सत्यमेव जयते

सीमाशुल्क व केन्द्रीय कर अपील्स-II आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS & CENTRAL TAX
APPEALS-II COMMISSIONERATE, HYDERABAD
सातवाँतल,केन्द्रीयशुल्कभवन,7th Floor, KENDRIYA SHULK BHAVAN,
एलबीस्टेडियमरोडकेसामने,बशीरबाग,हैदराबाद – 500 004
OPP. L. B. STADIUM, BASHEERBAGH, HYDERABAD-500 004.
Ph. Nos.: 040-23241716; Fax-040-23237873 E-mail: cgst.hydappeals1@gov.in

Appeal No. 218/2024 (SC) DGST
OIO No. 23/2024-25-Adjn.(GST) dated 19.04.2024
DIN – 20250356DN0000555BE4

366

अपील आदेशORDER - IN - APPEAL No. HYD-GST-SC-AP2-1123-24-25-GST
तारीख Date. 27.03.2025
जारीकर्ता: श्री बि. विजय आई आर एस, अपर आयुक्त,अपील्स-II
Passed by: Shri. B Vijay, IRS. Additional Commissioner of Appeals- II

उद्देशिका/PREAMBLE

1	जिस व्यक्ति को यह प्रति जारी की जाती है, उस व्यक्ति के निजी उपयोग के लिए निशुल्क दी जाती है ।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	इस आदेश से व्यथित कोई भी व्यक्ति,वस्तु एवं सेवा कर नियम, 2017 के नियम 110 के साथ पठित केंद्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (1) के तहत इलेक्ट्रॉनिक या अन्य माध्यम से,केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित उपयुक्त अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'अपूर्ति की जगह',विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है । जहां 'आपूर्ति की जगह' विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ के समक्ष दायर की जाए ।जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे अपीलकर्ता को संप्रेषित करने की तिथि से 3 (तीन) माह के अंदर अपील जीएसटी एपीएल-05 फॉर्म में दायर की जानी चाहिए । आदेश की एक प्रमाणित प्रति, यदि लागू हो तो नियम 110 (5) के अंतर्गत विहित शुल्क तथा अन्य संगत दस्तावेज़ संलग्न करते हुए, अपील पर नियम 26 के तहत विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएं ।
	Any person aggrieved by this order, may under Section 112(1)of the Central Goods and Services Tax (CGST) Act 2017, read with Rule 110 of the CGST Rules, 2017; file an appeal electronically or otherwise, to the appropriate State / Area Bench of the Appellate Tribunal constituted under Sec 109 of the CGST Act 2017 in cases not involving 'place of supply' as one of the disputed issues. Where the 'place of supply' is one of the disputed issues, the appeal shall be filed with the National / Regional bench constituted under the said Sec 109. The appeal should be filed in Form GST APL-05 within 3(three) months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal. The appeal shall be signed in the manner specified under Rule 26, enclosing a certified copy of the order, the prescribed fee under Rule 110(5) if applicable, and any other relevant documents.
3.	वस्तु एवं सेवा कर नियम, 2017 के नियम 111 के साथ पठित केंद्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (3) के तहत आयुक्त द्वारा प्राधिकृत अधिकारी इलेक्ट्रॉनिक या अन्य माध्यम से, केन्द्रीय वस्तु एवं सेवा कर अधिनियम 2017 की धारा 109 के तहत गठित अपीलीय न्यायाधिकरण के राज्य / क्षेत्र के क्षेत्राधिकार के खंड पीठ में उन मामलों में, जिनमें 'आपूर्ति की जगह' विवाद-ग्रस्त विषयों में से एक न हो, अपील दायर कर सकता है । जहां 'आपूर्ति की जगह' विवादित मामलों में से एक है, अपील, उपरोक्त धारा 109 के तहत गठित राष्ट्रीय / क्षेत्रीय खंडपीठ के समक्ष दायर की जाए।जिस आदेश के विरुद्ध अपील दायर की जा रही है उसे जारी करने की तिथि से 6 (छः) माह के अंदर अपील जीएसटी एपीएल -07 फॉर्म में दायर की जानी चाहिए। अपील के साथ आदेश की प्रमाणित प्रति एवं अन्य संगत दस्तावेज़ संलग्न हो । विभागीय अपील के प्रत्याक्षेप,वस्तु एवं सेवा कर अधिनियम 2017 की धारा 112 (5)के साथ पठितनियम 110 (2) के अनुसार जीएसटी एपीएल -06 फॉर्म में इसकेसम्प्रेषण के 45 दिनों के अंदर दायर किए जाएं और इस पर नियम 26 में विनिर्दिष्ट तरीके से हस्ताक्षर किए जाएं।
	The officer authorized by the Commissioner under Sec 112(3) of the CGST Act 2017, read with Rule 111 of the CGST Rules, 2017; file an appeal electronically or otherwise, to the State / Area Bench of the Appellate Tribunal constituted under Sec 109 of the CGST Act 2017 in cases not involving 'place of supply' as one of the disputed issues. Where the 'place of supply' is one of the disputed issues, the appeal shall be filed with the National / Regional bench constituted under the said Sec 109. The appeal should be filed in Form GST APL-07 within 6 (six) months of the date of issuance of the disputed order. The appeal shall enclose a certified copy of the order, and any other relevant documents. The cross objections to the departmental appeal shall be filed within 45 days of communicating it, in Form GST APL-06 in terms of Rule 110(2) read with Sec 112(5) of the CGST Act 2017 and signed in the manner specified in Rule 26.
	रेवेन्यू बार एसोसिएशन के मामले में मद्रास उच्च न्यायालय के आदेश के मद्देनजर अपीलीय न्यायाधिकरण का गठन नहीं

	किया गया है। v. भारत संघ और इसलिए अपील उस तारीख से तीन महीने के भीतर दायर नहीं की जा सकती जिस दिन आदेश के खिलाफ अपील की मांग की गई है। अधिनियम के उपरोक्त प्रावधान को प्रभावी करने में उत्पन्न होने वाली कठिनाई को दूर करने के लिए, सरकार ने परिषद की सिफारिशों पर, केंद्रीय माल और सेवा कर (कठिनाइयों का नौवां निवारण) आदेश, 2019 दिनांक 03.12.2019 जारी किया है। उक्त आदेश के माध्यम से यह प्रावधान किया गया है कि ट्रिब्यूनल में अपील आदेश के संचार की तारीख या जिस तारीख को राष्ट्रपति या राज्य अध्यक्ष, के रूप में तीन महीने (सरकार द्वारा अपील के मामले में छह महीने) के भीतर की जा सकती है। अपीलीय न्यायाधिकरण के कार्यालय में प्रवेश करने की स्थिति में, जो भी बाद में हो।
	(ii) The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) 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.
4.	धारा 112 (8) के अनुसार, धारा 112 (1) केतहत तब तक कोईअपीलदायरनहींकीजाएगीजबतकअपीलकर्तानें (ए) आक्षेपित आदेश सेउत्पन्नकर, ब्याज, फाइन, शुल्क व जुर्मानाके उस अंश का, जो उसके द्वारा स्वीकार किया गया है तथा (बी) उक्त आदेश, जिसके संबंध में अपील दायर की गई है, से उत्पन्न धारा 107(6)के अंतर्गत प्रदत्त राशि के अतिरिक्त, विवादित कर की शेष राशि के 20% का पूर्ण भुगतान नहीं किया हो ।
	In terms of Sec 112(8), no appeal shall be filed under Sec 112(1) unless the appellant has paid (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and (b) a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under Sec 107(6), arising from the said order, in relation to which the appeal has been filed.
5.(i)	धारा 112 (1) के तहत आवेदन पत्र के साथ रुपए 5 मूल्य (केवल पांच रुपये) का गैर न्यायिक न्यायालय शुल्क टिकट हो। नियम 110 (5) के साथ पठित धारा 112 (10) के अनुसार अपीलीय प्राधिकरण के समक्ष अपील / अपील प्रत्यावर्तन हेतु प्रस्तुत आवेदन के साथ अधिकतम रु. पच्चीस हजार रुपये के अध्यधीन कर / इनपुट टैक्स क्रेडिट के प्रति एक लाख रुपए के लिए रु. एक हजार का शुल्क या कर या इनपुट टैक्स क्रेडिट में अंतर या जिस आदेश के विरुद्ध अपील की जा रही है उसमें निर्धारित फाइन, शुल्क या जुर्माना लगाया जाए ।
	The application under Sec 112(1) shall bear a non-judicial court fee stamp of value Rs.5 (Rupees Five only). In terms of Sec 112(10) read with Rule 110(5), an application for appeal / restoration of appeal before the Appellate Tribunal shall be accompanied by a fee of One thousand rupees for every one lakh rupees 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 twenty five thousand rupees
5.(ii)	उपरोक्त धारा 112 की उप धारा (5) में संदर्भित कुल प्रत्याक्षेपों के ज्ञापन के संबंध में कोई शुल्क देय नहीं होगा।
	No fee is payable in respect of the Memorandum of Cross Objections referred to in sub-sec (5) of Sec 112 ibid.
5.(iii)	धारा 112(3) के अंतर्गत,आयुक्त द्वारा अधिकृत अधिकारीद्वारा दायर किए जाने वाले आवेदन के मामले में कोई शुल्क देय नहीं होगा।
	No fee is payable in case of an application filed by the officer authorized by the Commissioner to file an appeal under Sec 112(3).
6.	केन्द्रीय वस्तु एवं सेवा कर अधिनियम, 2017 में निहित उक्त एवं अन्य संबंधित मामलों को नियंत्रित करने वाले प्रावधानों और इनके तहत बनाए गए नियम / जारी की गई अधिसूचनाओं की ओर ध्यान आकर्षित किया जाता है ।
	Attention is invited to the provisions governing these and other related matters, contained in the Central Goods & Services Act, 2017 and the rules made / notifications issued thereunder, for compliance.

Appellant	Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate, Hyderabad.
Respondent	M/s Nilgiri Estates, 2nd Floor, 5-4-187/3 and 4, Soham Mansion, MG Road, Secunderabad, Telangana-500003.

These proceedings arise out of an appeal filed by the Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate, Hyderabad (hereinafter referred to as 'appellant department') against Order-in-Original No. 23/2024-25-Adjn(GST) GST-Adjn), dated 19.04.2024 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner of Central Tax, Secunderabad GST Division, Secunderabad GST Commissionerate, Hyderabad (hereinafter referred to as 'original authority') in the case of M/s Nilgiri Estates, 2nd Floor, 5-4-187/3 and 4, Soham Mansion, MG Road, Secunderabad, Telangana-500003 (hereinafter referred to as "respondent").

STATEMENT OF FACTS

2)

A. The respondent having GSTIN 36AAHFN0766F1ZA are engaged in the supply of 'works contract services' falling under HSN 00440334 & 00440410 with effect from 01-07-2017.

B. Based on information received from the Telangana State GST authority, scrutiny of the records of the tax payer was undertaken for the financial year 2018-19, following discrepancy was noticed.

i. Under declaration of output tax on reconciliation of turnover in GSTR-01, GSTR-3B, and GSTR-9 for the year 2018-19.

ii. Excess availment of ITC on inward supplies on reconciliation of GSTR-9 for the year 2018-19.

iii. Excess reversal shown in GSTR-9 than the reversals shown in GSTR-3B for the year 2018-19.

C. Accordingly, the original authority issued the Show Cause Notice No. 46/2023-24 dated 19-12-2023 asking the taxpayer as to why

(i) an amount of Rs. 27,66,974/(Rs. 13,83,487/-CGST and Rs13,83,487/-SGST) (Rupees Twenty Seven Lakhs Sixty Six Thousand Nine Hundred and Seventy Four only), as discussed supra in Para 2 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.

(ii) an amount of Rs. 20,63,272 /- (Rs.10,31,636/- CGST and Rs. 10,31,636/- SGST) (Rupees Twenty Lakhs Sixty-Three Thousand Two Hundred and Seventy-Two only), as discussed supra in Para 3 should not be demanded from them under Section 73(1) of the CGST Act, 2017 and similar provisions as laid in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.

(iii) interest at the applicable rate should not be demanded from them on tax demanded at (i) & (ii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act, 2017.

(iv) penalty should not be imposed on them demands at (i) & (ii) above under Section 73 of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017.

D. The Adjudicating Authority after due process of law passed the impugned order.

i. I drop the proceedings initiated in the show cause under Issue-1 in view of the discussions and findings in Para 9 above.

ii. I drop the proceedings initiated in the show cause under Issue-2 in view of the discussions and findings in Para 10 above.

iii. I confirm the demand of Rs. 4,56,318/- (CGST: Rs.2,28,159/-SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty-Six Thousand Three Hundred and Eighteen Only), in respect of Issue-3, as discussed supra in Para -11 under Section 73(9) of the CGST Act, 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.

iv. I appropriate the amount of Rs. 4,56,318/- (CGST: Rs.2,28,159/-SGST: Rs.2,28,159/-) (Rupees Four Lakh Fifty Six Thousand Three Hundred and Eighteen Only) which was already paid by them vide DRC dated 07.01.2020 under Debit Entry No. D13601200012760 and DRC dated 16.10.2020 under debit entry no. D13610200050832 towards duty confirmed at Sl.No. (iii) above, under Section 73(9) of the CGST Act, 2017 and similar provisions as laid down in the TGST Act, 2017 read with Section 20 of IGST Act, 2017.

v. I confirm the demand of interest at the applicable rate from them on tax demanded at (iii) above under Section 50 of CGST Act, 2017 read with Section 20 of IGST Act and similar provisions under TGST Act, 2017.

vi. I confirm the demand of penalty from them on the demand at (iii) above under Section 73(9) of CGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017 and Section 20 of IGST Act, 2017 and similar provisions under TGST Act, 2017.

E. The impugned order was reviewed vide Review Order No. 222/2024-25-GST (OIO) dated 15.10.2024 passed by the Commissioner of Central Tax, Secunderabad GST Commissionerate, Hyderabad and by virtue of powers vested under Section 107(2) of the CGST Act, 2017, the original authority was authorised and directed to file an appeal to this forum for correct determination of the following points arising out of the impugned order:

i. ***"set aside the impugned order-in-original to the extent of dropping the demand of Rs.27,66,974/- (CGST-Rs.13,83,487/- and SGST-Rs.13,83,487/-) vide Para 13(i) of the impugned Order-In-Original proposed in terms of Section 73 of the CGST Act,2017 and TGST Act, 2017 for the reasons cited supra;***

ii. ***confirm the demand of Rs.27,66,974/- (CGST-Rs.13,83,487/- and SGST-Rs.13,83,487/-) as proposed in the show cause notice under Section 73(9) of the CGST Act, 2017 & TGST Act, 2017 along with Interest under Section 50 of the CGST Act, 2017 & TGST Act, 2017 and impose appropriate penalty under Section 73(9) read with Section 122(2)(a) of the CGST Act, 2017 & TGST Act, 2017 for the reasons cited supra;***

iii. ***set aside the impugned order-in-original to the extent of dropping the demand of Rs.16,06,954/- (CGST-Rs.8,03,477/- and SGST-Rs.8,03,477/-) (included in the total amount of Rs.20,63,272/- (CGST-Rs. 10,31,636/-, SGST:10,31,636/-) demanded vide Para 5(ii) of the impugned show cause notice)) vide Para 13(ii) of the impugned Order-In-Original proposed in terms of Section 73 of the CGST Act,2017 and TGST Act, 2017 for the reasons cited supra;***

iv. ***confirm the demand of Rs.16,06,954/- (CGST-Rs.8,03,477/- and SGST-Rs.8,03,477/-) as proposed in the show cause notice under Section 73(9) of the CGST Act, 2017 & TGST Act, 2017 along with Interest under Section 50 of the CGST Act, 2017 & TGST Act, 2017 and impose appropriate penalty under Section 73(9) read with Section 122(2)(a) of the CGST Act, 2017 & TGST Act, 2017 for the reasons cited supra;***

v. ***Pass such other orders as deemed fit."***

GROUNDS OF APPEAL

3)

A. The impugned Order-In-Original does not appear to be legal and proper to the extent of dropping the demands in the issues of 'Under declaration of output tax on reconciliation of turn over in GSTR-01, GSTR-3B and GSTR-9 for the year 2018-19' and 'Excess availment of ITC on inward supplies on reconciliation of GSTR-9 for the year 2018-19' stating that on the same issues, a show cause notice was issued earlier and adjudicated by the Additional Commissioner, Secunderabad GST

Commissionerate, for the following reasons:

Under declaration of output tax on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the year 2018-19

B. In the impugned Show Cause Notice, it was alleged that the tax payer has not correctly declared tax on his outward supplies on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the financial year 2018-19 and an amount of Rs. 27,66,974/- (CGST-Rs.13,83,487/- and SGST-Rs.13,83,487/-) was demanded under Section 73 of CGST Act, 2017/TGST Act, 2017 along with interest under Section 50 of CGST Act, 2017/TGST Act, 2017 and penalty also was proposed under Section 73 of CGST Act, 2017/TGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017.

C. Whereas vide Para 13 (i) of the impugned Order-In-Original, the Adjudicating Authority dropped the proceedings initiated in the show cause notice holding that on the same issue as detailed at Para 3.2.1 above, a show cause notice was issued by the Additional Commissioner, Hyderabad Audit-II Commissionerate vide Show Cause No. 06/23-24 dated 19.05.2023 in C.No. V/Audit-II/C-I/28/2021- 22/Gr-15 and the same was adjudicated by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No.28/2023-24 (Sec-Adjn-ADC)(GST), dated 12.10.2023.

D. However, as observed from the said OIO dated 12.10.2023 passed by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST), demand was made for tax liability of CGST & SGST of Rs 27,16,554/- (CGST-Rs. 13,58,227/-, SGST-Rs.13,58,227/-) pertaining to the Financial Year 2018-19 and the same has been confirmed along with applicable interest and penalty which is less than the current demand i.e. Rs.27,66,974/- (CGST-Rs.13,83,487/- and SGST-Rs.13,83,487/-) proposed in the impugned Show cause notice pertaining to the current order-in-original, but the adjudicating authority dropped the demand without proper verification of the facts of the issue and without assigning any reasons for the difference in tax demanded, which does not appear to be legal and proper.

Excess availment of ITC on inward supplies on reconciliation of GSTR-9 for the year 2018-19 for an amount of Rs.16,06,954/- (CGST-Rs.8,03,477/- and SGST-Rs.8,03,477/-).

E. In the impugned Show Cause Notice, it was alleged that the tax payer has not correctly availed input tax on his inward supplies on reconciliation with GSTR-09 for the financial year 2018-19 and an amount of Rs.16,06,954/- (CGST-Rs.8,03,477/-

and SGST-Rs.8,03,477/-) (included in the total amount of Rs.20,63,272/- (CGST-Rs. 10,31,636/-, SGST:10,31,636/-) demanded vide Para 5(ii) of the impugned show cause notice)) was demanded under Section 73 of CGST Act, 2017/TGST Act, 2017 along with interest under Section 50 of CGST Act, 2017/TGST Act, 2017 and penalty also was proposed under Section 73 of CGST Act, 2017/TGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017.

F. Whereas vide Para 13 (ii) of the impugned Order-In-Original, the Adjudicating Authority dropped the proceedings initiated in the show cause notice holding that on the same issue as detailed at Para 3.3.1 above, a show cause notice was issued by the Additional Commissioner, Hyderabad Audit-II Commissionerate vide Show Cause No. 06/23-24 dated 19.05.2023 in C.No. V/Audit-II/C-I/28/2021- 22/Gr-15 and the same was adjudicated by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No.28/2023-24 (Sec-Adjn-ADC)(GST), dated 12.10.2023.

G. However, as observed from the said OIO dated 12.10.2023 passed by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST), demand was made for tax liability of CGST & SGST of Rs 18,65,370/- (CGST-Rs. 9,32,685/-, SGST-Rs. 9,32,685/-) pertaining to the Financial Year 2018-19 and the same has been confirmed along with applicable interest and penalty. However, it appears that the adjudicating authority erred in dropping the current demand of Rs. 16,06,954/- without going into merits of the issue and without verifying whether the said amount of Rs. 16,06,954/- demanded in the impugned show cause notice of the current OIO is involved in the said amount of Rs.18,65,370/- which was confirmed along with applicable interest and penalty vide old OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST), dated 12.10.2023. OIO does not appear to be legal and proper to this extent.

PERSONAL HEARING: -

4) Following the principles of natural justice, three opportunities for Personal Hearing were given to respondent on 29.01.2025, 07.03.2025 and 18.03.2025. However, the respondent neither availed the opportunity of attending personal hearing nor submitted any reply to the appeal.

FINDINGS:

5) I have gone through records of the case, impugned OIO and Grounds of appeal.

The issues in the instant case alongwith findings of the OIO, Contentions in the Appeal memo and my findings are discussed hereunder :

A) <u>Under declaration of output tax on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the year 2018-19</u>

It was alleged in the Show Cause Notice that the respondent has not correctly declared tax on his outward supplies on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the financial year 2018-19 and an amount of Rs. 27,66,974/- (CGST-Rs.13,83,487/- and SGST-Rs.13,83,487/-) was demanded under Section 73 of CGST Act, 2017/TGST Act, 2017 along with interest under Section 50 of CGST Act, 2017/TGST Act, 2017 and penalty also was proposed under Section 73 of CGST Act, 2017/TGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017.

The Adjudicating Authority dropped the proceedings initiated in the show cause notice holding that on the same issue , a show cause notice was issued by the Additional Commissioner, Hyderabad Audit-II Commissionerate vide Show Cause Notice No. 06/23-24 dated 19.05.2023 in C.No. V/Audit-II/C-I/28/2021- 22/Gr-15 and the same was adjudicated by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No.28/2023-24 (Sec-Adjn-ADC)(GST), dated 12.10.2023 confirming the said demand.

Appellant contested that as observed from the said OIO dated 12.10.2023 passed by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST), demand was made for tax liability of CGST & SGST of Rs 27,16,554/- (CGST-Rs. 13,58,227/-, SGST-Rs.13,58,227/-) pertaining to the Financial Year 2018-19 and the same has been confirmed along with applicable interest and penalty which is less than the current demand i.e. Rs.27,66,974/- (CGST-Rs.13,83,487/- and SGST-Rs.13,83,487/-) proposed in the impugned Show cause notice pertaining to the current order-in-original, but the adjudicating authority dropped the demand without proper verification of the facts of the issue and without assigning any reasons for the difference in tax demanded.

B) <u>Excess availment of ITC on inward supplies on reconciliation of GSTR-9 for the year 2018-19 for an amount of Rs.16,06,954/- (CGST-Rs.8,03,477/- and SGST-Rs.8,03,477/-).</u>

It was alleged in the Show Cause Notice that the tax payer has not correctly availed input tax on his inward supplies on reconciliation with GSTR-09 for the financial year 2018-19 and an amount of Rs. 16,06,954/- (CGST-Rs.8,03,477/- and SGST-Rs.8,03,477/-) (included in the total amount of Rs.20,63,272/- (CGST-Rs. 10,31,636/-, SGST:10,31,636/-) demanded vide Para 5(ii) of the impugned show cause notice)) was demanded under Section 73 of CGST Act, 2017/TGST Act, 2017 along with interest under Section 50 of CGST Act, 2017/TGST Act, 2017 and penalty also was proposed under Section 73 of CGST Act, 2017/TGST Act, 2017 read with Section 122(2)(a) of CGST Act, 2017.

The Adjudicating Authority vide impugned Order-In-Original dropped the proceedings initiated in the show cause notice holding that on the same issue, a show cause notice was issued by the Additional Commissioner, Hyderabad Audit-II Commissionerate vide Show Cause No. 06/23-24 dated 19.05.2023 in C.No. V/Audit-II/C-I/28/2021- 22/Gr-15 and the same was adjudicated by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No.28/2023-24 (Sec-Adjn-ADC)(GST), dated 12.10.2023.

Appellant contested that as observed from the said OIO dated 12.10.2023 passed by the Additional Commissioner, Secunderabad GST Commissionerate vide OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST), demand was made for tax liability of CGST & SGST of Rs 18,65,370/- (CGST-Rs. 9,32,685/-, SGST-Rs. 9,32,685/-) pertaining to the Financial Year 2018-19 and the same has been confirmed along with applicable interest and penalty. However, it appears that the adjudicating authority erred in dropping the current demand of Rs. 16,06,954/- without going into merits of the issue and without verifying whether the said amount of Rs. 16,06,954/- demanded in the impugned show cause notice of the current OIO is involved in the said amount of Rs.18,65,370/- which was confirmed along with applicable interest and penalty vide old OIO No. 28/2023-24 (Sec-Adjn-ADC)(GST), dated 12.10.2023.

Respondent in this regard neither submitted any reply nor availed the opportunity to attend personal hearing.

In view of the contentions raised in the Appeal memo, I found that the Adjudicating Authority has erred in dropping the demand of Rs. 27,66,974/- (CGST-Rs.13,83,487/- and SGST-Rs.13,83,487/-) towards Under declaration of output tax on reconciliation of turnover in GSTR-01, GSTR-3B and GSTR-9 for the year 2018-19 and Excess availment of ITC on inward supplies on reconciliation of GSTR-9 for the year 2018-19 for an amount of Rs.16,06,954/- (CGST-Rs.8,03,477/- and SGST-Rs.8,03,477/-).

In view of the above findings and discussion, I pass the following order;

O R D E R

The appeal filed by the appellant is allowed on the above grounds.

बि. विजय
27/3/25

(बी विजय) / (B VIJAY)
अपर आयुक्त (अपील-II) / ADDITIONAL COMMISSIONER (APPEALS-II)
हैदराबाद / HYDERABAD

To

1. Assistant Commissioner, Secunderabad GST Division, Secunderabad GST Commissionerate, Hyderabad.
2. M/s Nilgiri Estates, 2nd Floor, 5-4-187/3 and 4, Soham Mansion, MG Road, Secunderabad, Telangana-500003

Copy submitted to

1. The Commissioner of Customs and Central Tax, Secunderabad GST Commissionerate, Hyderabad

2. Master copy

Sd/-

(बी विजय) / (B VIJAY)
अपर आयुक्त (अपील-II) / ADDITIONAL COMMISSIONER (APPEALS-II)
हैदराबाद / HYDERABAD

0

EMS SPEED POST
A/c. No: 1742
Customer ID: 200 000 1681

366

केवल भा.स.से पर
ON I.G.S. Only

स्पीड पोस्ट
SPEED POST

EMS SPEED POST
JD408444332IN

To

M/s. Nilgiri Estates,
2nd Floor, 5-4-187/3 and 4,
Soham Mansion, MG Road,
Secunderabad.
Telangana - 500 003,

rom
Office of the Commissioner of
Customs & Central Tax
Appeals-II Commissionerate
7th Floor, GST Bhavan, L.B. Stadium Road
Basheerbagh, Hyderabad-500 004.

SECUNDERABAD

.0.4 25

S.P.O.