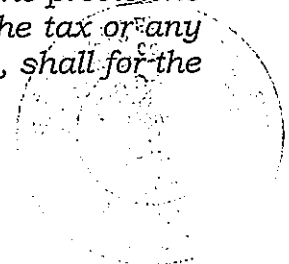
Period	Tax paid through cash ledger		Delayed days	Interest @18%		
	CGST	SGST		CGST	SGST	Total
Mar-18	3842385	3848904	80	151590	151847	303437
Oct-18	1586124	1588305	113	88388	88510	176898
Nov-18	397400	397400	83	16266	16266	32532
Mar-19	2471456	2472158	62	75566	75587	151153
Apr-19	783227	783227	79	30514	30514	61027
Jul-19	285306	298195	32	4502	4706	9208
Aug-19	1065964	1066007	49	25758	25759	51518
Sep-19	238738	238738	31	3650	3650	7299
Oct-19	911614	911614	26	11689	11689	23377
Nov-19	284792	284792	3	421	421	843
Dec-19	464388	464388	1	229	229	458
Jan-20	31779	31916	4	63	63	126
Feb-20	260850	261144	65	8361	8371	16732
Mar-20	1575281	1579456	55	42727	42840	85567
Total tax paid through cash	14199304	14226244				
Total Interest to be paid				459724	460452	920176

3.1 Whereas, from the above table, it appeared that during the period from March 2018 to March, 2020, the said taxpayer had paid CGST of Rs.1,41,99,304/- and SGST of Rs.1,42,26,244/- from their electronic cash ledger, on a date later than the due date specified under Section 39(1) of the said Act, which is the 20th day of the succeeding month or as extended vide notification from time to time. Therefore, the said taxpayer have deliberately failed to discharge their GST liability on or before the due date of GST payment. Thus, it appeared that the said delayed payment of GST totally amounting to Rs.2,84,25,548/- (CGST Rs.1,41,99,304/- and SGST Rs.1,42,26,244/-) and the same is required to be demanded under Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017. However, the said taxpayer has paid evaded amount, and since the said taxpayer has paid this amount, the same is required to be adjusted and appropriated towards the proposed demand of GST, the interest and penalty on the same under Section 50(1) and 74(1) respectively of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 appeared recoverable from the said taxpayer on the delayed payment of GST as shown in table-1 above.

3.2 In view of the above, it appeared that the said taxpayer has deliberately contravened the provisions of CGST Act, 2017 with intent to delay payment of GST of Rs.2,84,25,548/-

3.3 Section 50 of CGST Act 2017: Interest on Delayed Payment of Tax

“(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the



period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council. Interest on delayed payment of tax.

(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.”

3.4 Accordingly, it appeared that interest liability of **Rs.4,59,724/-** on delayed payment of CGST, interest liability of **Rs.4,60,452/-** on delayed payment of SGST, as detailed in the table-1 above, total **Rs.9,20,176/-** is required to be recovered from them in terms of Section 50(1) of CGST Act, 2017/Gujarat GST Act, 2017.

3.5 In light of the above facts, it appeared that the taxpayer has failed to discharge their tax liability within stipulated dates and they have deliberately retained tax collected but not paid to the Government account running into Crore of rupees for a period ranging from one day to almost four months, therefore, the taxpayer also appeared liable for penalty under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017.

REVENUE PARA 11:- ITC availed wrongly on credit note issued against sale by the taxpayer

4 Whereas, during the course of audit on verification of financial records of the taxpayer, it has been observed that the taxpayer has issued credit notes against their supply of services to ONGC, IFFCO Ltd. and Tata Project Limited. The taxpayer has wrongly availed the ITC on the credit notes issued to their buyer. The details of such Credit notes are as below:

Table – 2

(Amount in Rs.)

Date	Particulars	Voucher No.	Voucher Ref. No.	Taxable value	C GST	S GST
30-Jun-18	O.N.G.C (2017-18)	1	12 b	1929094	173619	173619
30-Jun-18	O.N.G.C (2017-18)	2	498g	523859	47147	47147
31-Jul-18	Oil Natural Gas Ltd-Cambay-153G	3	6001H	30427	2738	2738
30-Sep-18	Iffco Ltd –Kalol	4	102	181311	16318	16318
30-Sep-18	Iffco Ltd –Kalol	5	103	232958	20966	20966
30-Sep-18	Iffco Ltd –Kalol	6	102	270985	24389	24389
01-Nov-18	Tata Projects Limited	7	E21TT2018	8558	770	770
01-Nov-18	Tata Projects Limited	8	E16TT2018	11602	1044	1044
28-Feb-19	Iffco Ltd –Kalol	9	26as2	459381	41344	41344
30-Mar-19	O.N.G.C (2017-18)	10	493	277734	24996	24996
01-Nov-19	O.N.G.C (2017-18)	1	661G	2032717	182945	182945
01-Nov-19	O.N.G.C (2017-18)	2	636G	441441	39730	39730
Total				6400067	576006	576006

4.1. The credit note issued against sale is not eligible documents to avail the ITC as per Section 16 of CGST Act, 2017. There is a provision of reducing tax liability in cases of reduction in sales under Section 34 of CGST Act, 2017 by showing the same in prescribed GST return but there is no provision of availing ITC back.

4.2. Therefore, the taxpayer is required to reverse such ineligible ITC along with applicable interest under Section 50 and penalty under Section 74 of CGST Act, 2017 as detailed below:

Table – 3 (Amount in Rs.)

Period	Tax		Interest		Penalty	
	CGST	SGST	CGST	SGST	CGST	SGST
2018-19	353331	353331	TBA	TBA	TBA	TBA
2019-20	222675	222675	TBA	TBA	TBA	TBA
Total	576006	576006	TBA	TBA	TBA	TBA

Section 34. Credit and debit notes.-

(1) ¹[Where one or more tax invoices have] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient ²[one or more credit notes for supplies made in a financial year] containing such particulars as may be prescribed.

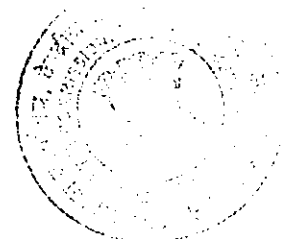
(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than ³[the thirtieth day of November] following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

(3) ⁴[Where one or more tax invoices have] been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient ⁵[one or more debit notes for supplies made in a financial year] containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation.-For the purposes of this Act, the expression "debit note" shall include a supplementary invoice.



Rule 36 of CGST Rules, 2017**"Rule 36. Documentary requirements and conditions for claiming input tax credit.-**

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

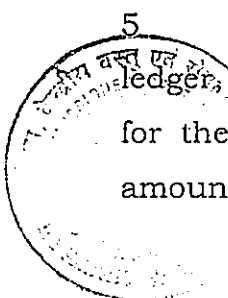
(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

4.3 Accordingly, in view of the above provisions, it appeared that the taxpayer has contravened the provisions of Section 16 of CGST Act, 2017 read with Rule 36 of CGST Rules, 2017, in as much as, they have availed ITC on the strength of credit note issued by them to their buyers which is in contravention of Section 34 of CGST Act, 2017 and this is not the specified document under the said rule. Therefore, it appeared that ITC amounting to Rs.11,52,012/- (CGST + SGST) is required to be demanded and recovered from the taxpayer in terms of Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017. The taxpayer has failed suo moto to reverse the ITC and file proper and correct returns, therefore, interest on the said ITC in terms of Section 50(3) of CGST Act, 2017/Gujarat GST Act, 2017 appears recoverable from the taxpayer from the date of taking the said ITC and till the date of reversing the same. The taxpayer appeared to have deliberately taken and utilized the ITC on the credit note issued by them to their buyers as the credit note so issued is not eligible document for availing ITC. Therefore, the taxpayer appears liable for penalty under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017.

REVENUE PARA 12:- Non-payment of GST on the supply of services for which income is booked in the books of accounts:

5 During the course of audit, on verification of Sales register, Sales ledger, Trial Balance, Audited Balance Sheet and GSTR 3B as well as GSTR 9 for the audit period, it is observed that the taxpayer has not shown the amount/value of services, in the GSTR returns filed for discharging GST



liability on it, which are supplied by the taxpayer and income of the same is booked by them in their books of accounts as well as the recipient of services had also booked their expenses in the books of accounts and shown the amount as paid/credited to the supplier and also deducted TDS against the amount shown as paid/credit to the supplier. Details of income booked in the books of account by the supplier (taxpayer), against the services supplied by them and not shown the same in GSTR 3B and GST is not paid on it is shown in the table below:

Table - 4

(Amount in Rs.)

Period	Gross receipt (IIFCO)	Gross receipt of Department of Space	Gross receipt ONGCAH MO00282 C	Gross receipt ONGC Cambay Brd00015 3G	Gross receipt Baroda-Brdd0013 4B	Gross receipt IOCL	Gross receipt ONGC Mehsana-AHMO00421 B	Total receipt/income
1	2	3	4	5	6	7	8	9=2+3+4+5+6+7
2017-18	514026	0	99443247	0	2000000	3464814	300000	105722087
2018-19	1747582	500000	80366797	4016193	0	0	0	86630572
2019-20	625960	0	50732502	4800000	1794000	0	1039831	58992293
Total	2887568	500000	230542546	8816193	3794000	3464814	1339831	251344952

5.1. Details of GST payable on gross receipt shown as income in the books of accounts by the taxpayer (supplier) is mentioned in the table below:

Table - 4.1

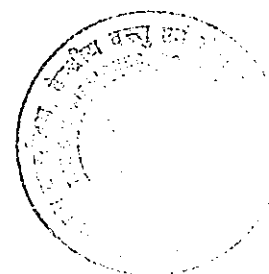
(Amount in Rs.)

Period	Gross receipt booked as income in the books of accounts by the taxpayer against supply of services	CGST payable	SGST payable	Total GST short paid
1	2	3 = 2*9%	4 = 2*9%	5 = (3+4)
2017-18	105722087	9514988	9514988	19029976
2018-19	86630572	7796751	7796751	15593502
2019-20	58992293	5309306	5309306	10618612
Total	251344952	22621045	22621045	45242090

Table - 4.2 (Amount in Rs.)

Period	Tax		Interest		Penalty	
	CGST	SGST	CGST	SGST	CGST	SGST
2017-18	9514988	9514988	TBA	TBA	TBA	TBA
2018-19	7796751	7796751	TBA	TBA	TBA	TBA
2019-20	5309306	5309306	TBA	TBA	TBA	TBA
Total	22621045	22621045	TBA	TBA	TBA	TBA

5.2. Regarding time of supply of services, Section 13 of CGST Act, 2017 provides as follows:



Section 13. Time of Supply of Services.-

(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 earliest 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 ^[****] 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

^[****] Omitted "sub-section (2) of" by The Central Goods and Services Tax (Amendment) Act, 2018 (No.31 of 2018) – Brought into force w.e.f. 01st February, 2019. Till 31.01.2019 time limit for issuing tax invoice will be 30 days as per Section 31(2) read with Rule 47 of the CGST Rules, 2017 and thereafter Section 31 (5) (a) will be effective.

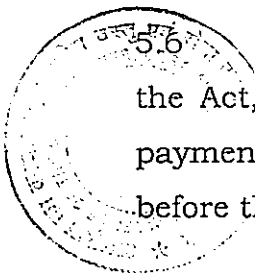
5.3 As per the Agreement cum Tender/Bidding document for construction services to be rendered to M/s. ONGC and other service recipient, it is prescribed under the head "Remuneration and Terms of Payment" that Invoices will be submitted monthly by the contractor to Corporation i.e. recipient of the services **and payment shall be made within 21 calendar days from the date of receipt of invoice**. This indicated the periodicity of invoices to be raised by the contractor (and the payment time period) as per Section 31(2) read with Rule 47 of the CGST Rules, 2017 for the period till 31.01.2019 time period for issuing Tax invoice is 30 days period and as per Section 31(5) (a) of the Act for period from 01.02.2019 onwards.

(a) Sub-section (2) of Section 31 of CGST ACT, 2017 provides that "a registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed".

5.4. Further, Rule 47 of CGST Rule, 2017 prescribes 30 days period for issuing tax invoice till 31.01.2019.

5.5. In view of above of provision of Sub-section (2) of Section 31 of the ACT read with Rule 47 of the Rules, the period prescribed for issuing invoice is '30 days' for transaction prior to 31.01.2019. But the taxpayer has not issued invoices within 30 days period against the work completed for which they have booked income/provided for in their books of accounts.

For the period 01.02.2019 and onwards as per Section 31(5)(a) of the Act, in case of continuous supply of services- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;



5.7 For the period from 01.02.2019 onwards as per the contract, in the instant case, the due date of payment is ascertainable from the contract which is discussed in para above. Therefore, the taxpayer is required to issue invoice as per Section 31(5)(a) of the Act which the taxpayer has failed to do.

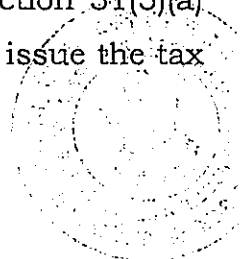
5.8 As per clause (b) of sub-section (2) of Section 13 of the CGST ACT, 2017, Section 31(5)(a) and read with Rule 47 of the CGST Rules, 2017 tax invoice is not issued within prescribed time period, hence the time of supply of service appears to be **the date of provision of service.**

6. The fact that the recipient of services has also shown the receipt of services in their books of account and also deducted TDS against the amount shown as paid /credited to the supplier, strengthens the case that the contractor has made supply to the corporation/recipient at the material time. Therefore, it appeared that the taxpayer is required to pay the total GST amounting to Rs.4,52,42,090/- [CGST of Rs.2,26,21,045/- & SGST of Rs.2,26,21,045/-] along with applicable interest under section 50(1) of the CGST Act, 2017/Gujarat GST Act, 2017 and penalty under Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017.

CONTRAVENTIONS

7 In light of the facts discussed herein above in Para 3 to 6 and the material evidences available on records, it appeared that M/s. Gayatri Construction Co. have contravened the following provisions of the CGST Act 2017:

- The taxpayer appeared to have contravened the provisions of Sections, 39, of the CGST Act, 2017 in as much as they failed to furnish the returns in prescribed time and contravened the provisions of Sections 39(7) of the Act read with the provisions of Rules 85(3) of the Central/State Goods and Services Rules, 2017 ('Rules') by not making payments for certain months in prescribed time.
- The tax payer appeared to have contravened the provisions of Section 16 of the CGST Act, 2017 & corresponding entry of Gujarat State GST Act, 2017 read with section 34 of CGST Act, 2017 & corresponding entry of Gujarat State GST Act, 2017 in as much as they failed to follow the procedure to reduce the ITC liabilities in their returns on issuance of credit notes and taken ITC wrongly on issuance on such credit notes.
- The taxpayer appeared to have contravened the provisions of clause (b) of sub-section (2) of Section 13 of the CGST ACT, 2017, Section 31(5)(a) read with Rule 47 of the Rules, in as much as they failed to issue the tax invoice within prescribed time period.



- The taxpayer appeared to have contravened the provisions of section 15 of the CGST ACT, 2017 as much as they failed to add the value of supply of services in their Tax Invoices.
- The tax payer appeared to have contravened the provisions of section 59 of Central Goods and Service Tax Act, 2017 and corresponding provisions of Gujarat State GST Act, 2017, in as much as they have failed to self-assess the taxes payable under the provisions of the Act.
- Section 50(1) of the said Act, in as much as they failed to pay interest on late payment of tax deposit in Government Account;

8 Quantification of GST evasion, as mentioned in above 3 to 6 paras like irregular/inadmissible ITC wrongly availed and utilized by the said taxpayer, interest applicable on late payment of the dues, short paid / non-payment of tax on supply of services is as below.

Table - 5

(Amount in Rs.)

Sr. No.	Revenue Para No.	CGST	SGST	Paid		Interest Demand	
		Demand	Demand	CGST	SGST	CGST	SGST
1	R.P.4	1,41,99,304	1,42,26,244	1,41,99,304	1,42,26,244	459724	460452
2	R.P.11	5,76,006	5,76,006	0	0	TBA	TBA
3	R.P.12	2,26,21,045	2,26,21,045	0	0	TBA	TBA
	Total	3,73,96,355	3,74,23,295	1,41,99,304	1,42,26,244	459724+ TBA	460452 + TBA

8.1 As discussed herein above, in Para 3 to 8 with respect to Revenue Para 04,11 & 12 it appeared that M/s. Gayatri Constructions Co. has contravened Section 13,15, 16, 31, 39, 59 and 50 of the CGST Act,2017 as well as Rule 47 & 85 of CGST Rules, 2017. They have not paid interest on cash component, they have short paid /not paid the tax amount on supply of services as well as they have wrongly availed and utilized irregular/inadmissible ITC to the tune of Rs.7,48,19,650/-(CGST+SGST) and interest liability of Rs.9,20,176/-(CGST+SGST) and plus to be ascertained for demand of tax in respect of Revenue Para 11 and 12 for the period July,2017 - March,2020.

INVOCATION OF SECTION 74 OF THE CGST ACT, 2017

Section 74 of the CGST Act, 2017 :

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

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

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

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

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

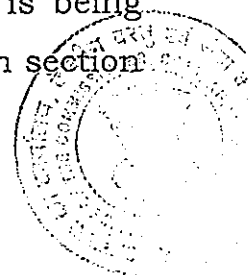
(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date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

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

9. As discussed herein above, it appeared that they have contravened section 74 of CGST Act, 2017 by the act of commission and omission which has resulted in non payment or short payment or late payment of GST totally amounting to Rs.7,48,19,650/- (CGST+SGST) and interest liability of Rs.9,20,176/- (CGST+SGST) plus to be ascertained for demand of tax in respect of Revenue Para 11 and 12 for the period July,2017 – March,2020.

9.1 In light of the above facts and evidences, M/s. Gayatri Constructions Co. has contravened various provisions of CGST Act, 2017 and Rules made thereof. Therefore, it appeared that section 74 of CGST Act, 2017 is invocable in this audit case.

10. In the instant case, the taxpayer has neither paid the evaded liability before nor paid the same after commencement of audit by CGST Audit Commissionerate Ahmedabad for revenue para no.11 & 12 and not paid total liability of interest and penalty for revenue para no. 4. Hence, it appears that they were required to pay applicable interest on the entire amount of the tax demand raised under Section 50(1) / 50 (3) of the CGST Act, 2017. Therefore, Demand-Cum-Show Cause Notice is being issued in this case under Section 74 of CGST Act, 2017 read with section 74 of Gujarat GST Act, 2017 to protect Government Revenue.



11. 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 taxpayer.

12. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act' 2017 /Gujarat GST Act'2017 which reads as "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for the tax period as specified under section 39." It appears that the said taxpayer suppressed the wrong availment and utilization of irregular ITC on various counts; non-payment of applicable interest and thereby it appears has knowingly failed to correctly self-assess tax payable with an intent to evade payment of proper tax. In the scheme of self-assessment, the Central Audit Department Ahmedabad comes to know about the supplies made and ITC wrongly availed and utilized only during the scrutiny of the financial records and statutory returns filed by the taxpayers under the statute. Therefore, it places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns.

13 The scrutiny of information/data/record of the taxpayer verified during the course of audit, it appears that the taxpayer had short paid GST; wrongly availed irregular ITC; not discharged its interest liability and it appears that the taxpayer's liabilities are not properly discharged in GST returns. The above said wrong availment of ITC; non-payment of interest is unearthed after audit was conducted by officers of Central Tax Audit, Ahmedabad and therefore they had the wrong availment and utilization of ITC; then non-payment of interest had not been detected during audit, it would have remained unnoticed. All the above facts of contravention on the part of the Taxpayer have been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded from them under Section 74(1) of the CGST Act, 2017 read with Section 74(1) of Gujarat GST Act, 2017 by invoking extended period of five years.

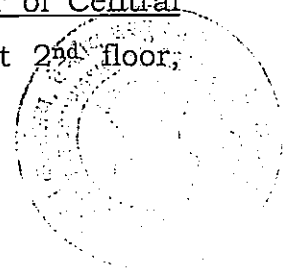
14. Further, it appeared that the taxpayer had not paid/reversed the wrongly availed and utilized ITC in the prescribed due dates. Also, they had not paid applicable interest on the wrongly availed irregular ITC. Hence, it appeared they had wrongly availed ITC of CGST/SGST/IGST. These supplies; late payments of tax on which interest was due; wrongly availed ITC were not shown in their GSTR 3B returns. It, therefore, appeared that there is a case of suppression of facts with intent to evade the payment of tax; payment of interest; wrong availment and utilization of ITC. It appeared that short paid CGST/SGST and wrongly availed CGST/SGST is to be demanded/ recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act 2017. Similarly, wrongly availed and utilized irregular ITC of CGST/SGST; non-payment of applicable interest appears liable to be demanded/ recovered from them under the provisions of Section 74(1) and Section 50(1) of the CGST Act, 2017 /Gujarat GST Act, 2017.

15. By their various acts discussed above, the said taxpayer appeared to have rendered themselves liable for penal action under Section 74 (1) of the CGST Act' 2017 for failure to file proper statutory GST returns duly discharging the proper tax liability, failure to pay tax, failure to self-assess the tax liability, wrong availment and utilization of irregular/inadmissible ITC and suppression of facts and contravention of various provisions of the CGST Act, 2017 and rules made there under with intent to evade payment of Goods and Services Tax; thereby it appears penalty under Section 74(1) of the CGST Act, 2017 is to be invoked.

16. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC-01A was issued to the said taxpayer on 26.12.2022 intimating their liability under Section 74(5) of the CGST Act, 2017 or to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 03.01.2023.

17. The said taxpayer has not made any written submissions in response to DRC-01A.

18. Therefore, M/s. Gayatri Construction Co., 508-509, 5, Vraj Valencia, Science City Road, S. G. Highway, Sola, Ahmedabad, Gujarat-380060, were called upon to show cause to the Additional/Joint Commissioner of Central Tax, Ahmedabad North Commissionerate, having their office at 2nd floor;



Custom House, Opposite Old High Court, Near All India Radio, Navrangpura, Ahmedabad – 380 009 as to why:

- i. GST amounting to Rs.2,84,25,548/- (CGST Rs.1,41,99,304/- + SGST Rs.1,42,26,244/-) (Rupees Two Crore Eighty four Lakh Twenty five Thousand Five Hundred Forty eight only) as per Revenue Para 4, should not be demanded and recovered from the taxpayer under Section 74(1) of CGST Act, 2017/Gujarat GST Act, 2017 ;
- ii. GST amounting to Rs.2,84,25,548/- (CGST Rs.1,41,99,304/- + SGST Rs.1,42,26,244/-) (Rupees Two Crore Eighty four Lakh Twenty five Thousand Five Hundred Forty eight only) already paid by the taxpayer should not be adjusted and appropriated towards the demand proposed at 18(i) above ;
- iii. Interest amounting to Rs.9,20,176/- (CGST Rs.4,59,724 + SGST Rs.4,60,452) being late payment of tax (cash component) as per Revenue Para 4, should not be demanded and recovered from them, under Section 50(1) of the CGST Act, 2017/Gujarat GST Act, 2017 on demand of GST at 18(i) above;
- iv. ITC amounting to Rs.11,52,012/- (CGST Rs. 576006+ SGST Rs.576006/) (Rupees Eleven Lakh Fifty Two Thousand & Twelve Only) as per Revenue Para 11, should not be disallowed and recovered from them under Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017;
- v. Interest should not be charged and recovered from them under the provisions of Sections 50(3) of the CGST Act, 2017/Gujarat GST Act, 2017, on the proposed recovery of irregular ITC at para 18(iv) above;
- vi. GST amounting to Rs.4,52,42,090/- (CGST Rs. 2,26,21,045/- + SGST Rs. 2,26,21,045/-) (Rupees Four Crores Fifty Two Lakh Forty Two Thousand & Ninety only), as per Revenue Para 12, should not be demanded and recovered from them under section 74(1) of the CGST Act,2017/Gujarat GST Act, 2017;
- vii. Interest should not be charged and recovered from them, under the provisions of Section 74(1) of the CGST Act, 2017/Gujarat GST Act 2017, on the proposed recovery of tax at para 18(vi) above;
- viii. Penalty should not be imposed on them on ITC and GST proposed to be demanded at para 18(i), (iv) & (vi) above under the provisions of section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017.



Defence Submission :-**19. The said taxpayer have submitted their written submission vide their letter dated 07.04.2023****19.1. Reply to Revenue Para-04: Non-payment of Interest on Late Payment of GST**

It's true that there were delay in payment of GST. The reason was due to late receipt of payments from debtors of which work were done and so they have was facing financial crises and so they couldn't pay the GST in time and ultimately interest on late payment of GST was due. But after GST audit they had made payment of interest on late payment of GST in two instalments as and when funds were available for payment of Interest via DRC-03.

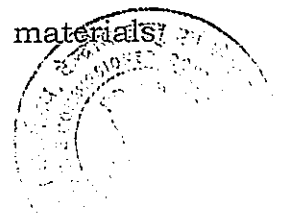
19.2. Reply to Para-11:- ITC Availed wrongly on credit note issued against sales by the taxpayer.

19.2.1 They had issued RA bills to the customers after completion of work. But sometimes it happed that there were always difference in the billed amount and final amount as calculated by the customers i.e ONGC/ IOCL / IFFCO etc. In this case also due to change in rate difference / quantity difference the companies had deducted certain amount from the final bill amount against which they had issued credit notes to the customers. But while filing GST returns i.e. GSTR-3B clerical mistake was made i.e. instead of deducting the credit notes amount from sales value, amount was added along with ITC. The above said difference was only and only due to clerical mistake. No credit was taken as excess in GSTR 3B.

19.2.2. The net effect in GST payable amount was remained same, whether they had reduced the output liability or increased the ITC in GSTR 3B. It was correct that the correct effect should be by reducing the output liability only. As due to above clerical error there was no change in the amount of GST net payable as well as there was no such intention to avoid GST liability and requested to rectify the para.

19.3. Reply to Revenue Para-12:- Non-payment of GST on supply of services for which income is booked in the books of accounts.

19.3.1. They had brief about their business and some of the accounting treatments which they have to incorporate in their books of accounts due to counter treatments of companies of which work had been done. They were engaged in the business of work contract services. i.e. construction of buildings, laying of pipelines, pump house, road construction etc. During the audit period works of ONGC, IFFCO and IOCL were done along with materials



and labour.

19.3.2. The contracts were allotted through tendering process. On completion of work RA bills were issued to the companies and payments were received after deduction of TDS, Security deposits, labour cess and other deductions. The process is followed by the companies during the year.

19.3.3. But at the end of the year the companies i.e. ONGC / IOCL make provision in their books of accounts for **work in progress** at the year-end on which TDS was also been deducted (For which ONGC uses terminology "**outstanding liabilities**" in their books of accounts and make provision at the year-end). This outstanding liability is nothing but work in progress at the year end, the bills are to be issued in future after completion of work. Against this work in progress i.e. outstanding liabilities companies had also deducted TDS at the year end and shown the same in 26AS, so in 26AS the gross amount on which TDS was deducted shows more amount than the sales booked in the books of account. This excess amount which was shown in 26AS was the amount of work in progress i.e. outstanding liabilities against which bills were not prepared up to 31st of March of respective financial year but bills had been issued after 31st March i.e after completion of work.

19.3.4. Sales amount and gross receipts as per 26AS shows difference for work in progress amount. As per the provision of TDS "**TDS is to be deducted on payment or credit to the books of accounts whichever is earlier**". So ONGC had followed this provision and at the year end when they made provision for "work in progress" i.e outstanding liabilities they had deducted TDS and shown in 26AS. But this was just the provisions made for "work in progress". The company had not received the invoices from M/s Gayatri Construction Co. and so they even can't take GST ITC credit on the same as no sales invoices had been received from supplier of whom TDS had been deducted. The invoices against these provisions was received after 31st March of respective financial year i.e after completion of work and at that time the M/s. Gayatri Construction Co. had issued the invoices, mentioned the same in GSTR-1, paid the GST and company to whom invoices were made had also taken GST ITC.

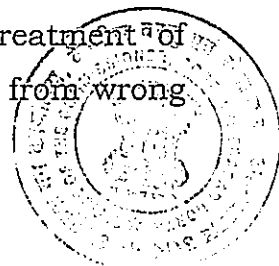
19.3.5. The provision made by ONGC is nothing but the work in progress for which billing is to be done in future and to show the closing work in progress in the books of accounts the accountant had shown the work in progress amount along with sales group ledger giving them separate name and named ledger account as "gross receipts from ONGC". As the accountant was not aware about the treatment of work in progress in the books of accounts he had matched gross receipts of 26AS with the books of accounts.

19.3.6. The accountant had shown the amount of work in progress separately but mistake was done by him that he had selected wrong group ledger i.e he had selected "sales group" instead of "closing stock" which was mistake made by accountant. The accountant was of the opinion that if amount is not matched with 26AS in books of accounts then notice will be received from income tax department for showing less turnover in the books of accounts. And he was having correct opining and in past they had received notice from income tax department for not matching 26AS and books of account. Clarification was filed against that query and matter was resolved after clarification.

19.3.7. This treatment was given so that the turnover amount matches with the 26AS and books of accounts to avoid the difference in books of accounts and 26AS. In actual the additional amount shown along with sales amount is nothing but amount of closing work in progress. And completed works of which invoices were issued were shown separately as ledger name "GST sales". This amount is nothing but the closing stock of work in progress. Later on when work gets completes RA bills are also issued for the same Work in progress and the amount of closing work in progress decreases. The track record i.e which bills are made against closing work in progress of previous year (outstanding liabilities) are also maintained by the accountant as well as details were also received from ONGC. **The assessee is liable to pay GST "either when invoices are issued to the customer or advances are received whichever is earlier.**

19.3.8. Here invoices were issued after completion of work and at that time M/s Gayatri Construction co. had mentioned the all invoices in GSTR-1 and paid GST on them. Further M/s. Gayatri Construction Co. had not received any advance from customers neither invoices were issued. M/s Gayatri Construction co. had just mentioned the amount of work in progress which is not work completed and no invoices were raised up to that. **They had already raised the invoices of work in progress for the year 2017-18, 2018-19 and 2019-20 and already paid the GST on them. So there is no questions arises for payment of GST on the same amount on which GST had already been paid.**

19.3.9. On knowing the above treatment as wrong in the books of accounts, with effect from financial year 2020-21 and in 2021-22 the above practice had been discontinued and the practice of showing closing work in progress as closing stock is followed. This misunderstanding had been arised only and only due to the wrong accounting method followed by them. there wouldn't have any revenue loss to the department by following this treatment of accounting. If they make separate the amount of work in progress from wrong



group and show the same as work in progress as closing stock then also the amount of gross and net profit will have no change.

19.3.10. Following is the Example for your understanding of accounting treatment followed by accountant of Gayatri Construction Co.

In the year 2017-18

Sales before (April-17 to June-17)	03,66,41,081/
Sales From July-17 to March-18	12,14,89,061/
Total sales on which GST-Service tax and Vat paid	15,81,30,142/
Work in Progress at year end	10,57,22,087/
Total Amount shown in sales group	26,38,52,230,/

(Out of above amount, Rs.10,57,22,087/- was work in progress but accountant has wrongly selected sales group so it was shown along with sales group)

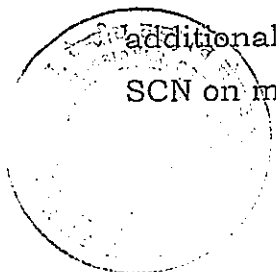
19.3.11. Further they had attached one excel sheet which shows the details of provisions as well as sales bills made with bill no. against work in progress. This calculation will clear the concept of work in progress and its treatment. As per that sheet provisions made for work in progress is mentioned with line no. of 26AS with TDS amount. And against this provision, details of bills made is also given with date, amount and bill no.

19.3.12. In view of above please go through the explanations given regarding work in progress and let them know if any explanation is require to clear the concept and treatment of work in progress. **This is just the misunderstanding of accounting treatment and no short payment of GST.**

In view of above out of three paras were raised in SCN two paras were raised either due to wrong treatment of accounting without affecting net liability of GST or clerical mistake. And one para had been settled by payment of GST before issuing SCN.

Personal Hearing :-

20. Shri Kalpesh D. Patel, CA, authorized representative of the noticee appeared for personal hearing. He reiterated their written submission dated 07.04.2023. Further, during the course of PH, he requested to submit their additional submission dated 12.12.2023. Further, he requested to decide the SCN on merit.



Discussion and Findings

21. I have carefully gone through the show cause notice, submissions made by M/s taxpayer in their written submissions and at the time of personal hearing and other available records.

22. I find that the present show cause notice is issued based on objections/points noticed during the course of audit of records of the said taxpayer by the officers of Central Tax, Audit, CGST, Ahmedabad which remained unsettled (Revenue Paras 4, 11 & 12) and culminated into issuance of show cause notice. I take up the issues for discuss Revenue Paras wise one by one as below.

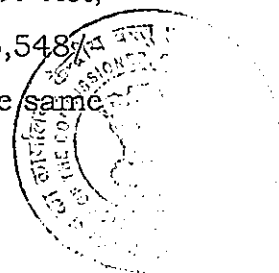
Revenue Para No.	Issue involved	Amount of ITC
04	NON-PAYMENT OF INTEREST ON LATE PAYMENT OF GST	9,20,176/-
11	ITC availed wrongly on credit note issued against sale by the taxpayer	11,52,012/-
12	Non-payment of GST on the supply of services for which income is booked in the books of accounts	4,52,42,090/-

23. Revenue Para No. 04 regards non-payment of interest on late payment of GST,

23.1. I find that during the period from March 2018 to March, 2020, the said taxpayer had paid GGST of Rs. 1,41,99,304/- and SGST of Rs. 1,42,26,244/- by electronic cash ledger (cash component), on a date later than the due date specified under section 39(1) of the Act. Further, the details of delay filing of GSTR-3B returns for the period Mar-2018 to March 2020 has been prescribed in para 3 of the SCN and the said details have also not disputed by the said taxpayer.

23.1.1. I find that the SCN proposes demand of GST amounting to Rs. 2,84,25,548/- (CGST of Rs. 1,41,99,304/- + SGST of Rs. 1,42,26,244/-) under Section 74(1) of the Act and Since the said tax amount has already been paid by the said taxpayer, the same is required to be adjusted and appropriated against the said demand.

23.1.2. As of now, looking to facts of case, I find that it is an undisputed fact on record that the liability of tax amount of Rs. 2,84,25,548/- has not been discharged within due date in the instant case due to non-filing of GSTR-3B returns within the prescribed time limit as specified under sub-section 7 of the Section 39 of the CGST Act, 2017. I find that it was the prime responsibility of the taxpayer, in the present era of self-assessment, to comply the government procedures and immediately pay the tax due alongwith applicable interest/fee/penalty, as applicable in terms of CGST/SGST rules and regulations. I find that the said taxpayer has not discharged their tax liability within the prescribed time as specified under Section 39(7) of the CGST Act, 2017. Further, I am of the view that since the tax amount of Rs. 2,84,25,548/- has already been paid against liability of tax by the said taxpayer and the same



is required to be appropriated against the said tax liability under provisions of section 74 of the CGST Act, 2017/Gujarat GST Act, 2017.

Liability of interest: -

23.2. It would be relevant to mention here that the liability of GST payment for a tax period is considered to be discharged only after filing of GSTR-3B returns as per provisions of Section 39(1) of the Act, hence the delay filing of GSTR-3B returns in this instant case would be amount to late/delayed payment of GST which subject to automatic liable to interest.

23.2.1. I take look into the relevant legal provisions of CGST/SGST/IGST Act, 2017 deals the interest liability on delay/late payment of tax. Section 50 of the Act contains provisions relating to levy of interest on delayed payment of tax.

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

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

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

23.2.3. The liability of interest would automatic be arisen if the tax due is paid after due day of payment of tax as prescribed. I relying upon the judgement of Hon'ble Jharkhand High Court in case of Mahadev Construction reported at 2020 (36) G.S.T.L. 343 (Jhar.), wherein it was held that

“Liability of interest is automatic, the same is required to be adjudicated in event of an assessee disputes in computation or vary leviability of interest, by initiation of adjudication proceeding under section 73 or section 74 of the CGST Act.”

23.2.4. According, the interest liability of Rs. 9,20,176/- (CGST of Rs. 4,59,724/- & SGST of Rs. 4,60,452/-) towards cash component of tax is required to recovered from

the said taxpayer in terms of Section 50(1) of the CGST/SGST Act, 2017, since interest amount of Rs. 9,20,176/- (Rs. 6,78,370/- & 2,41,806/- paid vide DRC-03 dtd 28.12.2022 & 17.03.2023, respectively) the same is required to be adjusted and appropriated against the demand of Interest.

23.3. I take up the next limbs of the case regards Invocation of Provisions of Section 74 of the CGST Act, 2017 for imposing appropriate penalty.

23.3.1. Before going into discussion the charges of suppression of facts in terms of provisions of Section 74 of the CGST Act, 2017, I would like to elaborate the core facts of the case available on records which are as under:-

- (i) The payment of tax of Rs. 2,84,25,548/- for the period under consideration between March-2018 to March-2020 have been paid by GSTR-3B returns filed for the respective tax period on a date later than the due date as specified but well before the audit of records of the taxpayer was conducted by the department officer in the month of June, 2022.
- (ii) The interest of Rs. 9,20,176/- on late payment of GST (cash component) had also been paid (Rs. 6,78,370/- & Rs. 2,41,806/- paid on 28.12.2022 & 17.03.2023, respectively) before issuance of SCN as well as within thirty days of issuance of SCN i.e. 15.03.2023.

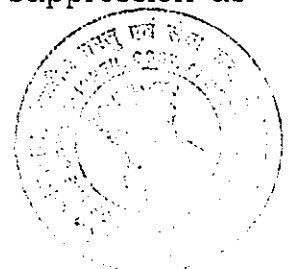
From above facts, it is clear that the taxpayer has *sou moto* filed the GSTR-3B returns and also paid the amount of tax for the period under dispute before any interaction by the department.

23.3.2. I examine the relevant provisions in the matter as under:-

Section 74 of the CGST Act, 2017

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

Explanation 2 to Section 74 of the CGST 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"

23.3.3. On plain reading of provisions of the aforesaid section, it shows that the show cause notice under Section 74 (1) of the Act, can only be issued if the tax is-

- (i) Not paid or
- (ii) Short paid or
- (iii) erroneously refunded or
- (iv) where input tax credit has been wrongly availed or utilized

In circumstances with intent to evade payment of tax as such

- (i) *by reason of fraud, or*
- (ii) *any wilful misstatement or*
- (iii) *suppression of facts to evade tax*

23.3.4. As of now looking to facts of case regards delay payment of tax by delay filing of GSTR-3B returns *sou moto* cannot be counted as fraud or wilful misstatement or suppression of facts with intent to evade tax.

23.3.5. It is also an undisputed fact that the tax amount of Rs. 2,84,25,548/- has already been paid and GSTR-3B returns has also been filed by the said taxpayer much before the audit conducted by the departmental officers and even the interest component as applicable has also been paid before issuance of the SCN as well as within one month of issuance of SCN, therefore, the terms suppression of fact with intent to evade payment of tax does not fit to apply in respect to tax amount alongwith applicable interest had already been paid. Accordingly, I am of the view that penalty under Section 74 of the Act is not applicable in the instant case.

24. Revenue Para No. 11 regards ITC availed wrongly on credit note issued against sale by the taxpayer.

24.1. I find the allegation made in the SCN that the said taxpayer had availed ITC of Rs. 11,52,012/- (CGST of Rs. 5,76,006/- & SGST of Rs. 5,76,006/-) on strength of credit notes issued by them to M/s ONGC, M/s. IFFCO Ltd against the supply of taxable services. The details of credit notes availing ITC has been prescribed in para 4 of the SCN and the said details have also not disputed by the said taxpayer.

24.1.1. It is imperative on me to take a look towards the documents for availing the ITC prescribed under Rule 36 of the CGST Rules, 2017 as under:-

Rule 36 (1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section 3 of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

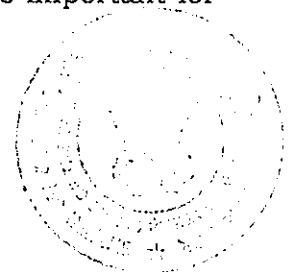
In view of above, it is evident that credit notes issued against taxable supply are not eligible documents to avail the input tax credit as per Section 16 of the CGST Act, 2017 readwith Rule 36 of the CGST Rules, 2017.

24.1.2. I, further, find that as per provisions of section 34 of CGST Act, 2017, the credit notes can be issued by the supplier for reducing tax liability by way of adjustment the same in GSTR-3B returns as prescribed in cases of any reduction in value of taxable supply or tax charged on such supply had been shown by the recipient. It means the Credit notes can be issued by the supplier only for reducing his tax liability by adjustment by declaring the details of such credit notes in GSTR-3B returns but the ITC cannot be availed on strength of the credit notes.

24.1.3. Further, proviso to Section 34(2) of the Act, provides that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

24.1.4. Now, coming to the submission of the said taxpayer, I find that they have submitted that while filing GSTR-3B returns clerical mistake was made and instead of deducting the amount of credit notes from sales value, the value shown in credit notes was added in sales value alongwith ITC. The net effect of GST payable & ITC was remained same.

24.1.5. I do not accept the above arguments of the said taxpayer as they had availed ITC on strength of the credit notes issued by them to their buyers which is clear contravention of the provisions of Section 34 of the CGST Act, 2017 as well as Section 16 of the CGST Act, 2017 readwith Rule 36 of the CGST Rules, 2017. This is a case where the said taxpayer had done something for availing ITC which is not available to them at all. I, further, find that the said taxpayer had failed to ascertain that whether the incidence of tax has been not passed on the other person which is important for reducing tax liability in terms of proviso to Section 34(2) of the Act.



24.1.6. Therefore, I am constrained to hold a view that the ITC of Rs. 11,52,012/- wrongly availed and utilised on strength on invalid documents is required to be recovered from the said taxpayer under the provisions of Section 74 of the CGST Act, 2017.

24.2. I have already discussed in para 23.2 above regards the liability of interest which would automatic be arisen, if the tax due/ITC wrongly availed has not been paid or reversed. The ITC of Rs. 11,52,012/- availed and utilised on strength on invalid documents has not been reversed in the present case, hence the interest in terms of Section 50(3) of the CGST Act, 2017/SGST Act, 2017 is required to be recovered from the said taxpayer from the date of taking the said ITC and till the date of reversing the same.

24.3. Now coming to issue of imposition of penalty, I find that the said the taxpayer had issued credit notes and wrong availment of ITC of Rs. 11,52,012/- in GSTR-3B returns against on strength of credit notes as inadmissible documents has been established beyond any doubt as per my discussion in above paras. The availment of ITC in GSTR-3B returns in such a manner is clear contraventions to provisions of Section 16 of the CGST Act, 2017 as well as Rule 36 of the CGST Rules, 2017 amount to willful misstatement of fact with intent to wrong availment of input tax credit.

24.3.1. Further, I find that one of the clause of Section 74 of the Act regards wilfull misstatement of facts with intent to evade payment of tax and input tax credit tax wrongly availed or utilised is clearly implied with the facts of the present case. In the era of self-assessment, specifically incorporated in respect of GST under the provisions of Section 59 of the CGST Act, 2017, the government has placed full trust on the taxpayer, accordingly, all statutory provisions create a liability on taxpayer to comply the same without any deviation. The fact of wrong availment and utilization of ITC on the basis of credit notes issued by them to their buyers has been established beyond doubt amount to contravention of various provisions of CGST Act/Rules and deliberately misstatement of facts with intent to evade payment of tax by availing and utilizing inadmissible input tax credit.

24.3.3. The fact, about the availment of ITC based on inadmissible documents i.e. credit notes issued in respect of supply, has been unearthed by the Department only on scrutiny of records of the said taxpayer during audit, otherwise it would be remained unnoticed. All these facts of contravention on part of the said taxpayer have been committed with an intention to evade payment of tax by suppressing the facts. therefore, I am constrained to hold a view that the extended period of five years is correctly invocable in the present case and penalty under the provisions of the Section 74 of the CGST Act, 2017/SGST Act, 2017 is impossible on the said taxpayer.

25. Revenue Para 12 :- Non-payment of GST on supply of services for which income is booked in the books of accounts.

25.1.1. I have gone through the charges made in SCN, written submissions and documents submitted by the taxpayer and arguments made during the course of personal hearing by the said taxpayer.

25.1.2. I find the main issue which needs to be decided in the present revenue para is whether the applicable GST has been paid towards the income booked in books of account in respect of supply of services by the said taxpayer in accordance with the provisions of Section 13 of the CGST Act, 2017 readwith Section 31(2) of the CGST Act, 2017 and Rule 47 of the CGST Rules, 2017.

25.1.3. I find main allegation from the show cause notice that during the course of audit, on verification of Sales records as well GSTR-3B, it was observed that the taxpayer had booked income as provisions in their books of accounts at end of the year and the recipient of services had also booked their expenses in the books of accounts and shown the amount as paid/credited to the supplier and also deducted TDS against the amount shown as paid/credit to the supplier but the said taxpayer had not shown the amount/value of services, in the GSTR returns filed for discharging GST liability which is required to be discharged at the time of making provisions of service in their books of account in term of provisions of Section 13(2)(b) of the CGST Act, 2017 as of "time of supply of service" readwith Section 31(2) of the CGST Act, 2017 readwith Rule 47 of the CGST Rules, 2017.

25.1.4. For better understanding the issue, the relevant provisions for time of supply under the CGST Act, 2017 is reproduced as under:-

Section 13. Time of Supply of Services :-

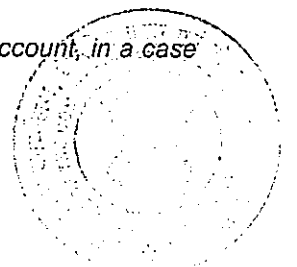
(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest 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 1[****] 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 1[****] 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



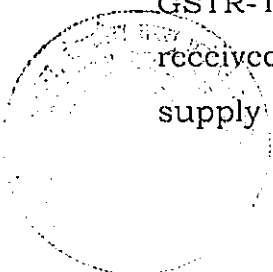
[****] Omitted "sub-section (2) of" by The Central Goods and Services Tax (Amendment) Act, 2018 (No.31 of 2018) – Brought into force w.e.f. 01st February, 2019. Till 31.01.2019 time limit for issuing tax invoice will be 30 days as per Section 31(2) read with Rule 47 of the CGST Rules, 2017 and thereafter Section 31 (5) (a) will be effective.

Further, as per Explanation (ii) as referred to clause (a) and (b) of Section 13(2) of the CGST Act, 2017, "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.

25.1.5. On going through the fact of the instant case pending before me, I find that it has explicitly established beyond any doubt that the said taxpayer had booked the income as provisions of service in their books of accounts and the recipient of services had also booked the expenses in the books of accounts and shown the amount as paid/credited to the supplier and also deducted TDS against the amount booked as provisions of service. As such, the time of supply of services in the instant case is validated either the date of provisions of service or the date of receipt of payment, whichever is earlier, in terms of provisions of Section 13(2)(b) of the CGST Act, 2017, as elaborated above.

25.1.6. I find that the income booked as provision of service under GST sales group in the books of account by the said taxpayer in respect of amount credited in their Form 26AS at end of the F.Y. 2017-18, 2018-19 and 2019-20. Hence, the time of supply of service, would amply be considered the date of provision or the date of receipt of payment as entered in the books of account by the said taxpayer, whichever is earlier, in terms of provisions of Section 13(2)(b) of the CGST Act, 2017. I observe that the said taxpayer have not claimed the said income of provisions either as advance receipt or as a continuous supply of service hence the provisions of Section 31(2) of the CGST Act, 2017 would be correctly applicable in the instant case and tax invoices are required to be issued within 30 days from the date of provisions of service in the books of account by the said taxpayer in terms of provisions of Rule 47 of the CGST Rules, 2017 being time of supply of service and the tax is required to be paid within due time by filing the GSTR-3B returns as prescribed.

25.1.7. I, further, find that the taxpayer have argued that the income booked towards provisions of service in their books of account in year-end was nothing but this was an amount of service which remains pending as work in progress at end of a given financial year and on completion of the such work in subsequent years, they have correctly issued invoices and reported in relevant GSTR-1 Returns and paid the applicable GST and then after the payment were received from the recipient. I don't accept the said argument as the time of supply of service would be applicable in the instant case based on the date of



provisions of service or the date of receipt of payment, whichever is earlier, in terms of provisions of Section 13(2)(b) of the CGST Act, 2017.

25.1.8. I, further, find that the said taxpayer has submitted that the difference had arisen due to their accounting method followed by them and the closing balance of work in progress had shown in books of account under sales group ledger for matching the gross receipt as per Form 26AS with the income shown in books of account by including amount of work in progress and after completion of work, they had issued invoices showing GST sales and they had raised invoices and had paid GST at the time of supply in subsequent year. I don't accept the said argument of the said taxpayer, as I already discussed about the applicability of GST payment in the instant case are correctly required to be paid in accordance with the provisions of Section 13(2)(b) of the CGST Act, 2017, read with the provisions of Section 31(2) of the Act and read with Rule 47 of the CGST Rules, 2017, as applicable, by filing of GSTR-3B return of the month of April of the succeeding financial year against the income booked as provision of service at end of preceding financial year in as much as they are required to issue the tax invoice within due date as prescribed.

25.1.9. I, further, find that as per the Agreement cum Tender/Bidding document for construction services to be rendered to M/s. ONGC and other service recipient, wherein prescribed under the head "Remuneration and Terms of Payment" that Invoices will be submitted monthly by the contractor to Corporation i.e. recipient of the services **and payment shall be made within 21 calendar days from the date of receipt of invoice**. The said agreement stipulates the terms regards issuance of invoices on monthly basis and subsequently payment from the date of receipt of invoices.

25.1.10. I find that On the contrary, the said taxpayer had submitted that after completion of work in subsequent years, RA bills were issued by them to the companies and applicable GST was paid. The payment towards such supplies were received after deduction of TDS, Security deposits and other deductions from the recipient. At the end of the year the companies for example ONGC make provision in **their books of account for work in progress at the year-end** on which TDS was also been deducted (for which ONGC uses terminology "**outstanding liabilities**" in their books of account and make provisions at the year-end). This liability was only towards work in progress at the end of year for which TDS was also deducted and shown in 26AS by these companies. The said argument also doesn't favour of the said taxpayer as I have already discussed in foregoing paras that the said taxpayer as well as the recipient of service had made provisions of services in their books of account and it is also on record that the recipient of services had also

deducted TDS against the amount shown as paid/credited to the supplier (said taxpayer) and the time of supply of service in the instant case would be the date of provisions of service in the books of account or the date of receipt of payment entered in the books of account, whichever is earlier, which was end of year of a given financial year in the instant case and accordingly, the tax is required to be issued within due date as prescribed under Rule 47 of the CGST Rules, 2017.

25.1.11. I, further, find that the said taxpayer had submitted detailed work sheet showing tax invoices reported in GSTR-1 and duty paying evidences which are correlated the supply of services in subsequent years with the income booked as provisions in books of account at end of the F.Y. 2017-18, 2018-19 & 2019-20. On examining the said details, I find that the said taxpayer had issued bills/invoices with GST payment in subsequent years (like income booked at end of F.Y. 2017-18, on completion of work, supply made in subsequent years 2018-19 and even later) towards income booked in books of account at end of financial year 2017-18, 2018-19 & 2019-20 and the said invoices were reflected in GSTR-1 returns for the respective tax period of the said taxpayer.

For easy of reference a sample of ledger showing some entries as provisions of service income booked in F.Y. 2017 with corresponding entry (invoices) of clearance in subsequent year is placed hereunder:-

Sl. No.	date	particulars	debit	credit	balance	date	particulars	debit	credit	balance
1		PROVISION		113570						
2		CONSTRUCTION WORK	113570							
3		CONSTRUCTION WORK		113570						
4		CONSTRUCTION WORK		113570						
5		CONSTRUCTION WORK		113570						
6		CONSTRUCTION WORK		113570						
7		CONSTRUCTION WORK		113570						
8		CONSTRUCTION WORK		113570						
9		CONSTRUCTION WORK		113570						
10		CONSTRUCTION WORK		113570						
11		CONSTRUCTION WORK		113570						
12		CONSTRUCTION WORK		113570						
13		CONSTRUCTION WORK		113570						
14		CONSTRUCTION WORK		113570						
15		CONSTRUCTION WORK		113570						
16		CONSTRUCTION WORK		113570						
17		CONSTRUCTION WORK		113570						
18		CONSTRUCTION WORK		113570						
19		CONSTRUCTION WORK		113570						
20		CONSTRUCTION WORK		113570						



From looking to the above, it is evident that the income booked as provisions of service at end of the year in 2017-18 towards gross value of service including TDS amount and the GST invoices were issued in subsequent year 2018-19 and shown the same in GSTR-1 Returns of relevant tax period and made payment of applicable GST.

In view of above, I hold that the GST payment, towards supply of service effected in subsequent years in respect of income booked as provisions of service in books of account by the said taxpayer at end of F.Y. 2017-18, 2018-19 and 2019-20, have not been paid in accordance with the provisions of Section 13(2)(b) of the CGST Act, 2017 and payment in subsequent year is amount to abundantly delayed/nonpayment of tax and the same is required to be recovered from the said taxpayer in terms of provisions of Section 74(1) of the CGST Act, 2017 readwith similar provisions of SGST Act, 2017 alongwith Interest as per provisions of Section 50(1) of the CGST Act, 2017.

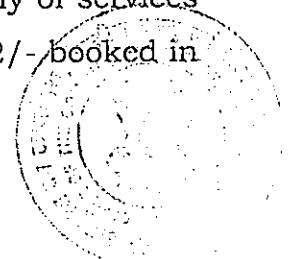
25.1.12. I find, that the taxpayer had claimed an amount of Rs. 4,52,49,146/- as reversal towards excess provision in profit and loss account of F.Y. 2019-20 and requested for reducing the demand accordingly but I don't find any supporting document even the year of provision of income booked in books of account also not ascertain. since the said taxpayer had failed to provide or ascertain the exact entry of said reversal towards income booked as provisions for GST regime (2017-18 to 2019-20) or pre-GST, hence, on this count the demand of GST as per SCN can't be reduced.

25.1.13. Further, I find the details of GST payable on gross receipt shown as income in the books of accounts by the taxpayer (supplier) as per the show cause notice as mentioned in the table below:

(Amount in Rs.)

Period	Gross receipt booked as income in the books of accounts by the taxpayer against supply of services	CGST payable	SGST payable	Total GST short paid
1	2	3 = 2*9%	4 = 2*9%	5 = (3+4)
2017-18	105722087	9514988	9514988	19029976
2018-19	86630572	7796751	7796751	15593502
2019-20	58992293	5309306	5309306	10618612
Total	251344952	22621045	22621045	45242090

Further, on detailed scrutiny of the details submitted by the said taxpayer showing as per GSTR-1 returns, I find the value of outward supply of services in subsequent years in respect of total income of Rs. 25,13,44,952/- booked in



the books of account as provisions of service in F.Y. 2017-18, 2018-19 and 2019-20, are as under :-

Supply as per GSTR-1	2017-18	2018-19	2019-20	2020-21	Total
ONGC	63,50,530/-	5,91,27,967/-	5,45,80,341/-	4,29,24,893/-	16,29,83,728/-
IFFO	0	4,52,297/-	14,85,993/-	0	19,38,290/-
Department of Space	0	0	8,98,297/-	0	8,98,297/-
IOCL	0	45,99,629/-	0	0	38,97,991/-
Total					16,97,18,306/-

From the above, it is evident that out of total income of Rs. 25,13,44,952/- booked as provisions, the said taxpayer have made supply of Rs. 16,97,18,306/- in contravention of the provisions of Section 13(2)(b) of the CGST Act, 2017 readwith Rule 47 of the CGST Rules, 2017 readwith Section 31(2) of the CGST Act, 2017 and reported in GSTR-1 returns in subsequent year and paid applicable GST of Rs. 2,98,62,614/- . The same is required to be appropriated and adjusted against their GST liability. Further, I find that there is a short payment of Rs. 1,53,79,476/- (CGST of Rs. 76,89,738 & SGST of Rs. 76,89,738/-) towards income of Rs. 8,16,26,646/- (i.e. 25,13,44,952/- minus Rs. 16,97,18,306/-) booked as provisions in terms of provisions of Section 13(2)(b) of the CGST Act, 2017 readwith Section 31(2) of the CGST Act, 2017 and Rule 47 of the CGST Rules, 2017 and the same is liable to be recovered from the said taxpayer in terms of provisions of Section 74(1) of the CGST Act, 2017 readwith similar provisions of SGST Act, 2017 alongwith Interest as per provisions of Section 50(1) of the CGST Act, 2017.

25.2.1. I, further, find that the delayed/nonpayment of tax in contravention of provisions of Section 13(2)(b) of the CGST Act, 2017, Section 31(2) of the CGST Act, 2017 readwith Rule 47 of the CGST Rules, 2017, is automatic liable for interest in terms of provisions of Section 50(1) of the CGST Act, 2017 readwith similar provisions of SGST Act, 2017. I have already discussed in para 23.2 above regards the liability of interest which would automatic be arisen, if the tax due has not been paid. The due date of payment of tax in the instant case would be ascertained as per the date of provision of service booked in the books of account by the said taxpayer i.e. end of a given financial year.

25.2.2. Manner of calculating interest on delayed payment of tax prescribes under Rule 88 of the CGST Rules, 2022 as under :-

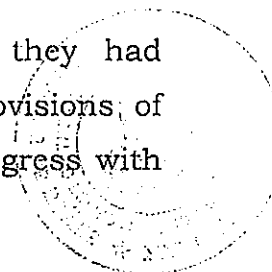
(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings 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.

On perusing the provisions of said rule, it emerges that if the supplies made during a tax period are declared in the returns for the said period (GSTR-3B) and furnished the same before commencement of any proceedings under Section 73/74, the interest shall be payable on cash portion of tax but in the instant case, as per discussion and finding in above paras, it has been established beyond doubt that the time of supply of service is required to be ascertained as per the date of provision of service booked in the books of account by the said taxpayer i.e. end of a given financial year (Month of March of F.Y.) and accordingly, the said supply is required to be declared in GSTR-3B returns of month of march but the said assessee had failed to declare the same manner (**GSTR-3B of March**), hence the delayed payment/nonpayment of tax (Gross ITC as well as Cash) amounting to Rs. 4,52,42,090/- is liable to charge interest in terms of provisions of Section 50(1) of the CGST Act, 2017/SGST Act, 2017 readwith Rule 88B of the CGST Rules, 2017 readwith Similar provisions of GGST Rules, 2017. **The JRO is directed to calculate the liability of interest towards delayed payment of tax of Rs. 2,98,62,614/- in GSTR-3B in subsequent years and also non-payment of tax.**

25.3.1. Now coming to issue of imposition of penalty, I find that as per discussion and findings in above paras, it has been established beyond that the said the taxpayer had booked income as provisions of service in their Books of Accounts and even the recipient of service has also booked expenses and deducted TDS in their books of accounts towards provisions of services but the said taxpayer failed to pay applicable tax in accordance with the provisions of Section 13(2)(b) of the CGST Act, 2017. The nonpayment/delayed payment of tax in such a manner is clear contraventions to provisions of Section 13(2)(b) of the CGST Act, 2017 as well as Rule 47 of the CGST Rules, 2017 in as much as they failed to issue the tax invoice within prescribed time period. The Taxpayer appeared to have contravened the provisions of Sections, 39, of the CGST Act, 2017 in as much as they failed to furnish the returns in prescribed time and contravened the provisions of Sections 39(7) of the Act read with the provisions of Rules 85(3) of the Central/State Goods and Services Rules, 2017 ('Rules') by not making payments in prescribed time.

25.1.11. I find that the said taxpayer have submitted that they had discontinued the accounting treatment of booked income as provisions of service towards closing balance of services remains as work in progress with



effect from financial year 2020-21 and 2021-22 and shown the closing balance of services remained as work in progress at end of year as closing stock. From the above submission, I am come to hold a view that the said taxpayer had themselves accepted their mistake and had deliberately adopted modus of non payment of tax in accordance with the provisions of Section 13(2)(b)/31(2) of the CGST Act, 2017 readwith Rule 47 of the CGST Rules, with a clear intention to delay payment of tax and also evade payment of tax.

25.3.3. It would be pertinent to mention here that in the era of self-assessment, specifically incorporated in respect of GST under the provisions of Section 59 of the CGST Act, 2017, the government has placed full trust on the taxpayer, accordingly, all statutory provisions create a liability on taxpayer to comply the same without any deviation. The fact of delayed/nonpayment of tax in accordance with provisions of Section 13(2)(b) of the CGST Act, 2017 has been established beyond doubt amount to contravention of various provisions of CGST Act/Rules and deliberately misstatement of facts with intent to evade payment of tax.

25.3.4. The fact, about the nonpayment/short payment of GST in accordance with the provisions of Section 13(2)(b) & 31(5)(a) of the CGST Act, 2017 readwith Rule 47 of the CGST Rules, 2017, has been unearthed by the departmental officers only on scrutiny of records of the said taxpayer during audit, otherwise it would be remained unnoticed. All these facts of contravention on part of the said taxpayer have been committed by suppressing the facts with an intention to delay payment of tax and evade payment of tax. therefore, I am constrained to hold a view that the extended period of five years is correctly invocable in the present case and penalty under the provisions of the Section 74 of the CGST Act, 2017/SGST Act, 2017 is impossible on the said taxpayer.

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

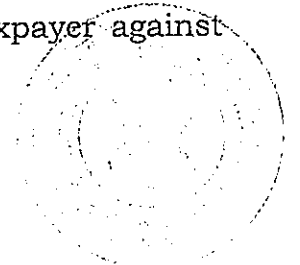
ORDER

- i. I confirm the demand of GST amounting to Rs.2,84,25,548/- (CGST Rs.1,41,99,304/- + SGST Rs.1,42,26,244/-) (Rupees Two Crore Eighty-Four Lakh Twenty-Five Thousand Five Hundred Forty-Eight only) as per Revenue Para 4, and order to recovery the same from the taxpayer under Section 74(9) of CGST Act, 2017/Gujarat GST Act, 2017;

- ii. GST amounting to Rs.2,84,25,548/- (CGST Rs.1,41,99,304/- + SGST Rs.1,42,26,244/-) (Rupees Two Crore Eighty-Four Lakh Twenty-Five Thousand Five Hundred Forty-Eight only) already paid by the taxpayer

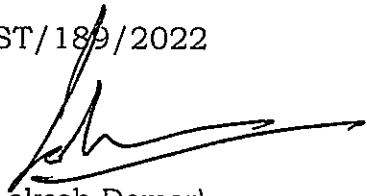
the same is adjusted and appropriated towards the confirmed demand at (i) above;

- iii. I hold the demand of Interest amounting to Rs.9,20,176/- (CGST Rs.4,59,724/- + SGST Rs.4,60,452/-) being late payment of tax (cash component) as per Revenue Para 4, and order to recovery the same from them, under Section 50(1) of the CGST Act, 2017/Gujarat GST Act, 2017 on confirmed demand of GST at (i) above;
- iv. I do not impose Penalty on them on demand confirmed at (i) above.
- v. I disallow ITC amounting to Rs. 11,52,012/- (Rupees Eleven Lakhs Fifty-Two Thousand & Twelve Only) as per Revenue Para 11, and order to recovery the same from them under Section 74(9) of the CGST Act, 2017/Gujarat GST Act, 2017;
- vi. I hold the demand of interest and order to recovery the same from the said taxpayer under the provisions of Sections 50(3) of the CGST Act, 2017/Gujarat GST Act, 2017, on the confirmed demand of irregular ITC at para (v) above;
- vii. I impose Penalty of Rs. 11,52,052/- (Rupees Eleven Lakhs Fifty-Two Thousand & Twelve Only) on the said taxpayer against confirmed demand at para (v) above under the provisions of section 74(9) of the CGST Act, 2017/Gujarat GST Act, 2017;
- viii. I confirm the demand of GST amounting to Rs. 4,52,42,090/- (CGST Rs. 2,26,21,045/- + SGST Rs. 2,26,21,045/-) (Rupees Four Crores Fifty-Two Lakh Forty-Two Thousand & Ninety only) towards income of Rs. 25,13,44,952/- booked as provisions and order to recovery the same from them under Section 74(9) of the CGST Act, 2017/Gujarat GST Act, 2017, as per Revenue Para 12; Since the amount of GST of Rs. 2,98,62,614/- had already been paid by the said taxpayer in subsequent years, the same is appropriated and adjusted against the confirmed demand;
- ix. I hold the demand of Interest on gross tax (ITC & Cash) towards delayed payment and nonpayment of GST total amounting to Rs. 4,52,42,090/- and order to recovery the same from them, under Section 50(1) of the CGST Act, 2017/Gujarat GST Act, 2017;
- x. I impose Penalty of Rs. 4,52,42,090/- (Rupees Four Crores Fifty-Two Lakh Forty-Two Thousand & Ninety only) on the said taxpayer against



the confirmed demand at para (viii) above under the provisions of section 74(9) of the CGST Act, 2017/Gujarat GST Act, 2017;

26. The show cause notice bearing F.No. GADT/TECH/SCN/GST/189/2022 dated 15.03.2023 is disposed off in above terms.


(Lokesh Damor)

Joint Commissioner,
Central Excise & CGST,
Ahmedabad North.

Date :- 06/03/2024

Place: Ahmedabad
F.No. GST/15-64/OA/2022
To,
M/s Gayatri Construction Company,
a proprietorship firm,
holding GSTN No.- 24ABXPP1801E1ZQ
having their principal place of business
located at 508-509, 5, Vraj Valencia,
Science City Road, S. G. Highway,
Sola, Ahmedabad, Gujarat-380060

Copy to :-

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-VI, Ahmedabad North.
3. The Superintendent, Range-IV, Division-VI, 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 and calculate the liability of interest towards delayed payment of tax of Rs. 2,98,62,614/- as per Annexure-A and non-payment of tax after actual realization basis. Further, it is also directed that if required necessary action may be taken for subsequent period to protect government revenue, in this matter.
4. The Superintendent (System), CGST & Central Excise, Ahmedabad North for uploading the order on website.
5. Guard File.

