



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.
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)68/North/Appeals/2019-20/15276 70 15280

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-015-2020-21
दिनांक Date : 14-07-2020 जारी करने की तारीख Date of Issue 04/08/2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No MP/447/RFD-1A/Inverted Ref/18-19 दिनांक: 31.03.2019
issued by Asst. Commissioner, Div-II, Central Tax, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Unnati Pumps Pvt Ltd
Ahmedabad

(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.
	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

This order arises out of an appeal filed by M/s. Unnati Pumps Private Limited, having registered office at 81 to 86, Amarnath Industrial Estate, Opposite Shayona Estate, Naroda Road, Ahmedabad-380025 (herein referred to as the 'appellant') against Order No. MP/447/RFD-1A/Inverted Ref/18-19 dated 31.03.2019 [hereinafter referred to as 'the impugned order'] passed by the Assistant Commissioner of Central Tax, Division-II, Ahmedabad North (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant is engaged in manufacture, supplier and exporter of Submersible Pumps and Pumps Sets and is holding GST Registration No. 24AAACU1996J1Z2. The appellant had filed refund claim amounting to Rs.23,59,233/- [CGST - Rs.1,75,213/- + SGST - Rs.21,84,020/-] in respect of Input Tax Credit (in short 'ITC') accumulated due to Inverted Tax Structure for the month of January, 2018 to March, 2018 on 28.11.2018 under Section 54(3) of the CGST Act, 2017 (in short 'the Act'). The appellant was issued deficiency memo on 10.12.2018 for non-submission of documents, variation between figures reported in the GSTR-3B and GSTR-1 returns. They submitted a fresh application on 09.01.2019 but did not submit complete documents. RFD-02 was issued on 24.01.2019. Further, the said claimant submitted revised RFD-01A on 20.02.2019. The adjudicating authority vide the impugned order has decided the refund claim filed by the appellant and has sanctioned refund for an amount of Rs.20,95,442/- which consists of CGST - Rs.1,75,213/- + SGST - Rs.19,20,229/- and rejected the refund claimed on an amount of SGST of Rs.2,63,791/-. After sanctioning the refund for Rs.20,95,442/-, the adjudicating authority has appropriated an amount of Rs.5,60,561/- from the said amount towards the interest liability of the appellant for late payment of their tax liability for the past period and ordered to pay the remaining sanctioned amount of Rs.15,43,881/- towards SGST to be paid in cash.

3. Being aggrieved with the impugned order of appropriating some amount from the sanctioned refund amount towards interest liability, the appellant preferred this appeal on the following grounds :

- (i) The adjudicating authority has erred in not considering the relevant definition of Tax Payable as per Notification No. 23/2017-Central Tax dated August 17, 2017 which states that 'tax payable' under the Act means the difference between the tax payable for the month and the amount of input tax credit and transitional credit;
- (ii) As per in-principal approval given in 31st meeting of GST Council vide Press Release dated 22nd December, 2018, for the amendment of section 50 of the



CGST Act and the interest to be charged on net tax payable after considering the Input Tax Credit and is to be levied only on amount payable through electronic cash ledger. They relied upon the judgement of Hon'ble High Court of Madras dated 06.01.2020 in case of M/s Refex Industries Limited and M/s Sherisha Technologies Private Limited, in this regard; and

(iii) Due date of filing of return under Section 39(1) of the Act i.e. return in form GST-3 has not yet been notified than the due date of payment of tax has not yet been specified. Since, due date of payment of tax has not yet seen light of the day, there is no question of a delay with regard to payment of tax. Hence, there is no question of any liability on account of interest payable either on the tax liability.

4. Personal Hearing in the case was held on 18.06.2020. Shri Jay Kishan Vidhwani, Chartered Accountant appeared on behalf of the appellant for the hearing and reiterated the submissions made in the Appeal Memorandum. He also submitted a written submission along with copies of case law in support of his contention.

5. I have carefully gone through the facts of the case available on record, grounds of appeal and oral submissions made by the appellant at the time of hearing. I find that the issue to be decided in the present appeal is as to whether in the facts and circumstances of the case the appellant is legally liable to pay interest on the tax liability discharged by them late, after the due date, through debit in their electronic credit ledger even while having sufficient credit in balance in their electronic credit ledger on the dates when they were legally required to discharge their tax liability under the provisions of GST Law.

6. The adjudicating authority has found that for the "tax for the month of January, 2018 and February, 2018 was paid only by the said claimant, when it was debited in their Electronic Credit Ledger on 10.05.2018. As such even they had amount in balance in their Electronic Credit Ledger as on due date for paying tax, it cannot be considered Tax paid. As such the said claimant is liable to pay Interest on delayed payment of Tax."

7. I find that that the charging of interest for delayed payment of tax is governed by the provisions of Section 50 (1) of the CGST Act, 2017 which reads as under:

"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 specified in the Government on the recommendations of the Council."



The section 50 of the Central Goods and Services Tax Act was amended vide Finance (No.2) Act, 2019 by inserting following proviso in sub-section (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 or 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.”

8. The above provisions of Section 50 of the CGST Act, 2017 and its amendment effected vide Finance Act, 2019 clearly indicate that the intention of the legislature is to charge interest on that portion of the tax that is paid by debiting the electronic cash ledger. Further, the GST Council in their 39th Meeting held on 14.03.2020, has recommended that interest for delay in payment of GST is to be charged on the net cash tax liability w.e.f. 01.07.2017. Hence, interest liability does not arise in such a situation when tax was paid by debiting the electronic credit ledger. This is more so, when it is not in dispute that the appellant had amount in balance in their Electronic Credit Ledger on the due date.

9. I find that the case law relied by the appellant in the case of M/s Refex Industries Limited and M/s Sherisha Technologies Private Limited, squarely covers the issue on hand. The Hon'ble High Court of Madras in their decision dated 06.02.2020 in respect of M/s Refex Industries Limited and M/s Sherisha Technologies Private Limited has held that interest under Section 50(1) is chargeable on net tax liability i.e. on tax payment in case after the netting of the ITC available and not on Gross Tax liability. Hon'ble Court has further observed that in such a case where ITC is available with the department, the payment is neither belated nor delayed. The relevant portions are reproduced below:

“In my considered view, the proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the department to the credit of the assessee. The latter being available with the Department is, in my view, neither belated nor delayed.”

10. In view thereof, following the ratio of the above said Madras High Court judgment, it is to be held that no interest liability arises in respect of the tax liability discharged by the appellant by debiting through their electronic credit ledger. When it is held that there is no interest liability, the appropriation of the sanctioned refund amount against such a



non-est liability is illegal and hence the said appropriation of the sanctioned refund amount deserves to be set aside. Having found merit in the appellant's contention as discussed above, I am not going into the merits of their other contentions in the matter.

11. Accordingly, the impugned order passed by the adjudicating authority to the extent of appropriating the sanctioned refund amount against interest liability is set aside for being not legal and proper and the appeal of the appellant is allowed with consequential relief.

12. The appeals filed by the appellant stand disposed off in above terms.

(Mukesh Rathore)

Joint Commissioner (Appeals)

Date: .07.2020.

Attested



(Anilkumar P.)

Superintendent (Appeals)
Central Excise, Ahmedabad

By Regd. Post A. D/Speed Post

To

M/s. Unnati Pumps Private Limited,
81 to 86, Amarnath Industrial Estate,
Opposite Shayona Estate,
Naroda Road,
Ahmedabad-380025

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, CGST, Ahmedabad North.
3. The Commissioner, CGST Appeals, Ahmedabad.
4. The Assistant/Deputy Commissioner, Central GST, Division-II, Ahmedabad North.
5. Guard File.
6. P.A. File.



