



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1856/2023 -APPEAL 14564 - 24

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC-15/2023-24
दिनांक Date : 16-08-2023 जारी करने की तारीख Date of Issue : 16-08-2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. KLL DIV/ST/Yogendra Singh Rawat/169/ 22-23 DT. 26.12.2022 issued by The Assistant Commissioner, CGST & C.Ex., Divison-Kalol, Gandhinagar Commissionerate.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Kansara Popatlal Tibhovandas Metal Pvt. Ltd., 1820/2,
Shah Industrial Estate, Kalol, Santej, Gandhinagar - 382721

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 दायर 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. Kansara Popatlal Tibhovandas Metal Pvt Ltd, 1820/2, Shah Industrial Estate, Kalol, Santej, Gandhinagar-382721(hereinafter referred as '*Appellant*') has filed the appeal against Order-in-Original No. KLL DIV/ST/Yogendra Singh Rawat/ 169/22-23 dated 26.12.2022(hereinafter referred as '*Impugned Order*') passed by the Assistant Commissioner, CGST& C.Ex., Division - Kalol,Gandhinagar Commissionerate(hereinafter referred as '*Adjudicating Authority*').

2. Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No.24AABCK2339N1ZGhas filed the present appeal on 09.05.2023. The appellant is engaged in manufacturing of Flat-Rolled products of stainless steel of a width of less than 600MM. During the course of CERA Audit, the Audit Party had noticed that the appellant had wrongly carried forward the Cess amount of Rs.10,90,626/- .The appellant has filed Trans-1 form on 25.09.2017 and carried forward the Cess amount of Rs. 10,90,626/- which was lying in balance in their book of accounts. The Trans-1 form was verified by the department on 24.03.2018 and upon verification the said Cess credit was reversed by the appellant in the GST return-GST-3B in the month of February 2018 on 15.06.2018 without payment of interest. In terms of provision of Section 50(3) read with sub-section (10) of Section 42 and 43, the appellant is liable to pay interest on the said Cess amount which had been wrongly carry forwarded and reversed. However, the appellant was not agreeing to pay applicable interest. A Show Cause Notice dated 28.07.2020 was accordingly issued to the appellant calling upon as to why - *the interest liability of Rs. 1,88,604 /- as per Section 50(3) read with Sub-Section (10) of Section 42 and 43 of the CGST Act, 2017 should not be recovered.*

3. Thereafter, the adjudicating authority vide impugned order has confirmed the said demand of recovery of interest amounting to Rs. 1,88,604/- under Section 50(3) of the CGST Act, 2017 on the inadmissible credit of cess carried forwarded to the tune of Rs. 10,90,629/- under section 140 of the CGST Act, 2017 on the following grounds:

- *The contention of the appellant that they had availed the credit but have not utilized therefore interest is not payable, is not legally sustainable, as the Board vide Circular No. 58/2018-GST dated 4th September, 2018 has clarified from time to time, that if the credit which is not admissible*



and if the same is transited under section 140 of the CGST Act, 2017, will be treated as "an arrears of tax" whether utilized or not. Thus, the availment of the admissible credit recovery is required to be made alongwith the interest.

- The assessee has contended that section 42(1) and 43(10) of the CGST Act, 2017, is with regards to "Matching, reversal and reclaim of input tax credit" and "Matching, reversal and reclaim of reduction in output tax liability", at the juncture, it is pertinent to note that audit of the said assessee was under taken and matching of input tax credit transited under section 140 of the CGST Act, 2017 was also done as was brought to the notice of the said assessee to which he agreed and reversed the credit in their Form 3B. This fact of availing of inadmissible credit was revealed only when audit was undertaken. Therefore, interest in terms of section 50(3) of the CGST Act, 2017 is applicable in the instant case.

4. Being aggrieved with the impugned order the appellant has filed the present appeal on 09.05.2023 whereinstated that -

- The adjudicating authority has erred in passing an order for recovery of interest amount of Rs. 188604 @ 24% under section 50(3) of the CGST Act, 2017.
- Section 50(3) of the CGST Act, 2017 clearly mentions that "Where the input tax credit has been **wrongly availed and utilized**, the registered person shall pay interest on such input tax credit **wrongly availed and utilized** which is retrospectively (w.e.f. 01.07.2017) amended by Section 111 of the Finance Act 2022 vide Notification No. 9/2022_CT dated 05.07.2022.
- As per Rule 88B(3) prescribes manner of calculating interest on delay payment of tax. The extract of the rule 88B(3) has been produced below;

" In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation.-For the purposes of this sub-rule, -

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit wrongly availed, and the extent of such utilization of input tax credit shall be the amount by which the balance in the elect



ronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be,

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.;(Notification NO. 14/2022 Central Tax)

- On combined reading of section 50(3) and Rule 88B(3) it is clarified without any ambiguity that interest is payable only if the wrongly availed credit is utilized and input tax credit wrongly availed shall be considered as utilised only when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.
- Considering above, the appellant prays to forgo the demand raised interest amounting to Rs. 1,88,604/-.

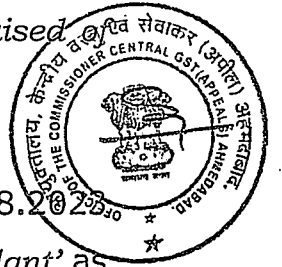
Personal Hearing:

5. Personal Hearing in the matter was held on 10.08.2023 wherein Shri A Siddharth Dudhela appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted that they have only availed i.e. Taken the credit in their ITC ledger on 25.09.2017, but not utilized the same at any point of time and reversed the same on 15.06.2018 in the return of Feb 2018. Thus they have not utilized the credit therefore provisions of section 50(3) of pay interest are not attracted, and this OIO is not maintainable and requested to allow appeal.

Discussion and Findings :-

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is (i) whether the appeal has been filed within the prescribed time- limit and (ii) Whether demand raised for interest liability on reversal amount of credit of cess, wrongly availed through Trans-1 under CGST Act, 2017 is valid or not .

7(i). First of all, I would like to take up the issue of filing the appeal and before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:



SECTION 107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2)

(3)

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a **further period of one month.**

7(ii). In the present matter, the “*impugned order*” is of 12.01.2023 so, the normal appeal period of three months was available up to 12.04.2023 whereas, the present appeal is filed on 09.05.2023. In this regard, I find that in the present matter the appellant has submitted the application for condonation of delay and requested to condone the delay. In light of Section 107(4) of the CGST Act, 2017 by condoning the delay of one month the last date for filing of appeal comes to 12.05.2023. In the present matter the appeal is filed on 09.05.2023. Accordingly, in view of above request of appellant to condone the delay in filing present appeal, I hereby condone the delay. Accordingly, the present appeal is considered to be filed in time.

Accordingly, I am proceeded to decide the case.

8. I have carefully gone through the facts of the case available on records, submissions made by the ‘*Appellant*’ in the Appeals Memorandum. I find that the ‘*Appellant*’ had filed Trans-1 form on 25.09.2017 and carried forward the Cess amount of Rs. 10,90,626/- which was lying in balance in their book of accounts. The Trans-1 form was verified by the department on 24.03.2018 and upon verification the said Cess credit was reversed by the appellant in the GST return-GST-3B for the month of February 2018 on 15.06.2018 without payment of interest. Since, the *appellant* has not paid the applicable interest on this amount, a SCN dated 01.12.2021 was issued to the *appellant* in this regard. Thereafter, the *adjudicating authority* vide *impugned order* has confirmed the demand of wrongly availed credit of



Cess. Further, the *adjudicating authority* has confirmed the demand of interest of Rs.1,88,604/-.

9. On carefully going through the submissions of *appellant* I find that the *appellant* is mainly contending that recovery of interest of demand raised for interest liability on reversal amount of credit of cess wrongly availed through Trans-1 and reversed the same in the month of February 2018 in GSTR-3B is not valid.

10. In the present matter, I find that *Section 50(3) of the CGST Act, 2017* clearly mentions that "*Where the input tax credit has been **wrongly availed and utilized**, the registered person shall pay interest on such input tax credit **wrongly availed and utilized** which is retrospectively (w.e.f. 01.07.2017) amended by Section 111 of the Finance Act 2022 vide Notification No. 9/2022_CT dated 05.07.2022.*

- As per Rule 88B(3) prescribes manner of calculating interest on delay payment of tax. The extract of the rule 88B(3) has been produced below;

" In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilized, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under sub-section (3) of section 50.



Explanation.-For the purposes of this sub-rule, -

1) *input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.*

(2) *the date of utilisation of such input tax credit shall be taken to be,*

(a) *the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or*

(b) *the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.;*(Notification NO. 14/2022 Central Tax)

- On combined reading of section 50(3) and Rule 88B(3) I find that interest is payable only if the wrongly availed credit is utilized and

input tax credit wrongly availed shall be considered as utilised only when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed. At the time of reversal of Cess amount of Rs. 10,90,629/-, credit balance available in the Electronic Credit Ledger was Rs. 3,05,76,901/- (IGST Rs. 1,81,47,400 and CGST Rs. 1,24,29,501). Hence sufficient credit balance was available at the time of reversal of Cess which clearly indicates that the ITC was not utilized and merely availment of credit does not result into non-payment or short payment.

12. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*"


अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


16/08/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 16 .08.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

To,
M/s. Kansara Popatlal Tibhovandas Metal Pvt Ltd,
1820/2, Shah Industrial Estate,
Kalol, Santej, Gandhinagar-382721.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Gandhinagar Commissionerate.
4. The Dy/Asstt. Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

