



सत्यमेव जयते

प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केन्द्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
छठी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
6th Floor, GST Bhavan, 380015



फा.सं. **STC/04-26/O&A/Apex Technocon/2021-22**

DIN: 20230664WS0000888DBD

आदेश की तारीख: Date of Order: 23/06/2023

जारी करने की तारीख: Date of Issue: 23/06/2023

द्वारा पारित /Passed by: Shri Shравan Ram, Joint Commissioner

मूल आदेश सं./Order-In-Original No.: 05/CGST/Ahmd-South/JC/ SR/23-24

यह प्रति उस व्यक्ति)यों (को ,जिसके)जिनके (लिए यह आदेश जारी किया गया है ,उसके)उनके (व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है ।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त)अपील ,(केन्द्रीय जीएसटी ,केन्द्रीय जीएसटी भवन ,आंबावाड़ी ,अहमदाबाद- 15को प्रारूप **GST APL-01** में अपील कर सकता है । उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से तीन माह के भीतर दाखिल की जानी चाहिए । इसपर रुपए -/2.00केवल 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 Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within three months from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं. GST APL-01 में दाखिल की जानी चाहिए । उसपर केन्द्रीय उत्पाद शुल्क)अपील (नियमावली 2001 ,के नियम 3के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए । इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. GST APL-01 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 108 of the CGST Rules 2017. It shall be accompanied with the following:

उक्त अ की प्रति ।

Copy of the aforesaid order.

निर्णय की दो प्रतियाँ)उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है (अथवा उक्त आदेश की अन्य प्रति जिसपर रु -/2.00का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त)अपील (में शुल्क के 10% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है ।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओं सूचना फा.सं./Show Cause Notice F.No. DGGI/AZU/36-56/2021-22 dated 30/06/2021 issued to M/s. Apex Technocon, FF-1, First Floor, Division Life Avenue, Opp. Devpriya-II, Ramdevnagar Road, Satellite, Ahmedabad.

Brief Facts of the Case:-

M/s. Apex Technocon is a proprietorship firm having principal place of business at FF-1, First Floor, Division Life Avenue, Opp. Devpriya-II, Ramdevnagar Road, Satellite, Ahmedabad engaged in works contract services registered with Range-III, Division-VIII, Ahmedabad South CGST Commissionerate and having GSTIN 24AAPPY1405L1ZC from 01/07/2017.

2. Whereas an inquiry against M/s. Apex Technocon had been initiated by Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit, Ahmedabad (herein after referred to as "DGGI-AZU" for the sake of brevity) for non-filing of GSTR-3B returns for the period from July,2018 to October,2019 and for non-payment of GST to Government exchequer during this period. A team of officers had visited the principal place of business of the firm i.e. FF-1, First Floor, Division Life Avenue, Opp. Devpriya-II, Ramdevnagar Road, Satellite, Ahmedabad on 02/12/2019 under authorization of Inspection (issued Section 67(1) of the Central Goods and Services Tax Act,2017) dated 02/12/2019 issued for inspection of the relevant documents/records of the assessee.

3. **EXECUTIVE SUMMARY:**

Based on the earlier information/intelligence received from DGGI Analytical Cell of DGGI vide letter F.No. DGGI/Fr-A/AZU/30-41/2018-19 dated 29/11/2019 regarding M/s. Apex Technocon (hereinafter referred to as "the taxpayer") regarding non-filing of GSTR-3B for the period from July,2018 to October,2019 an inquiry was initiated under Section 67 of CGST Act,2017 against them under inspection mode and a visit was made on 02/12/2019 by the officers of DGGI, AZU and relevant documents were withdrawn. During the visit and verification of records and after preliminary inquiry it was found that M/s. Apex Technocon had failed to file GSTR-3B returns from July,2018 onwards and they have not discharged their GST liability from July,2018 due to financial crunches and family problems but they have filed GSTR-1M. The taxpayer submitted copy of GSTR-1M for the month of July,2018 to October,2019 and assured to pay the outstanding GST liability.

As per sales/supply register and details shown in GSTR-1M filed by the taxpayer during July,2018 to October,2019, they were liable to pay GST amounting to Rs.2,38,07,642/- (CGST Rs.1,19,03,821/- and SGST Rs.1,19,03,821/-) but had failed to discharge their liability. During investigation, the taxpayer accepted to have defaulted in payment of GST for the month of July,2018 to October,2019 and assured to pay the outstanding GST liability.

Post initiation of proceedings against them on 02/12/2019, the taxpayer filed GSTR-3B returns for the period from July,2018 to October,2019, wherein they have made payment of GST amounting to Rs.2,38,07,642/- with late fee of Rs.46,500/- but interest and penalty has not been paid on the said GST liability.

4. **Scrutiny of the documents submitted during inspection on 02/12/2019 and subsequently submitted during investigation by M/s. Apex Technocon.**

During the visit and the course of inquiry, the taxpayer vide their letters dated 02/12/2019 submitted the documents viz. copy of GSTR-1M for the month of July,2018 to October,2019, copy of GSTR-3B for the month of

July,2017 to June,2018, Month wise sales/supply register from July,2017 to October,2019, Month wise purchase register from July,2017 to October,2019, Monthwise summary of ITC credit register from July,2018 to October,2019 which were scrutinized and documents submitted by the taxpayer was analyzed as under :

(Amount in Rs.)

TABLE-A : Calculation of GST liability as per Sales/Supply register									
Month/ Year	Invoice Value incl. of GST	Taxable Value@ 12%	Taxable Value@18%	SEZ (Exempt ed supply)	CGST @6%	SGST @6%	CGST @9%	SGST @9%	Total payable GST
Jul-2018	9976155	1613385	6923019	0	96803	96803	623072	623072	1439750
Aug-2018	10001408	0	9475768	0	0	0	762819	762819	1525638
Sep-2018	3856985	0	3268631	0	0	0	294177	294177	588354
Oct-2018	14762560	0	12510643	0	0	0	1125958	1125958	2251916
Nov-2018	18698180	0	15845915	0	0	0	1426132	1426132	2852264
Dec-2018	11670446	542479	9375313	0	32549	32549	843778	843778	1752654
Jan-2019	12716283	0	10776511	0	0	0	969886	969886	1939772
Feb-2019	4051649	0	3433601	0	0	0	309024	309024	618048
Mar-2019	24450319	4179870	16753275	0	250792	250792	1507795	1507795	3517174
Apr-2019	6968531	0	5905535	0	0	0	531498	531498	1062996
May-2019	8494768	0	7198956	0	0	0	647906	647906	1295812
Jun-2019	10495959	888715	8051355	0	53323	53323	724622	724622	1555890
Jul-2019	14500651	0	11107342	1393987	0	0	999661	999661	1999322
Aug-2019	3973650	0	2346650	1204603	0	0	211199	211199	422398
Sep-2019	6512552	0	3345485	2564880	0	0	301094	301094	602188
Oct-2019	4578364	0	2130375	2064521	0	0	191734	191734	383468
Total	165708459	7224449	127448373	7227991	433467	433467	11470354	11470354	23807642

As per sales/supply register, it was revealed that the taxpayer had made supplies to SEZ for the period July,2019 to October,2019 amounting to Rs.72,27,991/- for which they are claiming exemption under notification no. 18/2017 dated 5th July,2017.

As per the details obtained and contained in the above table, the taxpayer is liable to pay GST amounting to Rs.2,38,07,642/- for the month of July 2018 to October,2019. On pointing out the same they assured to discharge their GST liability at the earliest.

5. Legal Provisions

5.1 Scope of supply as defined under Section 7 of the CGST Act,2017 :

“7. (1) For the purposes of this Act, the expression “supply” includes—
 (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 (b) import of services for a consideration whether or not in the course or furtherance of business;
 (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and”

In view of the above provisions it appears that the goods provided by the taxpayer to their client were supply of taxable services.

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

“9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates,

not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.”

By virtue of the above provision the taxpayer was under obligation to pay the GST (CGST+SGST) at applicable rate on supply of services as mentioned at Para-4 above to government exchequer.

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

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

(2) The time of supply of services shall be the 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 sub-section (2) of 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 sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

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

Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.”

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

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

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

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

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of

goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein: Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

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

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

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act: Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.”

5.5 Rule 61 of the CGST Rules, 2017, as amended reads as :

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

From conjoint reading of Section 39 of CGST Act,2017 and Rule 61 of the CGST Rules,2017, it appears that the taxpayer should have filed in such form and manner as may be prescribed the GSTR-3/GSTR-3B returns, however

they have knowingly failed to file the correct stipulated GSTR-3B returns. They have discharged their GST liability less than what had been declared by them in their GSTR-1M, filed by them during the period from July,2018 to October,2019.

5.6 Payment of tax as detailed under Section 49 of the CGST Act,2017:

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

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

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

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

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of— (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order; (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax; (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax; (d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax; (e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:— (a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on

the full incidence of such tax to the recipient of such goods or services or both.”

The taxpayer having knowingly failed to pay the tax in gross contravention of Section 49 of the CGST Act,2017.

5.7 Self-assessment as defined under Section 59 of the CGST Act,2017 is as under :

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

Further, similar provisions exists in Section 59 of the CGST Act,2017.

In terms of Section 59 of the CGST Act,2017 read with Section 59 of the CGST Act,2017, the taxpayer has to self-assess the GST liability for the period July,2018 to October,2019 and to filed the stipulated returns as per Section 39 of the CGST Act,2017 and read with GGST Act, 2017.

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

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

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

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

Further, Hon’ble Jharkhand High Court in the case of M/s. Mahadeo Construction have stated that-

“Liability of interest is automatic, but the same is required to be adjudicated in the event of an taxpayer disputes the computation or very liability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act. In our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules,”

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

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

Similarly, vide Notification No. 16/2021-Central Tax dated 01/06/2021, in exercise of the power conferred by sub-section (2) of section 1 of the Finance Act, 2021 (13 of 2021) (hereinafter referred to as the said Act), the Central Government hereby appoints the 1st day of June,2021, as the date on which the provisions of Section 112 of the said Act shall come into force.

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

5.9 Section 73 of the CGST Act, 2017:

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

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(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) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(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.

(10) The proper officer shall issue the order under sub-section (9) within three 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 three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.”

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

“122.(1) Where a taxable person who –

(i) to (ii)....

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

(iv)....(xxi)....

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

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

(b)

(3) Any person who-

6. Outcome of the Investigations/conclusion:

In view of discussions in foregoing paragraphs and the evidences brought on record, it appeared that :

The taxpayer is a proprietorship firm having principal place of business at FF-1, First Floor, Division Life Avenue, Opp. Devpriya-II, Ramdevnagar Road, Satellite, Ahmedabad engaged in works contract services relating to construction works. It is registered with GST and holding GSTIN 24AAPPY1405L1ZC.

The taxpayer falls under the jurisdiction of Range-III, Division-VII, Ahmedabad South CGST Commissionerate.

The taxpayer was collecting CGST and GGST from their clients/customers but not depositing the same to the Government exchequer during the period from July,2018 to October,2019 and also had not filed their GSTR-3B returns.

Accordingly, the registered premises of the taxpayer was visited by the Officers of DGGI, ZU, Ahmedabad on 02/12/2019 under authorization of Inspection (issued under Section 67(1) of the CGST Act,2017) dated 02/12/2019 and inspection of relevant records was carried out. The taxpayer had submitted sales and purchase register vide their letters dated 02/12/2019. From the scrutiny of the documents submitted by the taxpayer vide their letter dated 02/12/2019, it appeared that the taxpayer had collected GST amount but not paid the same to the Government exchequer during the period from July,2018 to October,2019 and also not filed the corresponding GSTR-3B returns.

The taxpayer had filed GSTR-1M before initiation of inquiry by the DGGI but have failed to file GSTR-3B returns from July,2018 to October,2019. The taxpayer stated that they have not discharged their GST liability from July,2018 to October,2019 due to financial crunches and family problems. From the sales/supply register and GSTR-1M for the months of July,2018 to October,2018, it was revealed that the taxpayer is liable to pay GST amounting to totally Rs.2,38,07,642/- for the period from July,2018 to October,2019.

The taxpayer admitted that they have defaulted in payment of GST amounting to Rs.2,38,07,642/- during July,2018 to October,2019.

After initiation of investigation by DGGI, the taxpayer accepted their GST liability and have filed GSTR-3B return for the period from July,2018 to October,2019 and have paid the outstanding GST liability of Rs.2,38,07,642/- (ITC Rs.1,84,07,905/- and cash Rs.53,99,739/-) and paid late fee Rs.46,500/- (Cash). But applicable interest and penalty has not been paid on the said GST liability. Details of payment are shown in Table-B.

(Amount in Rs.)

TABLE-B : Payable GST as per GSTR-1M & details of payment as per GSTR-3B										
Month/ Year	Invoice Value incl. of GST	Taxable Value as per GSTR-1	Payable CGST	Payable SGST	Payable GST	Taxabl e value as per GSTR- 3B	GST paid by ITC	GST paid by Cash	Late Fee	Total
Jul-2018	9976155	853640 5	719875	719875	1439750	85364 05	1096259	343491	0	1439750
Aug-2018	10001408	847576 9	762819	762819	1525638	84757 69	690424	835214	5000	1525638
Sep-2018	3856985	326863 1	294177	294177	588354	32686 31	588354	0	5000	588354
Oct-2018	14762560	125106 43	1125958	1125958	2251916	12510 643	2251916	0	5000	2251916
Nov-2018	18698180	158459 15	1426133	1426133	2852264	15845 915	1996678	855586	5000	2852264
Dec-2018	11670446	991779 2	876327	876327	1752654	99177 92	1019845	732809	5000	1752654
Jan-2019	12716283	107765 11	969886	969886	1939772	10776 511	909417	1030355	5000	1939772
Feb-2019	4051649	343360 1	309024	309024	618048	34336 01	618048	0	5000	618048
Mar-2019	24450319	209331	1758587	1758587	3517174	20933	2830620	686554	5000	3517174

		45				145				
Apr-2019	6968531	5905535	531498	531498	1062996	5905535	877387	185609	5000	1062996
May-2019	8494768	7198956	647906	647906	1295812	7198959	1174259	121553	250	1295812
Jun-2019	10495959	8940070	777945	777945	1555890	8940070	1434308	486986	250	1555890
Jul-2019	14500651	12501329	999661	999661	1999322	12501329	1512336	486986	250	1999322
Aug-2019	3973650	3551253	211199	211199	422395	3551253	422398	0	250	422398
Sep-2019	6512552	5910365	301094	301094	602188	5910365	602188	0	250	602188
Oct-2019	4578364	4194896	191734	191734	383468	4194896	383468	0	250	383468
Total	165708459	141900819	11903821	11903821	23807642	141900819	18407905	5399739	46500	23807642

They have defaulted in payment of GST to the Govt. exchequer on sale/supply of services during the period from July,2019 to October,2019. If this investigation had not been initiated by DGGI, AZU and inspection of their premises was not conducted then the taxpayer would not have deposited the same to the government exchequer. This shows that despite having knowledge of CGST Acts & procedures, the act of other than fraud, misdeclaration or suppression by the taxpayer shows the contravention of provisions with intent to evade payment of GST on the part of M/s. Apex Technocon.

The taxpayer are also liable to pay applicable penalty under the provisions of Section 73(11) readwith section 73(9) of the CGST Act,2017 readwith Section 73(11) readwith section 73(9) of the Gujarat State GST Act, 2017 readwith Section 20 of the IGST Act,2017.

7. It is seen from the facts that have emerged during the investigation of the instant case that the taxpayer had filed GSTR-1M but did not discharge their liability by filing GSTR-3B returns in the prescribed form and manner under Section 39 of CGST Act,2017 for the period from July,2018 to October,2019. The fact about collecting and not depositing GST was detected only when the department (DGGI) initiated the present investigation. Various courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. In case of evaluation of tax behaviour of M/s. Apex Technocon, it shows their intent to evade payment of GST by an act of omission in as much as M/s. Apex Technocon though being well aware of the unambiguous provisions of the CGST Act,2017 and Rules made thereunder, failed to disclose to the department at any point of time, their taxable income on which GST was collected but not paid by them, by way of not filing their GST Returns viz. GSTR-3B before initiation of the present investigation.

7.1 It is worth mentioning here that the taxpayer had failed to discharge their actual tax towards providing the taxable supplies made by them by not filing the GST returns, viz. GSTR-3B in the prescribed form and manner for the period from July,2018 to October,2019. The total evasion of GST for the period from July,2018 to October,2019 on the entire income received towards making taxable supplies by the taxpayer came to the knowledge of the DGGI only due to specific investigations carried out as spelt out earlier.

8. Quantification of GST :-

8.1 The taxpayer had not discharged their regular GST liability before initiation of investigation for the period from July,2018 to October,2019 which is Rs.2,38,07,642/-.

8.2 However, after initiation of investigation, the taxpayer completely discharged the GST liability for the period from July,2018 to October,2019 to the tune of Rs.2,38,07,642/- as in Table-C below :

Table-C : Details of payment as per GSTR-3B (Amount in Rs.)

Month/Year	Date of filing of GSTR-3B	Invoice Value incl. of GST	Taxable Value as per GSTR-3B	CGST	SGST	GST paid by ITC	GST paid by Cash	Late Fee	Total GST paid
Jul-2018	06-12-19	9976155	8536405	719875	719875	1096259	343491	0	1439750
Aug-2018	31-12-19	10001408	8475769	762819	762819	690424	835214	5000	1525638
Sep-2018	31-12-19	3856985	3268631	294177	294177	588354	0	5000	588354
Oct-2018	31-12-19	14762560	12510643	1125958	1125958	2251916	0	5000	2251916
Nov-2018	18-03-20	18698180	15845915	1426133	1426133	1996678	855586	5000	2852264
Dec-2018	18-03-20	11670446	9917792	876327	876327	1019845	732809	5000	1752654
Jan-2019	18-03-20	12716283	10776511	969886	969886	909417	1030355	5000	1939772
Feb-2019	18-03-20	4051649	3433601	309024	309024	618048	0	5000	618048
Mar-2019	25-05-20	24450319	20933145	1758587	1758587	2830620	686554	5000	3517174
Apr-2019	30-09-20	6968531	5905535	531498	531498	877387	185609	5000	1062996
May-2019	30-09-20	8494768	7198956	647906	647906	1174259	121553	250	1295812
Jun-2019	30-09-20	10495959	8940070	777945	777945	1434308	486986	250	1555890
Jul-2019	30-09-20	14500651	12501329	999661	999661	1512336	486986	250	1999322
Aug-2019	30-09-20	3973650	3551253	211199	211199	422398	0	250	422395
Sep-2019	30-09-20	6512552	5910365	301094	301094	602188	0	250	602188
Oct-2019	30-09-20	4578364	4194896	191734	191734	383468	0	250	383468
Total		165708459	141900819	11903821	11903821	18407905	5399739	6500	23807642

8.3 From the above table, it appeared that the taxpayer during the period from July,2018 to October,2019 filed GSTR-3B, but they have not paid the applicable interest and penalty till date under the provisions of Section 73(11) of the CGST Act and/or Section 122 of the CGST Act.

8.4 In light of the facts discussed hereinabove and the material evidences available on records, it was revealed that the taxpayer had contravened the following provisions of the CGST Act, 2017 :

- (i) Section 9 of the CGST Act, 2017, in as much as they failed to pay the appropriate GST on supply of taxable supply made by them to their customers/clients, with intent to evade payment of Tax;
- (ii) Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Act,2017 in as much as they failed to file the correct GSTR-3B returns for the period from July,2018 to October,2019 with an intent to evade payment of tax;
- (iii) Section 49 of the CGST Act,2017, in as much as they failed to discharge their tax liability, with an intent to evade payment of tax;
- (iv) Section 49 of the CGST Act,2017 in as much as their failed to self-assess their tax liability with an intent to evade payment of tax;
- (v) Section 73(1) of the CGST Act,2017 in as much as they failed to pay the tax collected but not paid within a period of thirty days from the due date of payment of such tax.

9. And whereas the taxpayer had failed to discharge the applicable GST on the outward taxable supplied made by them on time during the period from July,2018 to October,2019. For their act other than act of suppression and mis-declaration, the provisions of Section 50 and 73 of the CGST Act, 2017 are invocable and the taxpayer are liable to pay applicable interest and penalty for the late filing of GSTR-3B for the period from July,2018 to October,2019.

9.1 Further, all the above act of contravention constitute and offence of the nature as prescribed under the provision of Section 39, 49,59, Section 122 of the CGST Act, 2017, rendering themselves liable to penalty under the provisions of Section 39, 49, 59, Section 122 of the CGST Act, 2017, rendering themselves liable to penalty under Section 73 and/ or 122 of the CGST Act, 2017 for failure to file the statutory GST Returns duly discharging the tax liability and non compliance of various provisions of the act leading to penalty under Section 73(11) and Section 122 of the CGST Act, 2017, as referred here-in-above.

9.2 The above liabilities of the taxpayer for the period from July,2018 to October, 2019 had been worked out on the basis of data/information received from the taxpayer vide their letter dated 02/12/2019. Thus the present notice relates exclusively to the information available on record and limited to the period mentioned and is restricted only to the issue of non-filing of GSTR-3B in the said period.

10. The taxpayer was communicated the details of penalty due to them vide DRC-01A dated 21/05/2021 under Rule 142(1A) of the CGST Rules, 2017. In response, they have submitted their reply vide letter dated 15/06/2021 and requested to grant 2 months time to clear the interest amount. Since, the taxpayer had failed to pay the interest and penalty as applicable, a show cause notice F.No. DGGI/AZU/36-56/2021-22 dated 30/06/2021 was issued by the Joint Director, DGGI, Zonal Unit, Ahmedabad answerable to the Additional/Joint Commissioner, CGST, Ahmedabad South, Ahmedabad as to why :-

- (i) The CGST amount of Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One only) evaded should not be demanded and recovered from them under Section 73(1) of the CGST Act,2017;
- (ii) The CGST amount of Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One only) paid through ITC (Rs.1,03,42,457/-) and Cash (Rs.13,60,984/-) should not be appropriated against their outstanding liability CGST tax liability demanded as per Sr. No. 11(i) above;
- (iii) The Gujarat GST/SGST amount of Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One only) evaded should not be demanded and recovered from them under Section 73(1) of the Gujarat GST Act,2017;
- (iv) The Gujarat GST/SGST amount of Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One only) paid through ITC (Rs.80,65,448/-) and Cash (Rs.40,38,755/-) should not be appropriated against their outstanding liability GGST tax liability demanded as per Sr. No. 11(iii) above;

- (v) Interest at applicable rates should not be demanded and recovered from them under Section 50 of the CGST Act, 2017 read with Section 50 of the Gujarat GST Act, 2017 on the total GST liability of Rs.2,38,07,642/- (Rupees Two Crores Thirty Eight Lakhs Seven thousand Six Hundred Forty Two Only) as demanded at Serial No. 11(i) and 11(iii) above;
- (vi) Penalty should not be imposed upon them under Section 73(9) of the CGST Act, 2017 read with Section 73(9) of the Gujarat GST Act, 2017 for non-payment of GST amount for Serial No. 11(i) and 11(iii) above;
- (vii) Penalty should not be imposed upon them under Section 73(11) of the CGST Act, 2017 read with Section 73(11) of the Gujarat GST Act, 2017 for non-payment of GST amount for Serial No. 11(i) and 11(iii) above;
- (viii) Penalty should not be imposed upon them under Section 122(1)(iii) of the CGST Act, 2017 read with Section 122(1)(iii) of the GGST Act, 2017 for collecting tax and not depositing to the Government beyond a period of three months from the date on which such payment becomes due;
- (ix) Penalty should not be imposed upon them under Section 122(2)(a) of the CGST Act, 2017 read with Section 122 (2) (a) of the GGST Act, 2017 for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax;
- (x) Late fees should not be recovered under Section 47 of the CGST Act, 2017 read with Section 47 of the GGST Act, 2017;
- (xi) Late fees of Rs.46,500/- already deposited by the assessee should not be appropriated against the late fees amount demanded at Serial No. 11(x) as above.

11. Defense Submissions :-

The taxpayer has not filed any defence reply to the show cause notice till date.

12. Personal Hearing :-

Personal hearing to the Taxpayer was granted by my predecessor to appear on 10/02/2023. However no one appeared for personal hearing on behalf of the Taxpayer. Consequent to the issue of Establishment Order No.08/2023 dated 13.02.2023 (DGHRD/ADC/JC/11/2023), issued by the Commissioner, Central GST, Ahmedabad South, adjudication of this case is now assigned to the undersigned. Accordingly, a fresh personal hearing was granted to the taxpayer to appear on 23/02/2023 and 15/03/2023 to comply with the principles of natural justice. The taxpayer vide their letter dated 13/03/2023 requested for more time to appear for personal hearing and their request was considered and a fresh date of personal hearing was fixed on 28/03/2023. The taxpayer vide their letter dated 28/03/2023 again requested to for adjournment in the matter for another 15 days which was considered and a fresh personal hearing was granted on 13/04/2023. However, due to preoccupation, the personal hearing was postponed. Further, the taxpayer was again granted personal hearing on 23/05/2023 which was also not attended by them.

13. Discussion and findings :-

13.1 I have carefully gone through the facts of this case. I observe from the records that the taxpayer was given the opportunity of personal hearing on different

dates as per the details given below in order to follow the principles of natural justice but he did not turn up.

Sr.No.	Date of PH Fixed	Remark if any
1.	10.02.2023	No one appeared
2	23.02.2023	No one appeared
3	15.03.2023	Requested for adjournment and allowed
4.	28.03.2023	Requested for adjournment and allowed
5.	13.04.2023	No one appeared
6.	23.05.2023	No one appeared

From the above I have noted that the taxpayer was given sufficient opportunities of PH and for filing written submission as well. I further noted that despite the second adjournment allowed and PH rescheduled on 13.04.2023, the department, at its own without even waiting for any communication from taxpayer has given one more opportunity for PH on 23.05.2023 but in response vide letter dated 23.05.2023 they requested for further adjournment. Such attitude on the part of taxpayer clearly displayed that they were not interested in joining the proceedings. Hence, I proceed to adjudicate the case on the basis of records available.

13.2 I find from the available records that the team of officers from DGGI, Zonal Unit, Ahmedabad had visited the principal place of business of the firm i.e. FF-1, First Floor, Division Life Avenue, Opp. Devpriya-II, Ramdevnagar Road, Satellite, Ahmedabad on 02/12/2019 under authorization of Inspection (issued Section 67(1) of the Central Goods and Services Tax Act,2017) dated 02/12/2019 issued for inspection of the relevant documents/records of the taxpayer on the grounds of non-filing of GSTR-3B returns for the period from July,2018 to October,2019 and for non-payment of GST to Government exchequer during this period by the taxpayer. As a matter of fact, the Taxpayer had declared their tax liability for the said period by filing GSTR-1, however, the tax liability reported in the GSTR-1 returns were not discharged by the taxpayer for the said period. During investigation, the taxpayer accepted their default in payment of GST for the period from July, 2018 to October, 2019 and assured to pay the outstanding GST liability. As per sales/supply register and details shown in GSTR-1M filed by the taxpayer during July, 2018 to October, 2019, they were liable to pay GST amounting to Rs.2,38,07,642/- (CGST Rs.1,19,03,821/- and SGST Rs.1,19,03,821/-) but had failed to discharge their tax liability.

13.3 I find that post initiation of proceedings against the taxpayer on 02/12/2019, the taxpayer filed GSTR-3B returns for the period from July,2018 to October,2019, wherein they have made payment of the tax liability declared in GSTR-1 returns amounting to Rs.2,38,07,642/- alongwith late fee of Rs.46,500/-. I further find that the taxpayer had declared their tax liability in GSTR-1M for the period from July, 2018 to October, 2019 but not discharged their GST liability in time thereby violating the provisions of Section 122(1)(iii) of the CGST Act, 2017 in spite of the fact that they collected the amount as tax from clients as verified from the respective ledgers. Thereafter, the taxpayer has filed GSTR-1 returns but the tax liability was discharged beyond a period of three months from the date on which such payment became due. The relevant portion of Section 122(1)(iii) are reproduced hereunder :-

“SECTION 122. Penalty for certain offences. — (1) Where a taxable person who —

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

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

From the aforesaid provision, I find that the position of the law is very clear which attracts penal action in the matter where the taxpayer collects tax but fails to pay the same to the exchequer beyond a period of three months. Here I may mention that statutory provision of the law is required to be strictly followed in its letter and spirit as per the judgment of Hon'ble Supreme Court 2003 (158) ELT 545 (SC) in the case of CCE Vs Orient Fabrics, where it was held as per the relevant text reproduced below.

“19. It is now a well settled principles of law that expropriatory legislation must be strictly construed (see M/s. D.L.F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and Ors., reported in AIR 2003 SC 1648). It is further trite that a penal statute must receive strict construction.”

In the instant matter the taxpayer has discharged his tax liability only after initiation of proceedings by the DGGI against them by filing GSTR-3B returns. Such non-payment of tax on the part of taxpayer raises question on the intention of the taxpayer. However, in view of the law declared by the Hon'ble Apex court in the aforesaid judgment, I am required to be more conscious and strict in construing the provision of Section 122 of the Act which empowers me to impose penalty equivalent to the tax collected but not paid to the exchequer beyond a period of three months which obviously destroys the arguments, if any, the taxpayer has on the intention of the taxpayer irrespective of the fact that he has made the payment of tax. Hence, I am not inclined to impose penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher as provided under Section 73(9) of the Act, especially, when the taxpayer has failed to make any representation and, therefore, I find it more appropriate to impose penalty under Section 122 of the Act as proposed in the notice. I further find that the taxpayer has not discharged their interest liability on their tax liability even after initiation of proceedings under Section 73 of the CGST Act, 2017. Therefore, in view of the aforesaid provision of law, the said taxpayer has rendered himself liable to penalty equal to the tax collected but failed to pay the same to the Government beyond a period of three months from the date on which such payment becomes due. The details of GSTR-3B returns filed by the taxpayer are as under in TABLE-D :-

TABLE-D

(Amount in Rs.)

Month/Year	Taxable Value as per GSTR-1	Payable CGST	Payable SGST	Payable GST	Taxable value as per GSTR-3B	Date of filing GSTR-3B	GST paid by ITC	GST paid by Cash	Late Fee	Total
Jul-2018	8536405	719875	719875	1439750	8536405	06-12-19	1096259	343491	0	1439750
Aug-2018	8475769	762819	762819	1525638	8475769	31-12-19	690424	835214	10000	1525638
Sep-2018	3268631	294177	294177	588354	3268631	31-12-19	588354	0	10000	588354
Oct-2018	12510643	1125958	1125958	2251916	12510643	31-12-19	2251916	0	10000	2251916
Nov-2018	15845915	1426133	1426133	2852264	15845915	18-03-20	1996678	855586	10000	2852264
Dec-2018	9917792	876327	876327	1752654	9917792	18-03-20	1019845	732809	10000	1752654
Jan-2019	10776511	969886	969886	1939772	10776511	18-03-20	909417	1030355	10000	1939772
Feb-2019	3433601	309024	309024	618048	3433601	18-03-20	618048	0	10000	618048
Mar-2019	20933145	1758587	1758587	3517174	20933145	25-05-20	2830620	686554	10000	3517174
Apr-2019	5905535	531498	531498	1062996	5905535	30-09-20	877387	185609	10000	1062996
May-2019	7198956	647906	647906	1295812	7198959	30-09-20	1174259	121553	500	1295812
Jun-2019	8940070	777945	777945	1555890	8940070	30-09-20	1434308	121582	500	1555890
Jul-2019	12501329	999661	999661	1999322	12501329	30-09-20	1512336	486986	500	1999322
Aug-2019	3551253	211199	211199	422395	3551253	30-09-20	422398	0	500	422398
Sep-2019	5910365	301094	301094	602188	5910365	30-09-20	602188	0	500	602188
Oct-2019	4194896	191734	191734	383468	4194896	30-09-20	383468	0	500	383468
Total	141900819	11903821	11903821	23807642	141900819		18407905	5399739	93000	23807642

13.4 I also find that the Taxpayer has discharged their tax liability of Rs.2,38,07,642/- for the period from July,2018 to October,2019 by way of payment of Rs.1,84,07,905/- through ITC and Rs. 53,99,739/- through electronic cash ledger. I find that the payment of GST for the said period was delayed by the Taxpayer in the respective months and they had discharged their tax liability late (i.e. beyond the prescribed time limit) as per the details mentioned in the aforesaid Table-D and thereby contravened the provisions of Section 39 of the CGST Act,2017 read with Rule 61 of the CGST Rules,2017. The Taxpayer had filed the GSTR-1 returns declaring their tax liability, however the GSTR-3B returns wherein the tax liability have been discharged by the Taxpayer have been filed only after initiation of proceedings against the Taxpayer. I also find that even though the Taxpayer has paid the tax liability, the Taxpayer has not discharged the interest liability in terms of Section 50(1) of the CGST Act, 2017 on the delayed payment of tax. The relevant provision regarding interest is reproduced hereunder:

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

13.5 From the aforesaid provision of law I have noted that a taxpayer is liable to pay interest on his own if he has not paid the tax or any part thereof, within the period of time limit as prescribed. As per the proviso to Section 50(1), the interest would be payable only on that portion of the tax which is paid by debiting the electronic cash ledger. However, this comes with a rider that this would not be applicable in case the return under Section 39 for the said period, is furnished after commencement of any proceeding under Section 73 or Section 74 of the said Act.

13.6 In the case in hand I find that as per Section 50(1), the Taxpayer was bound by the law to pay interest on his own which is not a case of taxpayer since he failed to pay the interest even after initiation of proceedings under Section 73. The taxpayer was very much aware of tax evasion as the DGGI had conducted inspection of the documents under Section 67(1) of the CGST Act, 2017 on 02/12/2019 wherein it was noticed that even though they had filed GSTR-1 returns, the tax liability was not discharged by them. The Taxpayer discharged his tax liability only on filing the GSTR-3B returns. Further, I find that the said GSTR-3B returns are not properly filed by the taxpayer in as much as they failed to discharge their interest liability while filing the GSTR-3B returns. Therefore, the taxpayer was issued Form DRC-01 under Rule 142(1A) on 21/05/2021 by the DGGI to pay the outstanding dues. Despite the said facts, the taxpayer has failed to pay the interest liability which was supposed to have paid on his own. Therefore, I find that the Taxpayer is liable to pay interest on the entire portion of tax liability which has been discharged from the electronic cash ledger as well as from electronic credit ledger in view of the fact that I noted and discussed in the Para above. Hence, the taxpayer is liable for interest on the entire declared tax liability of Rs.2,38,07,642/- under Section 50(1) of the CGST Act,2017 and equivalent penalty amounting to Rs.2,38,07,642/- under Section 122(1)(iii) of the CGST Act,2017. The interest liability has also been worked out in the below mentioned Table-E which comes to Rs.52,91,284/- (CGST Rs.26,45,642 + SGST Rs.26,45,642/-).

TABLE-E

Period	Taxable Value as per GSTR-3B	CGST	SGST	Actual date of filing GSTR-3B	Due date of filing GSTR-3B	Delay in payment of GST (No. of days)	Interest payable @18% (CGST)	Interest payable @18% (SGST)
July,2018	8536405	719875	719875	06-12-2019	24-08-2018	469	166498	166498
Aug,2018	8475769	762819	762819	31-12-2019	20-09-2018	467	175678	175678
Sep,2018	3268631	294177	294177	31-12-2019	25-10-2018	432	62672	62672
Oct,2018	12510643	1125958	1125958	31-12-2019	20-11-2018	406	225438	225438
Nov,2018	15845915	1426133	1426133	18-03-2020	20-12-2018	454	319298	319298
Dec,2018	9917792	876327	876327	18-03-2020	20-01-2018	788	340543	340543
Jan,2019	10776511	969886	969886	18-03-2020	22-02-2019	390	186537	186537
Feb,2019	3433601	309024	309024	18-03-2020	20-03-2019	364	55472	55472
March,2019	20933145	1758587	1758587	25-05-2020	23-04-2019	398	345165	345165
April,2019	5905535	531498	531498	30-09-2020	20-05-2019	499	130792	130792
May,2019	7198959	647906	647906	30-09-2020	20-06-2019	468	149533	149533
June,2019	8940070	777945	777945	30-09-2020	20-07-2019	438	168036	168036
July,2019	12501329	999661	999661	30-09-2020	22-08-2019	405	199658	199658
August,2019	3551253	211199	211199	30-09-2020	20-09-2019	376	39162	39162
Sept,2019	5910365	301094	301094	30-09-2020	20-10-2019	346	51376	51376
Oct,2019	4194896	191734	191734	30-09-2020	20-11-2019	315	29784	29784
Total Interest Liability Rs.							2645642	2645642

13.7 The show cause notice has proposed to impose penalty under the provisions of Section 122(1)(iii) of the CGST Act, 2017. As regards the penalty under Section 122(1)(iii), I find that the taxpayer had declared their tax liability in GSTR-1M for the period from July,2018 to October,2019 but they had not discharged their GST liability in time thereby violating the provisions of Section 122(1)(iii) of the CGST Act, 2017. I find that the tax payer has violated the provisions of Section 122(1)(iii) on the grounds that the taxpayer had collected the amount as tax from his clients as verified from the respective ledgers. Thereafter, the taxpayer had filed GSTR-1 returns but the tax liability was discharged beyond a period of three months from the date on which such payment became due. Accordingly, the Taxpayer is liable for penalty equivalent to the tax evaded under Section 122(1)(iii) of the CGST Act, 2017 which is Rs.2,38,07,642/- (CGST Rs.1,19,03,821/- + SGST Rs.1,19,03,821/-).

13.8 The show cause notice has also proposed to impose penalty under the provisions of Section 122(2)(a) of the CGST Act, 2017 read with similar provisions of GGST/SGST Act, 2017. In this connection I find that I have already imposed maximum amount of penalty that can be imposed upon the taxpayer which is equivalent to the amount of tax evaded and the said penalty has been imposed under Section 122(1)(iii) of the CGST Act, 2017. I therefore refrain from imposing any penalty under Section 122(2)(a) of the CGST Act, 2017.

14. The provisions under CGST Act and under SGST Act are the same except for certain provisions, unless a specific mention is made to such dissimilar provisions, a reference to CGST Act would also mean reference to the same provisions under SGST Act. Further in terms of Section 20 of the IGST Act, 2017 provisions of CGST Act,2017 relating to the matters as specified in the said Section 20, shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under IGST Act.

15. From the above discussions, I find that the demand alongwith interest and penalty as proposed in the show cause notice is required to be confirmed as the Taxpayer has violated the following provisions of the CGST Act,2017:-

(i) Section 9 of the CGST Act, 2017, in as much as they failed to pay the appropriate GST on supply of taxable supply made by them to their customers/clients, with intent to evade payment of tax;

(ii) Section 13 of the CGST Act,2017, in as much as they failed to pay the appropriate GST on supply of taxable services made by them in time. The provisions stipulates that the payment of Goods and Services Tax payable on supply of the services should be either the date of issue of invoice or the date of receipt of payment whichever is earliest. Accordingly, the Taxpayer was under obligation to make payment of GST in respect of the supply of taxable services during the period from July,2018 to October,2019 at the time as stipulated under Section 13 of the CGST Act, 2017;

(iii) Section 39 of the CGST Act, 2017 in as much as they failed to file the GSTR-3B periodical returns in time for the period from July,2018 to October,2019 with an intent to evade payment of tax and thereby failing to discharge their self assessed tax liability declared under Section 37 of the CGST Act,2017;

(iv) Section 47(1) of the CGST Act, 2017, in as much as they failed to furnish the returns required under section 39 by due date;

- (v) Section 49(8) of the CGST Act, 2017, in as much as they failed to discharge their tax liability, with intent to evade payment of tax;
- (vi) Section 59 of the CGST Act, 2017 in as much as they failed to self assess their tax liability with an intent to evade payment of tax;
- (vii) Section 73 of the CGST Act, 2017 in as much as they failed to pay the tax collected but not paid within a period of thirty days from the due date of payment of such tax.
- (viii) Section 122(1)(iii) of the CGST Act,2017 for failure to discharge the tax liability for the period from July,2018 to October,2019 for failure to discharge the tax liability beyond a period of three months from the date on which such payment became due;
- (ix) Section 122(2)(a) of the CGST Act, 2017 in as much as they failed to pay tax or short-paid tax for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax.

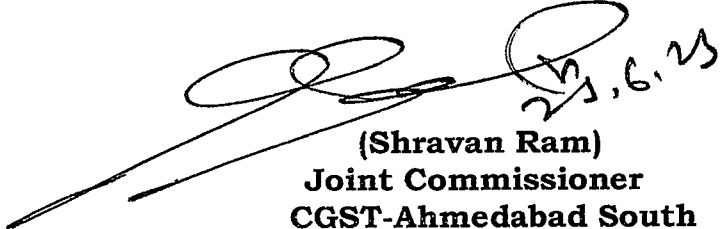
16. In view of the above discussions, I hereby pass the following Order.

O R D E R

- (i) I confirm the demand and order to recover CGST amount of **Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One Only)** from M/s. **Apex Technocon** under Section 73 of the CGST Act,2017. Since the CGST amounting to **Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One Only)** stands paid, I order to appropriate the same to the Government account against the liability demanded.
- (ii) I confirm the demand and order to recover GGST/SGST amount of **Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One Only)** from M/s. **Apex Technocon** under Section 73 of the CGST Act,2017. Since the GGST/SGST amounting to **Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One Only)** stands paid, I order to appropriate the same to the Government account against the liability demanded
- (iii) I confirm the demand of interest totally amounting to **Rs.52,91,284/- (Rupees Fifty Two Lakhs Ninety One Thousand Two Hundred Eighty Four only)** on the confirmed demand of Rs.2,38,07,642/- at para (i) & (ii) above from M/s. Apex Technocon under Section 50(1) of the CGST Act,2017 & GGST Act,2017 and Section 20 of the IGST Act,2017.
- (iv) I impose equivalent penalty of **Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One Only)** at (i) above under Section 122(1)(iii) of the CGST Act, 2017.
- (v) I impose equivalent penalty of **Rs.1,19,03,821/- (Rupees One Crore Nineteen Lakhs Three Thousand Eight Hundred Twenty One Only)** at (ii) above under Section 122(1)(iii) of the GGST Act, 2017
- (vi) I confirm the amount of late fees of Rs.46,500/- under Section 47(1) of the CGST Act, 2017 readwith Section 47 of the GGST Act,2017. Since the

entire amount of late fees have been paid, I order to appropriate the same to the government account.

- (vii) I refrain from imposing any penalty under Section 73(9)/73(11) in view of my discussions at para 13.3 above.
- (viii) I refrain from imposing any penalty under Section 122(2)(a) of the CGST Act, 2017 readwith similar provisions of GGST/SGST Act, 2017 in view of my discussions at para 13.8 above.


(Shравan Ram)
Joint Commissioner
CGST-Ahmedabad South

By Registered Post A.D./Email

F.No. STC/04-26/O&A/Apex Technocon/2021-22

Dated : 23.06.2023

To,

**M/s. Apex Technocon,
FF-1, First Floor, Division Life Avenue,
Opp. Devpriya-II, Ramdevnagar Road,
Satellite, Ahmedabad.**

Copy to :

- 1) The Principal Commissioner, CGST, Ahmedabad South.
- 2) The Additional Commissioner (Prev), CGST, Ahmedabad South.
- 3) The Assistant Commissioner, Central GST, Div-VI, Ahmedabad South.
- 4) The Assistant Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
- 5) The Superintendent, Range-V, CGST, Div-VI, Ahmedabad South for uploading DRC-07 on GSTN portal.
- 6) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
- 7) Guard file.