



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



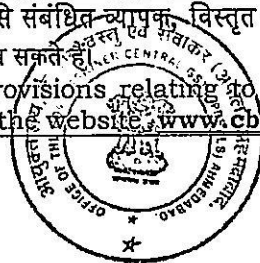
आजादी का
अमृत महोत्सव

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DIN NO. : 20230164SW0000010510

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1911/2022 / 266 - 72
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-142/2022-23 and 23.01.2023
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	24.01.2023
(ङ)	Arising out of Order-In-Original No. CGST/A'bad North/Div VII/ST/DC/181/2021-22 dated 25.03.2022 issued by The Deputy Commissioner, CGST, Division - VII (S G Highway East), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Aarvee Associates Architects Engineers and Consultants Pvt. Ltd. (GSTIN-24AAFCA7794M2Z2) Ground Floor, Heritage Tower, B/h Visnagar Bank, Ashram Road, Usmanpura, Ahmedabad, Gujarat-380014

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



:: ORDER-IN-APPEAL ::

BRIEF FACTS OF THE CASE :-

M/s. Aarvee Associates Architects Engineers & Consultants Pvt. Ltd., Office No 314 and 315, Plot No.485, 3rd Floor, Ratna Business Square, Ashram Road, Ellisbridge, Ahmedabad, Gujarat, 380009 (herein after also referred to as the 'appellant'), holding GST Registration No. 24AAFCA7794M2Z2, has filed the present appeal against the Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/181/2021-22, dated 25.03.2022 (herein after referred to as the 'impugned order') passed by the Deputy Commissioner, CGST & C.Ex, Division-VII [S.G.Highway- East], Ahmedabad-North Commissionerate (herein after referred to as the 'adjudicating authority').

2. The facts leading to this case are that the officers from the Directorate General of Goods and Services Tax Intelligence, Ahmedabad Zonal Unit [AZU], Ahmedabad (hereinafter referred to as 'DGGI') visited the factory premises of the *Appellant* on 12.12.2019 and it was found that they have not filed their GSTR-1M and GSTR-3B Returns for the period from July, 2019 to October, 2019 and thereby failed to file stipulated returns on time and also failed to deposit the tax collected to the government. On initiation of the inquiry the appellant has filed the required GST returns and has paid Rs.1,55,19,844/- towards the total tax liability alongwith interest of Rs. 7,50,778/- .

3. *The DGGI* has issued the Show Cause Notice F.No.DGGI/AZU/Gr.-A/36-53/2021-22, dated 17.09.2021 alleging that the appellant had not discharged their liability of GST and had not filed GSTR-1 and GSTR-3B returns for the period from July, 2019 to October, 2019; that the appellant had collected GST amount from their clients but did not deposit the same to Government exchequer during the period from July, 2019 to October, 2019; and that the appellant had discharged their GST liability for the said period and filed all pending GST Returns for July, 2019 to October, 2019 after initiation of inquiry. The said Show Cause Notice proposed to demand and recover GST of Rs.1,55,19,844/- (Rs. 77,59,922/- CGST + Rs. 77,59,922/- SGST) under Section 74(1) of the Central Goods and Services Tax Act, 2017 /read with the Section 74(1) of Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017 / GGST Act, 2017' and collectively as the 'GST Act, 2017').



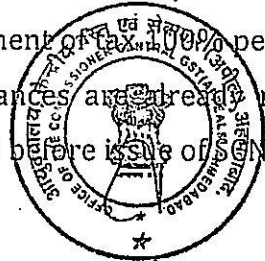
2017') ; to appropriate the GST of Rs.1,55,19,844/- (Rs.77,59,922/- CGST + Rs. 77,59,922/- SGST) paid by the appellant; to demand interest on aforesaid amount of GST of Rs.1,55,19,844/- (Rs. 77,59,922/- CGST + Rs. 77,59,922/- SGST) under Section 50 of the GST Acts, 2017; to appropriate interest of Rs. 7,50,778/- already paid by the appellant against the liability of interest; and to impose penalty under Section 74(1) , 122(1)(iii) and 122(2)(b) of the GST Acts, 2017.

4. *The Adjudicating Authority* vide Order-in-Original No. CGST/A'bad North/Div-VII/ST/DC/181/2021-22, dated 25.03.2022: -

- (a) confirmed the demand of GST of Rs.1,55,19,844/- (Rs. 77,59,922/- CGST + Rs. 77,59,922/- SGST) for the period from July, 2019 to October, 2019 under Section 74(1) of the GST Acts, 2017 and ordered appropriation of the same against the payment;
- (b) confirmed the demand of applicable interest @ 18% and adjusted/ appropriated Rs. 7,50,778/- against the liability under Section 50 of the GST Acts, 2017;
- (c) imposed penalty of Rs.1,55,19,844/- under Section 74(1) of the GST Acts, 2017 and given option of reduced penalty @50% of demand if the demand alongwith interest paid within 30 days from the date of service of the order.

5. Aggrieved by the aforesaid Order-in-Original, the appellant has filed the present appeal on 27.06.2022, wherein the appellant has *inter-alia contended* on the following grounds:-

- (a) CBIC vide Notification No.19/2021, dated 01.06.2021 provided that registered persons who failed to furnish the return in Form GSTR-3B for July, 2017 to April, 2021, by due date but furnish the said return between the period from 01.06.2021 to 31.08.2021, the total amount of late fee under section 47 of the ACT, shall stand waived. Thus for mere fault in furnishing return and payment of Tax 100% penalty under Section 74 is unjustified where required compliances are already made alongwith payment of Tax with interest and late filing fees before issue of



- (b) Even after complete furnishing of sales register, agreement and LOA, Tax Invoice copies, details of input credit availed etc., no discrepancies are noticed and accordingly levying penalty under Section 74 is unjustified since tax payment was made before 3 months from the due date of GSTR-9.
- (c) SCN dated 17.09.2021 received by them on 08.10.2021 in Form GST DRC-01 which should have been issued through GSTN portal itself.
- (d) In the reply to SCN they submitted to drop proceedings as Tax along with interest had been paid by them. The adjudicating authority's allegation at Para 5 that the appellant company did not filed reply to SCN is absolutely incorrect and misleading and the order is passed with predetermined frame of mind without going through their submission. Hence, OIO is defective and required to be quashed.
- (e) As per para 3A inserted vide Notification No. 02/2022-CT, dated 11.03.2022 in the Notification No. 02/20174-CT dated 19.06.2017 the Additional Commissioner of Central Tax is empowered to adjudicate the SCN issued by the officers of DGGI. Also as per Circular No.31/05/2018, dated 09.02.2018, OIO is issued without authority of law and hence to be dropped without going into merit.
- (f) DRC-01A Notice issued on 15.06.2021 received after the requiring time to response which is on 22.06.2021. They had not been granted opportunity to respond and represent the case before issue of the SCN. Therefore, principles of natural justice have not been followed. By relying several Court's judgement the appellant submitted that GST DRC-01 followed by OIO be quashed and set aside without going into merit.
- (g) DGGI has accepted the sales as recorded under register duly reconciled with GSTR-1 and GSTR-3B without noticing any error or suppression of facts. The tax liabilities summarized and shown in the SCN / OIO has already been paid by them along with interest of Rs.750778/- and considering the same penalty under Section 74 is unjustified.
- (h) They have filed the returns su-moto on own account and there was a mere delay in filing return. They received order for cancellation of Registration effective from 10.08.2020 and they have furnished reply on 31.08.2020 submitting return filed



details till period June, 2020, Order for revocation of cancellation of registration issued on 08.09.2020 being application found in order. Accordingly their registration was restored. This establishes that there was no intention to evade tax, suppression or fraud. Just because of the facts the returns have been file late does not amount to fraud, suppression and misstatement justifying levying penalty under Section 74(1) of the Act.

- (i) Appellant relied on decision of Hon'ble Supreme Court in case of Tamilnadu Housing Board Vs CCE - 1994(74)ELT9 (SC) and mentioned that in their case there was no deliberation to avoid payment of tax and considering the same 100% penalty imposed under Section 74 of the Act, be dropped.

PERSONAL HEARING :-

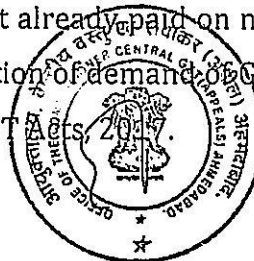
6. Personal Hearing in this case was held on 28.12.2022, wherein Shri Aatish Shah, Chartered Accountant & Keyur Kansara, authorised representatives, on behalf of the appellant, appeared in person and reiterated the submissions made in the appeal memorandum. They also submitted a further written submission dated 28.12.2022.

In the submission dated 28.12.2022, the appellant reiterated the ground of appeals and largely contended that mere fault in furnishing timely returns and payment of taxes, 100% penalty under Section 74 is unjustified where required compliances are already made along with payment of Tax with interest and late filing fees before issue of SCN. They requested to drop the order levying penalty.

DISCUSSION AND FINDINGS:-

7. I have carefully gone through the facts of the case available on records and submissions made by the *appellant* in the appeal memo as well as during the course of personal hearing.

8. The appellant is not disputing the payment of the GST made by them for the period from July, 2019 to October, 2019 along with interest already paid on net tax liability basis. The appellant has however challenged the confirmation of demand of GST under Section 74 and imposition of penalty under Section 74 of the GST



9. The impugned order has been passed by taking into consideration the allegation in the show cause notice of evasion of tax by the appellant, which they allegedly collected but not deposited to the Government exchequer.

10.1 The appellant has contended that the present case is not pertaining to non-payment or short payment of GST but it only pertains to delayed payment of GST, which was paid by the Appellant on its own, therefore Section 74 of the GST Acts, 2017 is not applicable.

10.2 For sake of elucidation, the meaning of expression 'suppression' given in Explanation 2 of Section 74 of the GST Acts, 2017 is reproduced as under :-

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

10.3 The first part of the Explanation 2 of Section 74 of the GST Acts, 2017 refers to non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder. This part pertains to non-declaration of facts or information in return etc. furnished under the GST Acts, 2017 or rules made thereunder. There is no allegation in the show cause notice or findings in the impugned order that the appellant has not declared facts or information in the returns etc. furnished under the GST Acts, 2017. In fact, the present case pertains to non-furnishing of returns rather than non-declaration of facts or information in returns furnished. It is on record that the enquiry against the appellant was initiated for non-filing of GSTR-1 M and GSTR3B for the period from July, 2019 to October, 2019 and for non-payment of GST to Government exchequer during that period. Once the returns were furnished on self-assessment basis, no discrepancy or short payment / non payment of tax has been noticed by the department. On the contrary, GST liability has been considered in the show cause notice as well as in the impugned order what has been self assessed and already paid by the appellant.



10.4 The second part of the Explanation 2 of Section 74 of the GST Acts, 2017 refers to failure to furnish any information on being asked for, in writing, by the proper officer. In the present case, the appellant, vide letter dated 12.12.2019 had provided the required documents (Copy of Sales register, agreements and LOA, sample Invoices, purchase register, work orders, ledger for reverse charge services etc.) from July, 2019 to October, 2019 to the officers at the time of the visit of officer of DGGI to the appellant's premises on 12.12.2019. The appellant had paid GST and furnished Form GSTR-3B from July, 2019 to October, 2019 on 13.12.2019, 20.12.2019, 31.12.2019 & 19.02.2020.

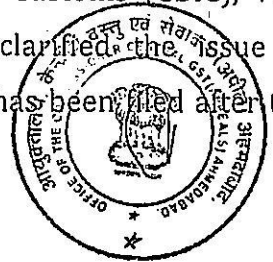
10.5 It is also not disputed that all the supplies were made by the appellant under cover of invoices, wherein self-assessed GST payable was shown; all such invoices were duly accounted for in the books of accounts maintained by the appellant; the details of such invoices were reflected in the registers provided vide letter dated 12.12.2019 to the officers of DGGI / department.

10.6 Therefore, taking all these peculiar facts of the case into consideration, I am of the view that the present one is not a case of 'suppression of facts' much less 'to evade tax', therefore invocation of Section 74 of the GST Acts, 2017 for confirmation of demand of GST already paid through returns for July, 2019 to October, 2019 filed by the appellant, is not found justifiable and sustainable.

11.1 I further find that at the operative portion of the impugned order (Para 19 of the impugned order), the adjudicating authority has ordered that - "*I refrain from imposing penalty separately by virtue of Section 122(1)(iii) and 122(2)(b) of CGST Act, 2017 readwith Section 122(1)(iii) and 122(2)(b) of GGST Act, 2017*".

11.2 In view of this clear findings by the adjudicating authority in the impugned order, I hold that the allegation of collection of tax by *the appellant* and not depositing the same to the Government Exchequer cannot be sustained.

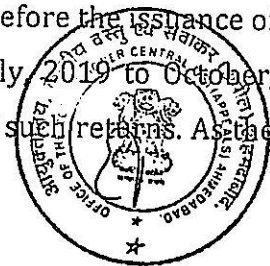
11.3 I further find that the Central Board of Indirect Taxes & Customs (CBIC), vide Circular No. 76/50/2018-GST, dated 31.12.2018, has already clarified the issue of imposition of penalty in cases where the return in Form GSTR-3B has been filed after the



due date of filing such return and where self-assessed tax or any amount collected as tax has not been paid. In the said Circular, it has been clarified as follows-

Sl. No.	Issue	Clarification
2	Whether penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?	<ol style="list-style-type: none">1. As per the provisions of section 73(11) of the CGST Act, penalty is payable in case 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.2. It may be noted that a show cause notice (SCN for short) is required to be issued to a person 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 under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.3. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.

Thus, as clarified in the aforesaid Circular, the provisions of Section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in Form GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It has been clarified that penalty under the provisions of Section 73(11) of the CGST Act is not payable in such cases. In the present case also, the tax along with applicable interest has already been paid by the appellant much before the issuance of show cause notice, though such payment and filing of returns for July, 2019 to October, 2019 had been after the due date for payment of such tax and filing of such returns. As a



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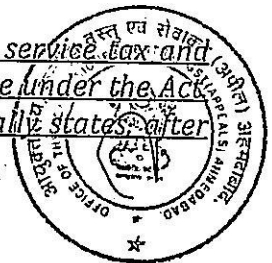
CBIC has clarified that penalty under Section 73 of the GST Acts, 2017 cannot be imposed in such cases, the question of invoking provisions of Section 74 of the GST Acts, 2017 and imposition of penalty under Section 74 of the GST Acts, 2017 in this case does not arise.

11.4. As per the Circular No. 76/50/2018-GST, dated 31-12-2018, penalty under Section 125 only is required to be imposed in case of late payment of tax and late filing of returns. Accordingly, I hold that the appellant is liable to penalty of Rs.25,000/- (Rupees twenty five thousand only) under Section 125 of the CGST/GGST Act, 2017.

12. Further, the appellant stated that as per para 3A inserted vide Notification No. 02/2022-CT, dated 11.03.2022 in the Notification No. 02/2017-CT dated 19.06.2017, the Additional Commissioner of Central Tax is only empowered to adjudicate the SCN issued by the officers of DGGI and also referred Circular No.31/05/2018, dated 09.02.2018 and contended that the OIO is issued without authority of law. In this regard, I don't find any force in the appellant's argument since the provisions/ instructions of the referred Notification / Circular regarding adjudication by the Additional Commissioner of Central Tax are applicable in respect of the show cause notices issued by officers of DGGI, only when the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates or where multiple show cause notices are issued on the same issue to different notices. In the present case only one SCN was issued to the single noticee having principal place of business at Ahmedabad having GSTN No. 24AAFCA7794M2Z2 and hence the issue of jurisdiction of multiple Central Tax Commissionerates is not involved in the present case.

13. The issue of imposition of penalty for non-payment of tax within stipulated time, which was paid after the due date with interest, came up before the Hon'ble High Court of Karnataka in case of *CCE & ST, LTU, Bangalore Versus Adecco Flexione Workforce Solutions Ltd. [C.E.A. Nos. 101-102 of 2008, decided on 8.9.11 - reported at 2012 (26) STR 3 (Kar.)]*, wherein it has been held as follows:-

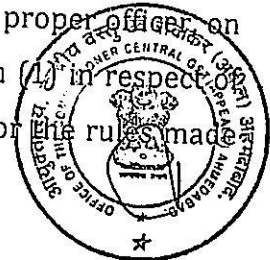
"2. Facts are not in dispute. The assessee has paid both the service tax and interest for delayed payments before issue of show cause notice under the Act Sub-sec. (3) of Section 73 of the Finance Act, 1994 categorically states after



the payment of service tax and interest is made and the said information is furnished to the authorities, then the authorities shall not serve any notice under sub-sec. (1) in respect of the amount so paid. Therefore, authorities have no authority to initiate proceedings for recovery of penalty under Sec. 76 of the Act.

3. Unfortunately the assessing authority as well as the appellate authority seem to think. If an assessee does not pay the tax within the stipulated time and regularly pays tax after the due date with interest. It is something which is not pardonable in law. Though the law does not say so, authorities working under the law seem to think otherwise and thus they are wasting that valuable time in proceeding against persons who are paying service tax with interest promptly. They are paid salary to act in accordance with law and to initiate proceedings against defaulters who have not paid service tax and interest in spite of service of notice calling upon them to make payment and certainly not to harass and initiate proceedings against persons who are paying tax with interest for delayed payment. It is high time, the authorities will change their attitude towards these tax payers, understanding the object with which this enactment is passed and also keep in mind the express provision as contained in sub-sec. (3) of Sec. 73. The Parliament has expressly stated that against persons who have paid tax with interest, no notice shall be served. If notices are issued contrary to the said Section, the person to be punished is the person who has issued notice and not the person to whom it is issued. We take that, in ignorance of law, the authorities are indulging in the extravaganza and wasting their precious time and also the time of the Tribunal and this Court. It is high time that the authorities shall issue appropriate directions to see that such tax payers are not harassed. If such instances are noticed by this Court hereafter, certainly it will be a case for taking proper action against those law breakers."

Though the aforesaid judgement pertains to Service Tax matter, the ratio laid down therein is applicable in the present case as well in as much as sub-sections (5) and (6) of Section 73 of the GST Acts, 2017 contains provisions similar to provisions of sub-section (3) of Section 73 of the Finance Act, 1994. As per sub-sections (5) and (6) of Section 73 of the GST Acts, 2017, the person chargeable with tax may, before service of notice under sub-section (1), 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 and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the tax so paid or any penalty payable under the provisions of this Act or



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thereunder. I, therefore, respectfully follow the aforesaid judgement of the Hon'ble High Court of Karnataka and hold that imposition of penalty on the appellant in this case is not sustainable as the appellant had already paid GST with applicable interest, much before the issuance of show cause notice.

14. In view of the foregoing, I uphold the demand and payment of GST of Rs.1,55,19,844/- (Rs. 77,59,922/- CGST + Rs. 77,59,922/- SGST) along with interest of Rs. 7,50,778/- already paid by the appellant for the period July, 2019 to October, 2019 & imposed a penalty of Rs.25,000/- under Section 125 of the CGST/GGST Act, 2017. However, I hold that invocation of Section 74 & imposition of penalty under Section 74 in the impugned order is not sustainable. The impugned order is modified and the appeal is allowed to the above extent.

15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


The appeal filed by the *appellant* stands disposed of in above terms.


23/01/23
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 23.01.2023

Attested


24/1/23

(Ajay Kumar Agarwal)
Assistant Commissioner [In-situ] (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,
M/s. Aarvee Associates Architects Engineers & Consultants Pvt. Ltd.,
Office No 314 and 315, Plot No.485,
3rd Floor, Ratna Business Square,
Ashram Road, Ellisbridge,
Ahmedabad, Gujarat, 380009



Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy/ Assistant Commissioner, CGST & C. Ex, Division-VII [S.G.Highway- East], Ahmedabad-North.
5. The Deputy Director, DGGI, AZU, Ahmedabad.
6. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
7. ~~Guard File.~~
8. P.A. File.