



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



By Regd. Post

DIN NO. : 20221064SW00008186E6

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/246/2022 / 3925-80
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-082/2022-23 and 11.10.2022
(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	11.10.2022
(ङ)	Arising out of Order-In-Original No: GST/D-VI/O&A/16/RIDDHI SIDDHI/AM/2021-22 dated 05.10.2021 issued by The Assistant Commissioner, CGST, Division - VI (S G Highway West), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Riddhi Siddhi Estate Creator LLP (GSTIN-24AATFR8340P2ZB), 10, Abhishree Corporate Park, Near Swagat Bunglows BRTS, Ambali-Bopal Road, Ahmedabad, Gujarat-380058

(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 .

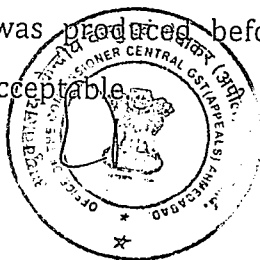
ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Riddhi Siddhi Estate Creator LLP; 10, Abhishree Corporate Park, Nr. Swagat Bungalows BRTS, Ambali-Bopal Road, Ahmedabad - 380058 (hereinafter referred as 'Appellant') has filed the present appeal against Order No. GST/D-VI/Q&A/16/RIDDHI SIDDHI/AM/2021-22, dated 05.10.2021 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST & C. Ex., Division - VI, Ahmedabad North (hereinafter referred as 'adjudicating authority').

2. Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AATFR8340P2ZB has filed the present appeal on 03.01.2022. During the course of audit it was observed that the 'Appellant' had wrongly carried forward the Cenvat Credit of Rs.6,67,473/- in the column 5(a) of TRAN-1 which pertains to the Cenvat Credit carried forward in the return ST-3 relating to the period ending on 30.06.2017, whereas the closing balance of STC No.AATFR8340PSD001 in the month of June, 2017 was Rs.5,00,856/- . Hence the appellant had taken excess credit of Rs.1,66,617/- . The appellant had agreed to the objection and subsequently reversed such inadmissible credit of Rs.1,66,617/- vide DRC-03 dated 04.02.2021 however interest and penalty were not paid. A Show Cause Notice dated 13.08.2021 was accordingly issued to the appellant. The adjudicating authority vide impugned order has confirmed the said demand of wrongly availed Cenvat Credit of Rs.1,66,617/- under proviso to Section 73 of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017. The adjudicating authority vide impugned order has also confirmed the demand of interest of Rs.93,342/- under Section 50 read with Section 73 of the CGST Act, 2017 and imposed penalty of Rs.16,662/- in terms of Section 122 read with Section 73 of the CGST Act, 2017.

3. Being aggrieved with the *impugned order* the *appellant* has filed the present appeal on 03.01.2022 wherein stated that:-

- the appellant has already informed department that ITC was availed in the Electronic Credit Ledger through Tran-1 but have not utilized the same till 04.02.2021.
- the balance of CGST in Electronic Credit ledger was more than the reversal amount for the period when TRAN-1 was filed i.e. on 26.12.2017 to the date of reversal i.e. 04.02.2021.
- the copy of Electronic Credit Ledger was produced before the department however their contention was not made acceptable.



- regarding demand of interest Rs.93,342/- under Section 50 read with Section 73 of the CGST Act, 2017, they referred a Press Release of 45th Meeting of the GST Council, Lucknow dated 17.09.2021 [Page-6 , Point-2] that :- *"In the sprit 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."*
- regarding demand of penalty Rs.16,662/- under Section 122 read with Section 73 of the CGST Act, 2017, the appellant contended that as tax has already been paid on 04.02.2021 vide DRC 03 and interest is not payable on ITC not utilized so penalty will not be applicable as per Section 73(8) of the CGST Act, 2017 if the same is paid within 30 days of the show cause notice.

In view of the above submission the appellant prayed to set aside the order for demand of interest and penalty and to allow appeal.

4. Personal Hearing in the matter was held physically on 08.09.2022 wherein Shri Hardik Sanhal, Chartered Accountant, appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the submissions made till date and informed that they want to give additional submission/information, which was approved and 3 working days period was granted.

Accordingly, the appellant has submitted the additional written submission on 09.09.2022 wherein stated that:-

- In the Grounds of Appeal filed on 03.01.2022 , wherein in Point No.2 it was highlighted that the GST Council in its 45th Meeting held on 17.09.2021 has decided to levy interest only on "ineligible ITC availed and utilized" and not on "ineligible ITC availed". Further, amendment of Section 50 was done through Section 110 of Finance Bill 2022, which was notified through Notification No. 09/2022- Central Tax dated 05.07.2022.
- they have availed ITC in Electronic Credit Ledger , however, they have not utilized the same till the date of reversal, so interest should not be levied on reversal.



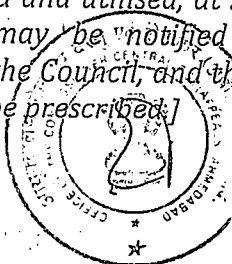
Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum as well as through additional submission. I find that the 'Appellant' had carried forward the Cenvat Credit of Rs.6,67,473/- in the TRAN-1 pertained to the Cenvat Credit carried forward in the return ST-3 relating to the period ending on 30.06.2017, whereas the closing balance of STC No.AATFR8340PSD001 in the month of June, 2017 was only Rs.5,00,856/- . This resulted into availment of excess credit of Rs.1,66,617/- . I find that on being pointed out the appellant reversed the said inadmissible excess credit of Rs.1,66,617/- vide DRC-03 dated 04.02.2021. However interest and penalty were not paid. The appellant has disputed the availment excess Therefore, Show Cause Notice dated 13.08.2021 was issued to the appellant. The adjudicating authority vide impugned order has confirmed the said demand of wrongly availed Cenvat Credit of Rs.1,66,617/- , also demand of interest of Rs.93,342/- and imposed penalty of Rs.16,662/- Accordingly, the appellant has preferred the present appeal.

4(ii). On carefully going through the submissions of appellant I find that the appellant is not disputing about the issue that they had wrongly taken excess CENVAT credit of Rs. Rs.1,66,617/- which on being pointed out reversed by them. However, I find that the appellant is mainly contending that they have not utilized the said CENVAT credit and the same was lying unutilized till they reversed the same. The appellant has contended that interest is levied only on "ineligible ITC availed and utilized" and not on "ineligible ITC availed" and referred to the amendment of Section 50 of CGST Act, 2017 done through Section 110 of Finance Bill 2022, which was notified through Notification No. 09/2022- Central Tax dated 05.07.2022. They also contended that as tax has already been paid on 04.02.2021 vide DRC 03 and interest is not payable on ITC as the same was not utilized, therefore penalty of Rs.16,662/- will not be applicable as per Section 73(8) of the CGST Act, 2017 as the same was paid within 30 days of the show cause notice.

4(iii). Considering the foregoing facts, I hereby referred the provisions of Section 50 (3) of the CGST Act, 2017, the same is as under:-

SECTION 50 (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.]



[As per Section 110 of the Finance Bill, 2022 this amendment has been with effect from 1st July, 2017, which has been notified vide Notification No. 09/2022-Central Tax, dated 05.07.2022.]

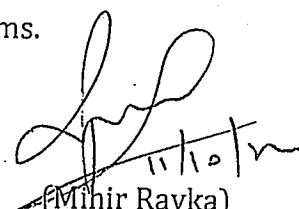
In view of above, it is abundantly clear that interest is leviable only if the Input Tax Credit has been wrongly availed and utilized. In the present matter, the appellant availed the ITC in the Electronic Credit Ledger through TRAN-1 but have not utilized the same till 04.02.2021 i.e. the date of reversal of the said Input Tax Credit. Further, I find that the balance of CGST in Electronic Credit ledger was more than the reversal amount for the period when TRAN-1 was filed i.e. on 26.12.2017 till the date of reversal i.e. 04.02.2021. I, therefore, find that interest is not leviable in the present case.

4(iv). The statutory provisions contained under Section 73 of CGST Act, 2017, provide relaxation from penalty under sub-section (6) and (8) subject to payment of wrongly availed credit/ tax liability along with interest within such time. In the subject case, it transpire from the records and grounds of appeal that the appellant has admitted the wrong availment of excess credit which was not utilized by them for discharging any of their tax liability. This fact was not at all disputed by the department. The appellant has reversed the excess credit on 04.02.2021 much before the issue of show cause notice dated 13.08.2021. Thus the case of the appellant is covered under Section 73(6) of CGST Act, 2017, where taxpayer has reversed the liability and interest is not payable as per the existing provisions of Section 50 of CGST Act, 2017, as the credit in dispute was not utilized at any point of time; they should have got the benefit intended under Section 73(8) of the CGST Act, 2017. Hence, I find that penalty is also not imposable upon the appellant.

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

6. 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.

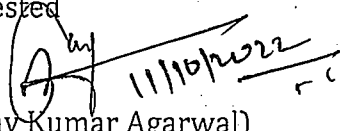

(Mihir Rayka)

Additional Commissioner (Appeals)



Date: .09.2022

Attested


(Ajay Kumar Agarwal)
Superintendent (Appeals)
Central Tax,
Ahmedabad.

By R.P.A.D.

To,
M/s. Riddhi Siddhi Estate Creator LLP,
10, Abhishree Corporate Park,
Nr. Swagat Bunglows BRTS,
Ambali-Bopal Road,
Ahmedabad - 380058, Gujarat.

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., Ahmedabad-North.
4. The Additional Commissioner, Central Tax (System), Ahmedabad- North.
5. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VI, Ahmedabad-North.
- ✓ 6. Guard File.
7. P.A. File.

