



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- 202309645W0000818720

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/1843/2023 -APPEAL (5711 - 5716
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-JC-49/2023-24
दिनांक Date : 25-08-2023 जारी करने की तारीख Date of Issue : 06-09-2023
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. 138/DC/D/VM/2022-23 DT. 14.03.2023 issued by
The Deputy Commissioner, CGST & C.Ex., Divison-III, Ahmedabad North
Commissionerate.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. JBM Auto Systems Pvt. Ltd.,
AV 13, BOL Industrial Estate,
Sanand, Ahmedabad - 382170

(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-APPEALBRIEF FACTS OF THE CASE:

M/s. JBM Auto System Private Limited, AV13, BOL Industrial Estate, Sanand, Ahmedabad 382170(GSTIN 24AAACK8997R1ZH) (hereinafter referred to as "the appellant"), have filed appeal against Order-In-Original No.138/DC/D/VM/22-23, dated 14.03.2023 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner, CGST & C.Ex., Division-III, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2. Facts of the case in brief, are that the appellant was registered in Central excise with ECC No.AAACK8997RSD005 and in Service Tax AAACK8997RSD005. M/s JMB Auto Systems Pvt. Ltd. is merged with JBM Auto Ltd. GSTN 24AAACJ9630N1ZA, at AV13, BOL Industrial Estate, Sanand, Ahmedabad 382170. The appellant is engaged in manufacturing of Motor Vehicle Part falling under CETH 87082900 of CETA 1985. The appellant has availed ITC of Rs.17,27,724/- (KKC of Rs.4,19,100/- and other ITC of Rs.13,08,624/-) on 28-08-2017 as transitional credit. During the audit of records of the appellant conducted for the period April-2016 to June-2017, it was noticed by the audit officers that the assessee has taken transitional credit of Krishi Kalyan Cess of Rs.4,19,100/-. They had reversed ITC of KKC and filed GSTR-3B for the month of May-2018 effecting in their electronic credit register. It was noticed by the Audit Officers that out of the total admissible ITC of Rs.1,70,60,425/-, the appellant had reversed credit of Rs.17,27,274/- and taken balance credit of Rs.1,53,32,701/- vide Entry No.5 dated 20.06.2018. They had taken excess credit of Rs.13,08,624/- on 28.08.2017. Therefore they had reversed both the transitional credit of KKC and excess credit total amounting to Rs.17,27,724/- from the ITC credit available, from the month of MAY-2018. It was thus noticed that the assess has wrongly taken credit of KKC and excess ITC in the month of August 2017 and the same was reversed in the month of MAY-2018. The said Credit was utilized by the appellant for payment of GST in the month of MAY-2018. Therefore a show cause Notice was issued to the appellant asking them as to why:

1. Transitional credit of Krishi Kalyan Cess of Rs.4,19,100/- lying in the balance as on 30.06.2017 and availed in TRAn-1 filed on 28.08.2017 and subsequently debited vide GSTR 3B for the month of MAY-2018 should not be appropriated under Section 140(1) of the transitional provision under GST,
2. Excess ITC of Rs.13,08,624/- taken on 28.08.2017 and subsequently reversed from the ITC Credit available from the month of MAY-2018

should not be appropriated under Section 140(1) of the transitional provision under GST,

3. Interest of Rs.3,44,218/- should not be charged and recovered from them on the late reversal of KK Cess and Input Tax credit under the provisions of Section 50(3) of the Act.

3. The adjudicating authority vide the impugned order, ordered to:

1. Appropriate the Transitional credit of Krishi Kalyan Cess of Rs.4,19,100/- lying in the balance as on 30.06.2017 and availed in TRAN-1 filed on 28.08.2017 and subsequently debited vide GSTR-3B for the month of MAY-2018 under Section 140(1) of the transitional provision under GST,

2. Appropriated the excess ITC of Rs.13,08,624/- taken on 28.08.2017 and subsequently reversed from the ITC Credit available from the month of MAY-2018 under Section 140(1) of the transitional provision under GST,

3. Confirmed the Interest of Rs.3,44,218/- for the amount appropriated above t Sl.No.1 & 2 of late reversal of KK Cess and Input Tax credit under the provisios of Section 50(3) of the Act.

4. Being aggrieved with the impugned order, the appellant preferred appeal on the following grounds:

" The impugned order is bad in law and the following submissions shall substantiate the same.

12.1 The impugned order while confirming the demand has invoked erstwhile Section 50(3) of CGST Act, 2017 which read as under:

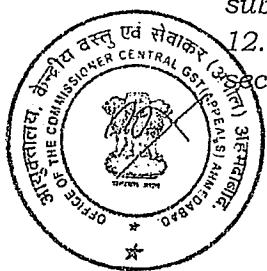
"3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council."

However, section 50(3) *ibid* was amended vide Finance Act, 2022, with retrospective effect from 01.07.2017 and made effective vide notification no. 09/2022-CT dated 05.07.2022. The amended section 50(3) reads as under:

"(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"

12.2 From the above amendment, it is clear that interest under section 50(3) *ibid* can only be recovered when the ITC has been wrongly availed and utilized.

Thus, mere wrongful availment of ITC will not attract interest under the said section unless coupled with utilization of such ITC.



12.3 There is no gainsaying that JBMAS had availed total ITC of Rs.17,27,724/- in the tax period of July 2017; however, the same was inadvertently utilized at the time of filing GSTR-3B return for the period April 2018 on 22.05.2018, while discharging the tax liability for the said period. On noticing the said inadvertence, JBMAS immediately reversed ITC of Rs.17,27,724/- in its May, 2018 GSTR-3B, which was filed on 20.06.2018.....

12.4 As the date of utilization of the said ITC was 22.05.2018 and the date of its reversal was 20.06.2018. The interest, in view of section 50(3) ibid was payable for 29 days and not 303 days as mentioned in para 13 of the impugned order.

12.4.1 The impugned order also errs in charging interest on such ITC utilization at the rate of 24% instead of 18%. It is pertinent to note that in terms of clause 116 of the Finance Act, 2022 read with sixth schedule of the said Act, the interest rate under section 50(3) ibid is to be recovered at 18% and this rate has been made retrospectively applicable from 01.07.2017. Copy of clause 116 alongwith schedule six of the Finance Act, 2022 and principal notification no. 13/2017-CT dated 28.06.2017

12.4.2 It is to be appreciated that JBMAS had already deposited the interest of Rs.24,709/- vide CIN 10BA21082400021629 dated 04.08.2021, which was calculated at 18% and not 24% as held in the impugned order. The amount deposited as interest is in consonance with the provisions mentioned afore; and therefore, the computation of interest in the impugned order is incorrect. Copy of the challan

Further, the appellant has prayed that the impugned order be quashed.

PERSONAL HEARING:

5. Personal hearing in this case was held on 08.08.2023. Shri Sunil Mishra, Assistant Manager (Employee of the appellant) appeared in person, on behalf of the appellant as authorized representative. He submitted that:

- (i) the rate of interest applicable is 18% as per the Finance Act (6th Schedule) therefore the calculation by the adjudicating authority is not Legal and proper to this extent and be amended accordingly.
- (ii) As regards to the period of interest calculated, the period should be from the date of utilization and not from the date of taking credit in ITC Ledger,
- (iii) Accordingly the interest amount comes to Rs.24,709/- which has already been paid vide DR-03 AR No.AD240821002400W dated 04-08-2021.

In view of the above the impugned order passed by the adjudicating authority may be set aside.

6 DISCUSSION AND FINDINGS:-

6.1 I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal as well as at the time of personal hearing and find that the appellant is mainly contesting with



regard to rate of interest applicable and the interest should be calculated from the date of utilization of wrongly availed KKC and ITC and not from the date of taking credit of the same in the ITC Register.

6.2 So the question to be answered in the present appeal is:

Whether the impugned order passed by the adjudicating authority is proper or otherwise?

6.3. At the foremost, I observed that in the instant case the "impugned order" is of dated 14-03-2023 and the present appeal is filed on 29.05.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.4 To examine the applicability of interest on wrongly availed and utilized the KKC and ITC by the appellant, I refer Section 50(3) of the CGST Act, 2017, which is as under:

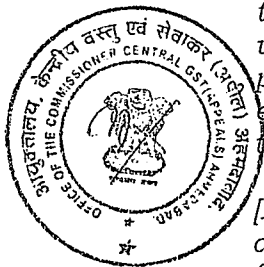
50. Interest on delayed payment of tax.— (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part 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:

[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 payable on that portion of the tax which 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) A taxable person who 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, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council

6.5 The above section was further amended vide Finance Act, 2022 with retrospective effect from 01.07.2017 vide Notification No.09/2022



dated 05-07-2022. The said amended Section 50(3) is reproduced hereunder:

[(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]

6.6 The manner of calculating interest, for delayed payment of TAX /ITC wrongly availed and utilized, has been amended vide Finance Act, 2022 with retrospective effect from 01-07-2017 Vide Notification No.14/2022-Central Tax dated 05-07-2022. The text of Rule 88B inserted vide the said Notification is reproduced hereunder:

"7. In the said rules, with effect from the 1st July, 2017, after rule 88A, the following rule shall be deemed to have been inserted, namely: -

—88B. Manner of calculating interest on delayed payment of tax. - (1)

In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with 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, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised 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, —

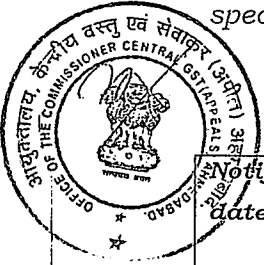
(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic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

6.7 Further, the rate of interest has been fixed for the purpose of sub section (1) and (3) of Section 50, Sub section (12) of Section 54 and section 56 of the CGST Act, 2017, vide Notification No.13/2017 dated 28-06-2017. Vide clause 116 of the Finance Act, 2022, the same has been amended and the rate of interest is revised from 24% to 18% for subsection (3) of Section 50. The text of the same is reproduced as under:

“116. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G. S. R. 661(E), dated the 28th June, 2017, issued by the Central Government on the recommendations of the Council, under sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the Central Goods and Services Tax Act, 2017, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Sixth Schedule, on and from the date specified in column (3) of that Schedule.”



THE SIXTH SCHEDULE

[See section 115(1)]

Notification number and date	Amendment	Date of effect of amendment
G.S.R 661 (E), dated the 28th June, 2017 [No. 349/72/2017-GST, dated 28th June, 2017]	In the said notification, in the Table, against serial number 2, in column (3), for the figures "24", the figures "18" shall be substituted.	1st July, 2017

6.8 From the above, it is crystal clear that the rate of interest for section 50(3) has been revised from 24% to 18% with retrospective effect from 01-07-2022 vide the Finance Act, 2022. Further as per the amended Rule 50(3) the interest is required to be paid from the date of utilization of wrongly availed credit as amended vide the Finance Act, 2022 with retrospective effect from 01-07-2017.

6.9 In the instant case, I find that the adjudicating authority has vide the impugned order charged Rs.3,44,218/- for the period from 28-08-2017 i.e.

the date of KKC/ITC wrongly taken till 30-06-2018 i.e. the date on which the said KKC/ITC was reversed in their electronic credit ledger. However, I am of the view that the interest @ 18% is payable on the wrongly availed KKC/ITC by the appellant for the period from the date of utilization till the date of payment of Interest.

6.10 I find that the appellant has already paid the interest of Rs.24,709/- vide DRC-03 dated 04-08-2021 as per the calculation above, which can be allowed, in view of the amended provisions. Therefore the interest paid by the appellant from the date of utilization till the date of payment is allowed to the appellant.

7. In view of the foregoing facts & discussion, I modify the impugned order. Accordingly I allow the present appeal of the "Appellant".

8. 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.

Asanump
25/08/2023
(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

ATTESTED.

Sunawani
(SUNITA D. NAWANI)
SUPERINTENDENT
CGST & C.EX. (APPEALS),
AHMEDABAD.



By R.P.A.D.

M/s. JBM Auto System Private Limited (GSTIN 24AAACK8997R1ZH) AV13, BOL Industrial Estate, Sanand, Ahmedabad 382170. (presently M/s. JBM Auto Limited GSTIN -24AAACJ9630N1ZA).

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-III Ahmedabad-North Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
6. Guard File/P.A. File.

