



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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DIN- 20230964SW000083178F

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1855/2023 -APPEAL /S367 - 72

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC-19/2023-24

दिनांक Date : 26-08-2023 जारी करने की तारीख Date of Issue : 05-09-2023

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. 03/SUPDT-AR-III/GNR/DRP/22-23 DT. 23.03.2023

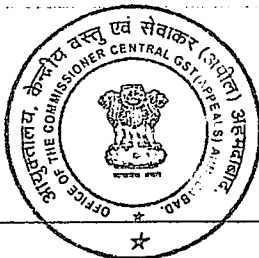
issued by The Superintendent, Range-II, , CGST & C.Ex., Divison- Gandhinagar, Gandhinagar Commissionerate.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. SMPL Infra Limited, Plot No. 458/2, Sector-1,

Nr. Gayarti Temple, Gandhinagar - 382007

(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 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 .

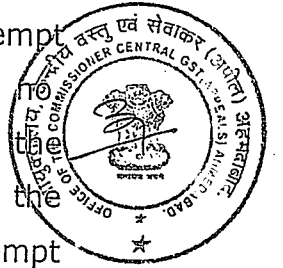


ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. SMPL Infra Limited, Plot No. 458/2, Sector-1, Nr. Gayatri Temple, Gandhinagar, Gujarat-382007 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. 03/SUPDT-AR-II/GNR/DRP/2022-23 dated 23.03.2023 (hereinafter referred as 'Impugned Order') passed by the Superintendent, Range-II, CGST& C.Ex., Division - Gandhinagar (hereinafter referred as 'Adjudicating Authority').

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AADCS2469K1Z5 filed the present appeal on 15.05.2023. The appellant was engaged in supply of service viz., works contract service falling under Tariff Heading No. 9954. The taxpayer is also availing the facility of Input Tax Credit. During the course of Audit, the Audit Party had noticed that the appellant had engaged in supplying of taxable as well exempted supply of service in the financial year 2017-18 and 2018-19 and accordingly availed ITC amounting to Rs.27,27,294/- relating to exempt supply. On being pointed out about the provisions of Rule 42 i.e. reversal of ITC in case of exempt supply, the supplier reversed ITC amounting of Rs.24,28,340/- relating to exempt supply for the financial year 2017-18 through DRC-03 debit entry DC2402200040677 dated 07.02.2020. On being pointed out about provisions of Rule 42 i.e. reversal of ITC in case of exempt supply, the supplier reversed ITC amounting of Rs.24,28,340/- relating to exempt supply for the financial year 2017-18 through DRC-03 debit entry no. DC2402200040677 dated 07.02.2020.

2(ii). As appellant had delayed the reversal of ITC by several days and had reversed the wrongly availed ITC only during the financial year 2017-18, they were liable to pay interest on the delayed reversal of ITC in terms of provision of Section 50(1) of CGST Act, 2017 read with Rule 42 of the CGST Rules 2017. However, the appellant was not agreeing to pay applicable interest. A Show Cause Notice dated 31.03.2022 was accordingly issued to the appellant calling upon as to why - *the interest liability of Rs. 9,45,810 /- as per Section 50(1) read with the provisions of Section 11(1) of the Compensation Act should not be charged and recovered.*



3. Thereafter, the adjudicating authority vide impugned order has confirmed the said demand of recovery of interest amounting to Rs. 9,45,810/- under Section 50(1) of the CGST Act, 2017 on the following grounds:

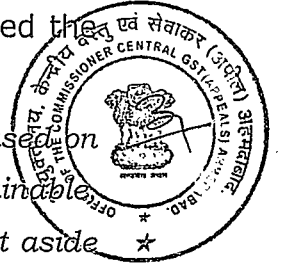
- The supplier had availed the ITC wrongly for the financial years 2017-18 and also made reversals in terms of the provisions of Rule 42 of the Rules in the year 2017-18. However, there was a delay of several days in the reversal of ITC, a tabulated below:

Value of Exempted Supplier	Date on which Date of reversal to be made	Date of reversal made by DRC-03	ITC to be reversed	Days diff.	Interest
4203079	25-08-17	07-02-2020	7,61,296	896	3,36,389
4568830	20-12-17	07-02-2020	8,27,544	779	3,17,913
2503951	20-02-18	07-02-2020	4,53,536	717	1,60,365
2130885	20-03-18	07-02-2020	3,85,963	689	1,31,143
13406745			24,28,340		9,45,810

- There was a contravention of provisions of Section 39(7) of the Act by delaying the reversal of ITC, in terms of the provisions of Rule 42 of the Rules. Therefore, it appears that they were liable to pay total interest amounting to Rs. 945810 under the provisions of Sections 50(1) of the Act.

4. Being aggrieved with the impugned order the appellant has filed the present appeal on 15.05.2023 wherein stated that –

- The impugned order is liable to set aside as the said order is based on mere conjecture and surmises and is therefore wholly unsustainable, bad in law and void ab-initio and should be quashed and/or set aside and/or dropped forthwith to meet the ends of justice.
- The Input Tax Credit was only availed and not utilized therefore interest should not be charged on the aforesaid reversal of Input Tax Credit. This was due to the fact that the balance of input tax credit in the electronic credit ledger was always more than the amount of reversal of input tax credit throughout the period.
- Interest not imposable on ineligible input tax credit availed but not utilized in terms of provisions of Section 50 of CGST Act 2017.
- That CBIC vide Press Release of 45" GST Council meeting dated 17.09.2021 clarified that interest shall be leviable on ineligible input tax credit availed and utilised.
- The notice has not utilized the ineligible input tax credit at any point of time before reversal of such input tax credit. In reference to above



interest cannot be demanded on reversal of input tax credit in accordance with Rule 42 of CGST Rules 2017.

Personal Hearing:

5. Personal Hearing in the matter was held on 07.08.2023 and 18.08.2023 wherein Shri Jaidep Basu appeared on behalf of the 'Appellant' as authorized representative. During P.H. he reiterated the written submission. He further submitted that:

They have reversed the ITC through DRC-03 and sufficient balance was there at all the time during the period when ITC was availed and reversed, thus not required to pay interest as they have not utilized the same in terms of Section 50(3) of CGST Act. He relied on cases referred in submission. In view of above 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 Whether demand raised for interest liability, on reversal of ITC amount, in case of exempt supply of input tax credit wrongly availed, is valid or not .

7(i). 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 contended that the Section 50(3) of CGST Act clearly states that a registered person is liable to pay interest on availing Input Tax Credit wrongfully only if it is utilized. Hence in this instant case Section 50(3) is not applicable as the ITC had only been availed but not utilized. Further, the input tax credit balance lying in the electronic credit ledger being more than the amount of Input Tax Credit reversed throughout the period.

7(ii). Further, I find that the *appellant* has also contended that interest not imposable on ineligible input tax credit availed but not utilized in terms of provisions of Section 50 of CGST Act 2017. That CBIC vide Press Release of 45" GST Council meeting dated 17.09.2021 clarified that interest shall be leviable on ineligible input tax credit availed and utilised. The relevant para are quoted as below :



"In the spirit of earlier council decision that interest is to be charged only in respect of net cash liability, Section 50(3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on ineligible ITC availed and utilized and not on ineligible ITC availed". It has been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. 01.07.2017".

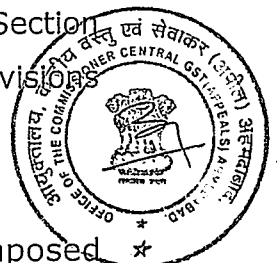
8. In the present matter, I find that the appellant had engaged in supplying of taxable as well exempted supply of service in the financial year 2017-18 and 2018-19 and accordingly availed ITC amounting to Rs.27,27,294/- relating to exempt supply. On being pointed out about the provisions of Rule 42 i.e. reversal of ITC in case of exempt supply, the supplier reversed ITC amounting of Rs.24,28,340/- relating to exempt supply for the financial year 2017-18 through DRC-03 debit entry no. DC2402200040677 dated 07.02.2020. Further I find that as appellant had delayed the reversal of ITC by several days and had reversed the wrongly availed ITC only during the financial year 2017-18, they were liable to pay interest on the delayed reversal of ITC in terms of provision of Section 50(1) of CGST Act, 2017 read with Rule 42 of the CGST Rules 2017. Further, I find that appellant has contravened the provisions of Section 39(7) of the Act by delaying the reversal of ITC, in terms of the provision of Rule 42 of the Rules.

9. Since, the *appellant* is contended that interest so imposed vide *impugned order* is not justified, I hereby refer the relevant provisions as under:

Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. -

(1) *The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section(2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,- (a) to (m)*

(2)(a) *where the aggregate of the amounts calculated finally in respect of 'D 1' and 'D 2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1 ' and 'D2 ', such excess shall be 11[reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year to which such credit relates and the **said person shall be liable to pay interest on the said excess amount at the rate specified***



in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

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:

1[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 ">section 73 or section 74">section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

(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) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed]

Section 17. Apportionment of credit and blocked credits.-

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.



Section 39. Furnishing of returns.-

(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, 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:

[Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,—

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed]

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or

both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.]

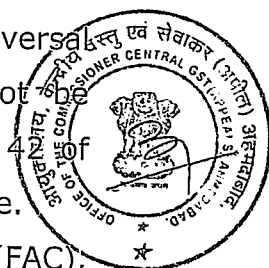
10(i). In the current case, I find that the appellant had engaged in supplying of taxable as well exempted supply of service in the financial year 2017-18 and 2018-19 and accordingly availed ITC amounting to Rs.27,27,294/- relating to exempt supply. On being pointed out about the provisions of Rule 42 i.e. reversal of ITC in case of exempt supply, the appellant reversed ITC amounting of Rs.24,28,340/- relating to exempt supply for the financial year 2017-18 through DRC-03 debit entry no. DC2402200040677 dated 07.02.2020. Further as per the provisions of Rule 42 where the aggregate of the amounts calculated finally exceeds the aggregate of the amounts determined, such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year to which such credit relates and the **said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period** starting from the first day of April of the succeeding financial year till the date of payment.

10(ii). I find that the appellant further contended that they have not utilized the ineligible input tax credit at any point of time before reversal of such input tax credit. In reference to above interest cannot be demanded on reversal of input tax credit in accordance with Rule 42 of CGST Rules 2017. The appellant has relied upon certain case laws, i.e.

- (a) Aathi Hotel Vs. Assistant Commissioner (ST) (FAC), Nagapattiam. [2022(61)G.S.T.L. 343(Mad.)].
- (b) Commercial Steel Engineering Corporation Vs. State of Bihar. [2019(28) G.S.T.L.579(Pat.)].
- (c) Maansorova R Motors P. Ltd. Vs Assttt. Commr. Ponamallee Division, Chennai[2021(44)GST126(MAD)].
- (d) Electronic Credit Ledger for the period of 2017- 2020.

Further, I find that the case laws relied upon by the appellant as above would not be applicable in the present case as the current matter is of interest on delayed reversal of ITC of exempted supply under Rule 42(2)(a) of CGST Rules 2017.

10(iii). I find that in the ^{instant} ~~current~~ case, the interest is leviable on delayed reversal of ITC relating to exempted supply for the FY.2017-18 under Rule 42(2)(a) of the CGST Rules, 2017 at the rate specified in Sub Section (1) of Section 50 of the CGST Act, 2017. The provision of section



50(3) is applicable when taxable person 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 but this case is for interest on delayed reversal of ITC of exempted supply under Rule 42(2)(a) of CGST Rules 2017 wherein it is specially mentioned that the appellant shall be liable to pay interest on the said amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment. Therefore provisions of Sub Section (3) of Section 50 of CGST Act, 2017 are not applicable in the instant case. In this case I find that interest on delayed reversal of ITC is leviable under Rule 42(2)(a) of CGST Rules 2017. Only rate of interest needs to be taken at the rate specified under sub-section (1) of section 50 of CGST Act, 2017.

11. In view of above discussions, I find that the appellant is liable to pay interest amounting to Rs. 9,45,810/- under the provisions of Rule 42 of the CGST Rules 2017 read with Sections 50(1) of CGST Act, 2017. Accordingly, I do not find any force in the contentions of the Appellant. Therefore, I do not find any reason to interfere with the order passed by the 'Adjudicating Authority' vide 'Impugned Order'. Accordingly, I uphold the impugned Order in Original and reject the present appeal filed by the 'Appellant'.

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.

Asad
(Adesh Kumar Jain)

Joint Commissioner (Appeals)
Date: 26 .08.2023

Attested

(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. SMPL Infra Limited,
Plot No. 458/2, Sector-1,
Nr. Gayatri Temple, Gandhinagar,
Gujarat-382007.

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 Superintendent, Range-II, CGST, Division-Gandhinagar.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

