



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009

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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. GST/15-96/OA/2023-24

DIN- 20240464WT0000777B67

आदेश की तारीख/Date of Order: - 23.04.2024

जारी करने की तारीख/Date of Issue :- 23.04.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 04/ADC/LD/GST/2024-25

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), केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F. No. GST/15-96/OA/2023-24 dated 28.12.2023 issued to M/s. Cinema Ventures Private Limited, GSTIN: 24AAFRC9542Q1ZO, Himalaya Mall, Drive In Road, Ahmedabad, Gujarat - 380052





BRIEF FACTS OF THE CASE

1. M/s. Cinema Ventures Pvt Ltd (Legal Name: Cinema Ventures Private Limited), Himalaya Mall, Drive-In Road, Ahmedabad, Gujarat-380052 (hereinafter referred to as "M/s. Cinema" for sake of brevity) were holding Goods and Service Tax Identification No. 24AAFRCR9542Q1ZO and were engaged in supplying Services viz. Motion picture projection services (HSN: 9996); Rental or leasing services involving own or leased non-residential property (HSN: 9972); sale of advertising space or time (HSN: 9983), etc. The noticee had undertaken to comply with the conditions prescribed in the Central Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act, 2017), the Gujarat Goods and Service Tax, 2017 (hereinafter referred to as "the SGST Act, 2017") and Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as "the IGST Act, 2017) and rules made thereunder.

2. Audit of returns filed by the noticee has been conducted by CERA, Ahmedabad regarding specific compliance audit on GST payment and return filing - Detailed Audit Inspection Report for the period 2018-19 to 2020-21 which resulted in issuance of Audit Query No. D-21 (AENQ-300105) which reads as under:

"D-21(AENQ-300105)SHORT PAYMENT OF INTEREST ON DELAYED PAYMENTS

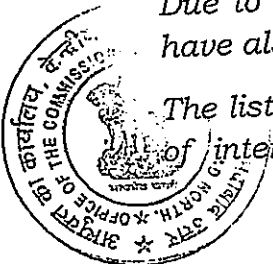
As per Section 61 of the CGST Act, various returns filed by taxpayers have to be scrutinized by the proper officer to verify the correctness of the returns and suitable action has to be taken on any discrepancies or inconsistencies reflected in the return. The Proper Officer designated for this purpose is the Range Officer.

Considering that global returns data of taxpayers is available in GSTN, under the SSCA on "Department's oversight on GST payments and Returns Filing" we have attempted to identify inconsistencies between returns through global data queries. For this purpose, we have extracted data centrally from GSTN by comparing various datasets from multiple returns using specific algorithms based on the interrelationships and data-matching techniques.

The extent of short payment of interest on account of delayed remittance of tax during 2018-19 to 2020-21 was identified through the tax paid details in GSTR-3B and the data of filing of the GSTR-3B. The due date of filing of GSTR-3B for the respective months (including any extension provided) and the actual date of filing of GSTR-3B has been taken into account to work out the interest liability and only the net tax liability (cash component) has been considered to work out the interest payable.

All the relaxations and reduced rate of interest extended to the industries during the COVID-19 phase I from January to April 2020 and Phase II for March 2021 returns have been considered while working out the interest component. It may also be noted that the interest worked out is only minimum as for the supplies made prior to the tax period and declared in the return for the said period, the interest has to be discharged on the entire tax component. Due to the non-availability of such bifurcation, the interest on such supplies have also been worked out only on the cash component.

The list of taxpayers with high value deviations, with potential short payment of interest pertaining to your jurisdiction, are brought out below. It is



requested that the reason for the inconsistencies may be ascertained from the taxpayers and intimated to Audit. Further, the details of action taken, if any, wherever applicable, under Section 61 may also be intimated to Audit.

Name of Taxpayer	GSTIN	Year	Months where returns were delayed filed	Filing dates	Number of days delayed	Calculate d Interest	Total calculate d interest	Total Interes T paid	Interest Difference	Interest Difference (Only positive) Total
CINEMA VENTURES PRIVATE LIMITED	24AAFRCR9542Q1Z0	201819	201804	'2018-10-21'	154,	289140 7.433	289140 7.433	0	0,	289140 7.433
			201805	'2018-12-12'	175,				685278.012329,	
			201806	'2019-01-16'	180,				499574.801096,	
			201807	'2019-02-01'	161,				193657.063562,	
			201808	'2019-02-22'	155,				239092.833699,	
			201809	'2019-05-23'	210"				309170.342466"	
			201810	'2019-05-27'	"188,				"234107.345096,	
			201811	'2019-05-27'	158,				179601.482959,	
			201812	'2019-05-28'	128,				308820.585205,	
			201901	'2019-05-29'	96,				111639.310027,	
			201902	'2019-05-29'	70,				79599.24,	
			201903	'2019-06-25'	66,				50866.416986,	
					201920				201904	
201905	'2019-07-16"	26"				34449.646685"				
201906	'2019-07-23'	3,				3366.136603,				
201909	'2019-11-18'	29,				18112.45611,				
201910	'2019-12-19'	29,				33631.015562,				
201911	'2020-01-03'	11,				6861.345534,				
201912	'2020-01-24'	4,				5246.770192,				
202001	'2020-11-10'	264,				138250.131288,				
202002	'2020-11-24'	249,				120235.359945,				
202003	'2020-12-18'	242,				18378.381699,				
		202021	202004	'2020-12-28'	220	null	2027.72	0	0	2027.724164
			202005	'2020-12-30'	171,				0,	
			202006	'2021-01-05'	167,				0,	
			202007	'2021-01-08'	139,				0,	
			202008	'2021-01-22'	113,				0,	
			202009	"2021-01-29'	"99,				0,	
			202010	'2021-02-09'	79,				174.302137,	
			202011	'2021-03-17'	85,				580.980822,	
			202012	'2021-03-17'	54,				1272.441205,	

3. The said AENQ was intimated to M/s. Cinema vide e-mail dated 21.06.2023. However, M/s. Cinema neither replied in this matter nor paid the interest as due

4. On verification of the data with GSTR 3B returns filed by M/s. Cinema , it was noticed that they had delayed filing of returns during 2018-19, 2019-20 and 2020-21. The return filing trends of noticee is provided in given below Annexure-A as under:-

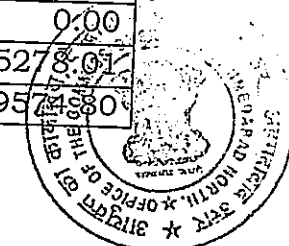
Annexure-A

GSTIN : 24AAFRCR9542Q1Z0

NAME : CINEMA VENTURES PRIVATE LIMITED

YEAR 2018-19

Month & Year	No. days delay	Total Cash Paid	IGST	CGST	SGST	Total Interest Payable
Apr-18	154		0.00	0.00	0.00	0.00
May-18	175	7940523	0.00	256854.97	428423.04	685278.01
Jun-18	180	5627926	0.00	212440.50	287134.30	499574.80



Jul-18	161	2439090	0.00	0.00	193657.06	193657.06
Aug-18	155	3127917	0.00	25101.06	213991.78	239092.83
Sep-18	210	2985375	0.00	54905.17	254265.17	309170.34
Oct-18	188	2525094	0.00	89023.86	145083.48	234107.35
Nov-18	158	2305012	0.00	25938.53	153662.96	179601.48
Dec-18	128	4892340	0.00	110124.95	198695.63	308820.59
Jan-19	96	2358122	0.00	23313.04	88326.27	111639.31
Feb-19	70	2305851	0.00	11183.66	68415.58	79599.24
Mar-19	66	1562815	0.00	2307.94	48558.47	50866.42
TOTAL		38070065	0.00	811193.67	2080213.76	2891407.43

YEAR 2019-20

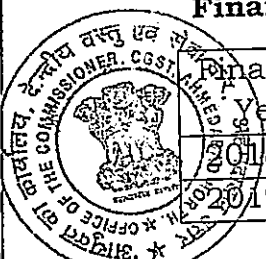
Month & Year	No. days delay	Total Cash Paid	IGST	CGST	SGST	Total Interest Payable
Apr-19	44	4360712	0.00	45030.277	49591.1993	94621.4768
May-19	26	2686778	0.00	11385.94	23063.7067	34449.6467
Jun-19	3	2275259	0.00	70.130466	3296.00614	3366.1366
Jul-19		2852243	0.00	0.00	0.00	0.00
Aug-19		3874535	0.00	0.00	0.00	0.00
Sep-19	29	1266484	0.00	436.83534	17675.6208	18112.4561
Oct-19	29	2351594	0.00	982.69003	32648.3255	33631.0156
Nov-19	11	1264844	0.00	384.29901	6477.04652	6861.34553
Dec-19	4	2659821	0.00	912.81205	4333.95814	5246.77019
Jan-20	264	1061896	1463.486	8792.6321	127994.0131	138250.131
Feb-20	249	979159	0.00	7135.7124	113099.6481	120235.36
Mar-20	242	153997	7407.706	5485.3378	5485.33775	18378.3817
TOTAL		25787322	8871.192	80616.667	383664.862	473152.72

YEAR 2020-21

Month & Year	No. days delay	Total Cash Paid	IGST	CGST	SGST	Total Interest Payable
Apr-20	220	0.00	0.00	0.00	0.00	0.00
May-20	171	0.00	0.00	0.00	0.00	0.00
Jun-20	167	0.00	0.00	0.00	0.00	0.00
Jul-20	139	0.00	0.00	0.00	0.00	0.00
Aug-20	113	0.00	0.00	0.00	0.00	0.00
Sep-20	99	0.00	0.00	0.00	0.00	0.00
Oct-20	79	4474	0.00	87.15	87.15	174.3
Nov-20	85	13860	0.00	290.49	290.49	580.98
Dec-20	54	47782	0.00	636.22	636.22	1272.44
TOTAL		66116		1013.86	1013.86	2027.72

Financial Year wise total Quantification of Interest is as under:-

Financial Year	Total Cash Paid	IGST	CGST	SGST	Total Interest Payable
2018-19	3,80,70,065	0	8,11,193.67	20,80,213.76	28,91,407.43
2019-20	2,57,87,322	8,871.19	80,616.67	3,83,664.86	4,73,152.72



2020-21	66,116	0	1,013.86	1,013.86	2,027.72
TOTAL	6,39,23,503	8,871.19	8,92,824.20	24,64,892.48	33,66,587.87

5. LEGAL PROVISIONS

(a) Section 39 of the CGST Act, 2017 reads as under:

“39. Furnishing of Returns (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)

(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.

(b) Section 59 of the CGST Act, 2017 reads as under:

Section 59: Self-assessment. – 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.

(c) Rule 61 of CGST Rules, 2017 reads as under:

Rule 61. Form and manner of furnishing of 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 in Form GSTR 3 B electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under-

(i) Sub-section (1) of section 39, for each month, or part thereof, on or before the twentieth day of the month succeeding such month:

(ii) Proviso to sub-section (1)

(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fee or any other amount payable under the Act or the provisions of this chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in Form GSTR 3B.

(d) Section 73 (1) of CGST Act, 2017 reads as under:

Section 73 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts



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

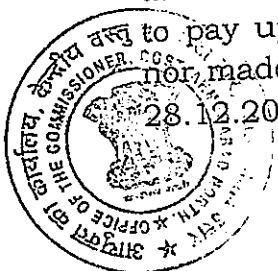
(e) **Section 50 of CGST Act, 2017 reads as under:**

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 of 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.

6. From the above it appeared that M/s. Cinema had paid net Cash amount totalling to Rs. 6,39,23,503/- (Rs. 3,80,70,065/- for FY 2018-19, Rs. 2,57,87,322/- for FY 2019-20 & Rs. 66,116/- for FY 2020-21) from their electronic cash ledger, on a date later than the due date specified under Section 39(1), Section 39(7) of CGST Act, 2017 read with Rule 61 of CGST Rules, 2017, therefore, the said noticee has 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. 6,39,23,503/- was required to be demanded along with interest and penalty from M/s. Cinema under Section 73 (1) of the CGST Act, 2017/ Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017. However, M/s. Cinema has paid the entire tax amount in their delayed filed GSTR-3B as discussed supra. Hence, the said amount of tax paid by them after due date is liable to be adjusted and appropriated towards the proposed demand of GST. Further, it appeared that total interest amount Rs.33,66,588/- (Rs. 28,91,407/- for FY 2018-19, Rs. 4,73,153/- for FY 2019-20 and Rs. 2,028/- for FY 2020-21) on the delayed payment of tax amounting to Rs. 6,39,23,503/- (Rs. 3,80,70,065/- for FY 2018-19, Rs. 2,57,87,322/- for FY 2019-20 & Rs. 66,116/- for FY 2020-21) not paid by the noticee was liable to be recovered from the noticee under Section 50(1) of the CGST Act.

7. M/s. Cinema had been communicated of the details of tax, interest and penalty which were to be discharged by them vide Form GST DRC 01 Part A dated 22.12.2023 under Rule 142(1A) of the CGST Rules, 2017 and requested to pay up the dues. However, they neither paid the said tax/interest liability nor made any representation till date of issuance of Show Cause Notice dated 28.12.2023.



8. Accordingly, Show Cause Notice F.No.GST/15-96/OA/2023-24 dated 28.12.2023 and having DIN 20231264WT000000F9FE was issued to M/s Cinema Services Pvt. Ltd., Himalaya Mall, Drive IN Road, Ahmedabad, Gujarat - 380052, under Section 73 of the CGST Act. Vide the said Show Cause Notice, the noticee were called upon to show cause to the Joint Commissioner, CGST, Ahmedabad North Commissionerate, as to why:-

- (i) The amount of Rs. **6,39,23,503/-** (Rupees Six Crore Thirty Nine Lakhs Twenty Three Thousand Five Hundred Three only) (Rs. 3,80,70,065/- for FY 2018-19 + Rs. 2,57,87,322/- for FY 2019-20 and Rs. 66,116/- for FY 2020-21) not paid within the prescribed time limit specified under sub section 7 of section 39 of the CGST Act, 2017 should not be demanded and recovered from them, under the provisions of Section 73(1) of the CGST Act, 2017/Gujarat GST Act, 2017.
- (ii) Since the Tax amount mentioned at (i) above has already been paid by them then the same should not be appropriated against aforesaid demand;
- (iii) Interest amount of Rs. **33,66,588/-** (Rupees Thirty Three Lakh Sixty Six Thousand Five Hundred Eighty Eight only) (Rs. 28,91,407/- for FY 2018-19 + Rs.4,73,153/- for FY 2019-20 + Rs. 2,028/- for FY 2020-21) on delayed payment of GST should not be charged and recovered from them under Section 50 of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017.
- (iv) Penalty should not be imposed on them under section 73(1) of CGST Act, 2017/Gujarat GST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017.

DEFENCE REPLY AND PERSONAL HEARING

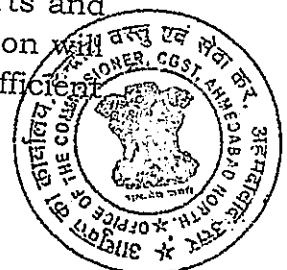
9. M/s. Cinema did not submit any reply to the Show Cause Notice dated 28.12.2023 issued to them.

10. In the instant case, Personal Hearing was given to M/s. Cinema on 09.02.2024, 28.02.2024, 22.03.2024 and 22.04.2024. However, neither M/s. Cinema nor their authorized representative appeared before me to present their case. Accordingly, I proceed to decide the matter on the basis of material available on record and on merits.

DISCUSSION AND FINDINGS

11. I have carefully gone through the Show Cause Notice issued to M/s. Cinema. On recapitulating, I find that the issue involved in the present show cause notice is late payment of GST due to late filing of GSTR-3B returns.

12. In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals, in several judgments/decision, have held that ex-parte decision will not amount to violation of principles of Natural Justice, when sufficient



opportunities for personal hearing have been given for defending the case. In support of the same, I rely upon the following judgments/orders as follows:-

a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;

"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

(Emphasis Supplied)"

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, deciding on 13-9-1963, has observed that;

"Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, 'deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case' [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

(Emphasis supplied)"

(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.), has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. - Admittedly, the appellant herein did not respond to the show cause notice. Thereafter, the appellant was called for personal hearing on six subsequent dates. According to the Additional DGFT nobody appeared on behalf of the appellant in spite of various dates fixed for personal appearance of the appellant and in these circumstances, the Additional DGFT proceeded with the matter ex parte and passed the impugned order. The appellant had the knowledge of the proceedings but neither any reply



to the show cause notice was given nor it chose to appear before the Additional DGFT to make oral submissions. Thus it is a clear case where proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;

"Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

(Emphasis Supplied)"

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus, COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.), has observed as under:

"Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing. - If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)"

(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.); has observed as under;

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an idea of formality."



(g) In the case of M/s. Patel Widecom India Ltd. Versus Commissioner, as reported at 2015 (321) E.L.T. A153 (All.), Hon'ble High Court of Allahabad had held that:-

"....It was further held that as the appellant had not filed reply to the show cause notice in spite of ample opportunity afforded to them, they could not take advantage of their own and seek quashing of impugned order on the ground that the proper opportunity of hearing was not granted and as such the principle of natural justice had been violated."

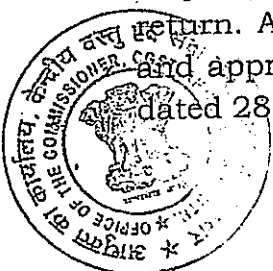
13. Further, apart from the above justification, it would be pertinent to mention and discuss the verdict of Hon'ble High Court of Patna in the case of **M/s. National Enterprises Versus Union of India**, as reported at **2021(55) G.S.T.L. 294 (Pat.)**, wherein, though the plea of the Petitioner was upheld, Hon'ble Court had categorically discussed the basic ingredients of Ex- Parte Order and defines that such Ex Parte Order would be bad in law for two reasons:-

- (a) violation of principles of natural justice, i.e. fair opportunity of hearing; no sufficient time afforded to petitioner to represent his case and ;
- (b) order passed ex parte in nature, does not assign any sufficient reasons which may even be decipherable from record, as to how officer could determine amount due and payable by assessee.

14. In the present proceedings, all efforts were made by the department, fair opportunities were given to M/s. Cinema to file his defense submission as well as to produce documents in support of their claim. Further sufficient time was also given to M/s. Cinema to file reply. Apart from all, sufficient opportunities were also given to the taxpayer to remain present in personal hearing and defend the case. Thus, principle of natural justice has been followed during the adjudicating process. Further, M/s. Cinema had been informed that if they fail to appear on the date of hearing then the matter would be decided ex parte. Therefore, the adjudication proceedings has taken due care that principle of natural justice have been duly followed.

15. On perusal of the above referred case records, I find that the issue is came out when the CERA, Ahmedabad, issued Audit Query No. D-21(AENQ-300105). The present Show Cause Notice was issued after verification of the data with GSTR-3B returns filed by M/s. Cinema and the above Audit Query. I find that in the present case, M/s. Cinema had filed their GSTR-3B returns after due date of filing and the present SCN has been issued for recovery of interest under Section 50 on late payment and imposition of penalty under Section 73 of the CGST Act, 2017/ Section 73 of the SGST Act, 2017 read with Section 122(2)(a) of the CGST Act, 2017. Now, I proceed to decide the issue on the basis of material available on record and on merits of the case.

16. There is no dispute as regards the GST liability of Rs.6,39,23,503/- as they M/s. Cinema have already paid the said amount while filing GSTR-3B return. Accordingly, the GST liability paid by them is required to be adjusted and appropriated against the GST liability proposed in the Show Cause Notice dated 28.12.2023 issued to M/s. Cinema.



17. It has been proposed to charge and recover interest of Rs.33,65,588/- (as detailed in Para 4 of the Show Cause Notice dated 28.12.2023 and Para 4 of this order. Interest is payable in accordance with provisions of Section 50 of the CGST Act, 2017. Accordingly, it is pertinent to discuss the provisions of Section 50 *ibid*, which is reproduced below for ease of reference:-

"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.

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.

18. M/s. Cinema had already filed GSTR-3B returns and made payment before commencement of proceedings and accordingly, interest is required to be paid only on the portion of the tax which is paid by debiting the electronic cash ledger. I find that in the Show Cause Notice dated 28.12.2023 issued to M/s. Cinema, interest has been calculated only on the portion of tax which was paid by debiting the electronic cash ledger. Accordingly, I find that interest has been correctly calculated in the Show Cause Notice in accordance with the provisions of Section 50 *ibid* and they are liable to pay interest of Rs.33,65,588/-.

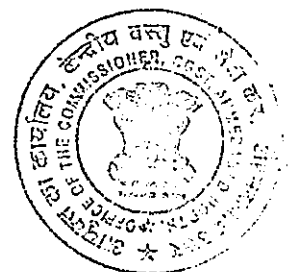
19. Now I proceed to decide the issue of levability of penalty under Section 73 read with Section 122(2)(a) of the CGST Act, 2017. It is pertinent to discuss the provisions of Section 122(2)(a) and Section 73(9) of the CGST Act, 2017.

Section 122(2)(a)

"(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, —
(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;"

Section 73(9)

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.



20. Show Cause Notice dated 28.12.2023 was issued to M/s. Cinema under section 73 ibid. According to the provisions of Section 122(2)(a) and Section 73(9), taxpayer is liable to penalty of Rs.10,000/- or 10 % of tax, whichever is higher. In the present case, amount of tax is Rs.6,39,23,503/- (Rupees Six Crore Thirty Nine Lakhs Twenty Three Thousand Five Hundred Three only). Accordingly, M/s. Cinema are liable to pay penalty of Rs.63,92,350/- (Rupees Sixty Three Lakh. Ninety Two Thousand Three Hundred Fifty only) in accordance with the above provisions.

21. In view of the above facts and findings I find that M/s. Cinema Ventures Private Limited are liable to pay GST of Rs. 6,39,23,503/- (Rupees Six Crore Thirty Nine Lakhs Twenty Three Thousand Five Hundred Three only) along with applicable interest under Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017. Further, they are also liable to pay penalty in accordance with the provisions of Section 122(2)(a) and Section 73(9) of the CGST Act, 2017. Accordingly, I pass the following order.

ORDER

- i. I confirm the demand of GST of Rs. 6,39,23,503/- (Rupees Six Crore Thirty Nine Lakhs Twenty Three Thousand Five Hundred Three only) ((Rs. 3,80,70,065/- for FY 2018-19 + Rs. 2,57,87,322/- for FY 2019-20 and Rs. 66,116/- for FY 2020-21), and order to recover the same from M/s. Cinema , under the provisions of Section 73(1) of the CGST Act, 2017/Gujarat GST Act, 2017;
- ii. I order to appropriate GST of Rs. 6,39,23,503/- (Rupees Six Crore Thirty Nine Lakhs Twenty Three Thousand Five Hundred Three only) ((Rs. 3,80,70,065/- for FY 2018-19 + Rs. 2,57,87,322/- for FY 2019-20 and Rs. 66,116/- for FY 2020-21) paid by M/s. Cinema against the demand of GST liability as per para (i) above;
- iii. I order to charge and recover interest amount of Rs. 33,66,588/- (Rupees Thirty Three Lakh Sixty Six Thousand Five Hundred Eighty Eight only) (Rs. 28,91,407/- for FY 2018-19 + Rs.4,73,153/- for FY 2019-20 + Rs. 2,028/- for FY 2020-21) on delayed payment of GST from M/s. Cinema under Section 50 of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017;

I impose penalty of Rs.63,92,350/- (Rupees Sixty Three Lakh Ninety Two Thousand Three Hundred Fifty only) under Section 73



read with Section 122(2)(a) of the Central Goods and Services Tax Act, 2017 on M/s. Cinema .

22. Accordingly, the Show Cause Notice bearing F.No.GST/15-96/OA/2023-24 dated 28.12.2023 (having DIN 20231264WT000000F9FE) is disposed of in above terms.

(Lokesh Damor)

Additional Commissioner,
Central Excise & CGST,
Ahmedabad North.

Date:23.04.2024

F.No. GST/15-96/OA/2023-24
BY SPEED POST/HAND DELIVERY

To,
M/s. Cinema Ventures Private Limited,
GSTIN :24AAF9542Q1ZO
Himalaya Mall, Drive IN Road,
Ahmedabad, Gujarat-380052.

Copy to:-

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-VII, Ahmedabad North.
3. The Superintendent, Range-II, Division-VII, CGST & Central Excise, Ahmedabad North, **with a request to create Form GST DRC-07 electronically in terms of DSR Advisory no.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.**
4. The Superintendent (System), CGST & Central Excise, Ahmedabad North for uploading the order on website.
5. Guard File.

