



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2282/2023   ११७९ - ६५
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-90/2023-24 and 30.10.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	10.11.2023
(ङ)	Arising out of Order-In-Original No. 52/AC/D/22-23/AM dated 03.03.2023 passed by The Deputy Commissioner, CGST & C.Ex., Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Brussels Laboratories Pvt. Ltd., 33, Changodar Industrial Estate, Nr. Changodar Water Canal, Sarkhej Bavla Highway, Changodar, Ahmedabad, Gujarat - 382210

- (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.  
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  
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.  
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.  
Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
- (i) (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.  
उक्त अपीलकारी प्राधिकारी को अपील दाखिल करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbic.gov.in](http://www.cbic.gov.in) को देख सकते हैं।
- (C) 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](http://www.cbic.gov.in).



ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

M/s. Brussels Laboratories Private Limited, 33, Changodar Industrial Estate, Nr Changodar Water Canal, Sarkhej Bavla Highway, Changodar, Ahmedabad, Gujarat, 382210 (GSTIN 24AAACB6302K1Z1) (hereinafter referred to as "*the appellant*"), have filed appeal against Order-In-Original No.52/AC/D/22-23/AM, dated 03.03.2023 (hereinafter referred to as the "*impugned order*") passed by the Deputy Commissioner, CGST & C.Ex., Division-IV, Ahmedabad-North Commissionerate (hereinafter referred to as the "*adjudicating authority*").

2. Facts of the case in brief, are that the appellant is engaged in manufacturing and supplying PP Medicaments. During the audit conducted by the Department, it was observed that the Appellant did not agree with some of the audit objections, which are as under:

- (i) Revenue Para 7- Non-payment of interest on late payment of GST on 'Product development Income',
- (ii) Revenue Para 11- Excess availment of ITC during 2017-18,
- (iii) Revenue Para 13- Excess availment of ITC during 2019-20,
- (iv) Revenue Para 15- Non reversal of ITC involved in goods destroyed for which insurance has been claimed from Insurance Company,
- (v) Para 16- Non reversal of ITC involved in amount Sundry Balance Written Off
- (vi) Para 17- Non Payment of GST on product permission income and product development income.

Therefore a show cause Notice was issued to the appellant asking them as to why:

"13.1

(i) *Integrated Goods and Service Tax (IGST) of Rs. 19,80,001/- should not be demanded and recovered from them under the provisions of Section 73(1) of the CGST Act, 2017 read with the provision of Section 20 of the IGST Act, 2017. Since the said amount has already been paid by them, why the said amount be not appropriated against aforesaid demand;*

(ii) *Integrated Goods and Service Tax (IGST) interest amounting to Rs.29,294/- should not be charged and recovered from them, under the provisions of Section 50(1) of the CGST Act, 2017 read with the provision of Section 20 of the IGST Act, 2017;*

13.2

(i) ITC of Integrated Goods and Service Tax amounting to Rs. 29,740/- wrongly availed in excess be demanded and recovered from them under the provisions of Section 74(1) of the Gujarat State GST Act, 2017. Since the said amount has already been paid by them under Section 74(5) why the said amount be not appropriated against aforesaid demand;

(ii) Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at 13.2(i) above, under the provisions of Section 50 of the CGST Act, 2017/ Gujarat GST Act, 2017;

(iii) Penalty should not be imposed upon them, under the provisions of Section 122(2)(b) read with Section 74(1) of the CGST Act, 2017/ Gujarat GST Act, 2017 on tax amount mentioned at 13.2(i) above;

13.3

(i) ITC of IGST amounting to Rs.9,22,930/- wrongly availed in excess be demanded and recovered from them under the provisions of Section 74(1) of the Gujarat GST Act, 2017. Since the said amount has already paid by them under Section 74(5) why the said amount be not appropriated against aforesaid demand;

(ii) Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at 13.3(i) above, under the provisions of Section 50 of the CGST Act, 2017/ Gujarat GST Act, 2017;

(iii) Penalty should not be imposed upon them, under the provisions of Section 122(2)(b) read with Section 74(1) of the CGST Act, 2017/ Gujarat GST Act, 2017 on tax amount mentioned at 13.3(i) above,;



(i) ITC of CGST amounting to Rs. 46,950/- and SGST amounting to Rs.46,950/- involved into Sundry Balance Written off, and not reversed by them be demanded and recovered from them, under the provisions of Section 74(1) of the Gujarat State GST Act, 2017. Since the said amount has already been paid by them under Section 74(5) of the CGST Act, 2017, why the same amount be not appropriated against the aforesaid demand;

(ii) CGST Interest of Rs.19,008/- + SGST interest of Rs.19,008/- should not be charged and recovered from them on tax mentioned at 13.4(i) above, under Section 50 of the CGST Act, 2017/ Gujarat GST Act, 2017. Since the interest of Rs.17,605/- has already been paid by them under Section 74(5), why the said amount be not appropriated against aforesaid demand of interest;

(iii) Penalty should not be imposed upon them, under the provisions of Section 122(2)(b) read with Section 74(1) of the CGST Act, 2017/ Gujarat GST Act, 2017 on tax amount mentioned at 13.4(i) above. Since CGST Penalty of Rs.7043/- has

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already been paid by them under section 14(5) why the said amount be not appropriated against aforesaid demand of penalty;

13.5

(i) ITC of CGST of Rs.91,584/- and Gujarat state GST of Rs.91,584/- involved in Goods destroyed for which insurance is claimed from Insurance Company and not reversed by them be demanded and recovered from them under Section 74(1) of the Gujarat state GST Act, 2017. Since the said amount has already been paid by them under Section 74(5) why the said amount be not appropriated against aforesaid demand;

(ii) CGST Interest of Rs.43,990/- + SGST Interest of Rs.43,990/- should not be charged and recovered from them on tax mentioned at 13.5(i) above, under Section 50 of the CGST/ Gujarat GST Act, 2017. Since CGST interest of Rs.43,960/- has already been paid by them under Section 74(5), why the said amount be not appropriated against aforesaid demand ;

(iii) Penalty should not be imposed upon them, under the provisions of Section 122(2)(b) read with Section 74(1) of the CGST Act, 2017/ Gujarat GST Act, 2017 on tax amount mentioned at 13.5(i) above. Since CGST Penalty of Rs.13,738/- has already been paid by them under section 74(5) why the said amount be not appropriated against aforesaid demand of penalty;



CGST of Rs.16,884/- and Gujarat state GST of Rs.16,884/- not paid on Product permission income and Product development income be demanded and recovered from them, under the provisions of Section 74(1) of the Gujarat state GST Act, 2017. Since CGST amount of Rs.16,002/- + SGST amount of Rs.16,002/- has already been paid by them under Section 74(5) why the said amount be not appropriated against aforesaid demand;

(ii) Interest at appropriate rate should not be charged and recovered from them on the tax mentioned at 13.6(i) above, under Section 50 of the CGST/ Gujarat GST Act, 2017. Since the CGST interest of Rs.10,934/- + SGST interest of Rs.10,934/- has already been paid b them under Section 74(5) why the said amount be not appropriated against aforesaid the demand of interest;

(iii) Penalty should not be imposed upon them under the provisions of Section 74(1) of the CGST Act, 2017/ Gujarat GST Act, 2017 on tax amount mentioned at 13.6(i) above. Since CGST penalty of Rs.2,400/- + SGST penalty of Rs.2,400/- has already been paid under Section 74(5) why the said amount be not appropriated against aforesaid demand of penalty.”



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

“8.1

(i) I confirm and order for recovery of IGST of Rs. 19,80,001/- under Section 73(1) of the CGST Act, 2017 read with the IGST Act, 2017 and since the said amount was already paid by them, I appropriate the same against the demand;

(ii) I confirm and order for recovery of interest of Rs. 29,294/- under Section 50 of the CGST Act, 2017 read with the IGST Act, 2017;

8.2

(i) I confirm and order for recovery wrongly availed excess IGST of Rs.29,740/- under Section 74(1) of the CGST Act, 2017 read with the IGST Act, 2017 and since the said amount was already paid under Section 74(5) of the CGST Act, 2017, I appropriate the same against the demand;

(ii) I confirm and order for recovery of interest on amount of IGST under Section 50 of the CGST Act, 2017 read with the IGST Act, 2017;

iii) I impose penalty of Rs. 29,740/- under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and also read with the IGST Act, 2017;

8.3

(i) I confirm and order for recovery of wrongly availed excess IGST of Rs.9,22,930/- under Section 74(1) of the CGST Act, 2017 read with the IGST Act, 2017 and since the said, amount was already paid under Section 74(5) of the CGST Act, 2017, I appropriate the same against the demand; (ii) I confirm and order for recovery of interest on amount of IGST under Section 50 of the CGST Act, 2017 read with the IGST Act, 2017;

(iii) I impose penalty of Rs.9,22,930/- under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and also read with the IGST Act, 2017;

8.4

(i) I confirm and order for recovery of ITC of CGST of Rs.46,950/- and SGST of Rs.46,950/- (Total Rs.93,900/-) involved into Sundry Balance Written off, under Section 74(1) of the CGST Act, 2017 read with SGST and IGST Act, 2017 as applicable and since the said amount was already paid under Section 74(5) of the CGST Act, 2017, I appropriate the same against the demand;

(ii) I confirm and order for recovery of Interest of Rs. 19,008/- on CGST amount and Recovery of Interest of Rs. 19,008/- on SGST amount under Section 50 of the CGST Act, 2017 read with SGST and IGST Act, 2017 as applicable and since the interest of Rs. 17605/- on CGST amount is already paid under Section 74(5) of the CGST

Act, 2017, I appropriate the same against the demand of interest. Further, I drop the demand of interest of Rs. 19,008/- on SGST for the reason discussed supra;

(iii) I impose penalty of Rs. 46,950/- on the SGST amount wrongly availed, under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and also read with SGST & IGST Act, 2017 as applicable. I also impose penalty of Rs.46,950/- on the CGST amount wrongly availed, under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and also read with SGST & IGST Act, 2017, as applicable and since the amount of Rs.7,043/- was already paid I appropriate the same against their liability;

8.5

(i) I confirm and order for recovery of ITC of CGST of Rs.91,584/- and SGST of Rs. 91,584/- (Total Rs.1,83,168/-) involved in Goods destroyed for which insurance was claimed, under Section 74(1) of the CGST Act, 2017 read with SGST & IGST Act, 2017 as applicable and since the said amount was already paid under Section 74(5) of the CGST Act, 2017, I appropriate the same against the demand;

(ii) I confirm and order for recovery of Interest of Rs.43,990/- on CGST amount and Recovery of Interest of Rs.43,990/- on SGST amount under Section 50 of the CGST Act, 2017 read with SGST & IGST Act, 2017, as applicable and since the interest of Rs.43,960/- on CGST amount was paid under Section 74(5) of the CGST Act, 2017, I appropriate the same against the demand of interest. Further, I drop the demand of interest of Rs.43,990/- on SGST for the reason discussed supra;

(iii) I impose penalty of Rs.91,584/- on SGST amount wrongly availed under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and applicable SGST & IGST Act, 2017 and since the penalty of Rs. 13,738/- on CGST amount was paid under Section 74(5) of the CGST Act, 2017, I appropriate the same against their liability;

8.6

(i) I confirm and order for recovery of CGST of Rs.16,020/- and SGST of Rs.16,020/- not paid on income under 'product permission' and 'product development', under Section 74(1) of the CGST Act, 2017 read with SGST & IGST Act, 2017 as applicable and since the said amount of CGST + SGST was already paid under Section 74(5) of the CGST Act, 2017, I appropriate the same against the demand;

(ii) I drop the demand of CGST of Rs. 864/- ( 16,884/- minus 16,020/-) and SGST of Rs. 864/- under' Section 74( 1) of the CGST Act, 201 7 read with SGST & IGST Act, 2017 for the reason discussed supra;

(ii) I confirm and order for recovery of Interest under Section 50 of the CGST/SGST Act, 2017 and since the interest of Rs. 10,950/- (10,934/- plus 16/-) on CGST amount and interest of Rs.10,950/- (10934/- plus 16/-) on SGST amount was paid under Section 74(5) of the CGST Act, 2017, I appropriate the same against the demand of interest;

(iii) I do not impose any further penalty under Section 74(1) of the CGST Act, 2017 read with Section 122(2)b) of the CGST Act, 2017 and applicable SGST & IGST Act, 2017 as the penalty amount of Rs. 2,400/- on CGST amount and penalty of Rs. 2,400/- on SGST amount was already paid under Section 74(5) of the CGST Act, 2017. I appropriate the same against their liability;

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

- The OIO passed by the Assistant Commissioner of Central Excise and GST has raised demand on the following-
- Levy of interest and penalty on excess availment of Input Tax Credit (ITC) during FY 2017- 18
- Levy of interest and penalty on excess availment of ITC during FY 2019-20 c. Levy of interest and penalty on non-reversal of ITC on goods destroyed for which insurance has been claimed
- Levy of interest and penalty on non-reversal of ITC on sundry balance written off

The aforesaid demand was raised on the ground that that there was an insufficient balance of credit in the electronic credit ledger and thus, the Company was liable to pay interest and penalty on such excess availment/ non-reversal of ITC.

- The department has alleged that the Company did not have sufficient balance of IGST in the electronic credit ledger as on the date of reversal and thus, even though there was sufficient balance of SGST, the IGST balance was fully utilized and thus, the Company was liable to pay interest and penalty.
- The levy of interest on wrong availment and utilization of ITC is governed by Section 50(3) of the CGST Act, 2017.
- The interest liability shall crystalize if the balance in electronic credit ledger falls below the ITC wrongly utilized and the amount of input tax includes IGST, CGST and SGST.
- In case reversal of ITC amount is required to be done in GSTR 3B or otherwise, the GST portal will initially utilize the balance of IGST ITC and in case the IGST balance is not available in electronic credit ledger, the reversal of IGST ITC amount will be done by either utilizing CGST ITC balance or SGST ITC balance.



- The department's contention that since the ITC balance in IGST has exhausted and the balance in CGST and SGST head cannot be considered as balance in IGST is not tenable and justifiable. This is due to the fact that the GST law itself provides that in absence of ITC balance under the IGST head in the electronic credit ledger, the payment of IGST amount can be made either through CGST
  - ITC or SGST ITC. The reversal of IGST ITC is as good as payment of IGST amount and section 49 of the CGST Act, 2017 also provides for utilization of CGST and SGST credit against the IGST liability.
  - The company has already reversed the erroneous "ITC availed but not utilized", thus, penalizing the company for having an insufficient balance of IGST at an instance when it has a surplus SGST credit is unjustified. Further, charging interest in these situations is clearly unprincipled and unfair.
  - In addition to the interest, the department has also levied penalty u/s 74 of the CGST Act. The provisions contained under section-74 of the SGST Act are as under.....
  - During the course of the audit, the department observed that the Company had availed excess input tax credit. The Company after going through its books and records immediately acknowledged the fact and reversed such excess input tax credit availed by it. Further, where the input tax credit was utilized by the Company, it had also paid interest and penalty on the same.
  - When all the liability due was paid to the Government, issuing a show cause notice u/s 74 is unjustifiable since the Company did not have any malafide intention to claim excess input tax credit
- The provisions contained under section-74 of the SGST/CGST Act applies only in those cases where the proper officer points out such mistake on part of a dealer, which apparently seems to be made with malafide intention on part of such dealer and had the proper officer not pointed out such mistake in time, there would have been a revenue loss.
- The Company engaged in the supply of pharmaceuticals has an inverted duty tax structure and availing excess input tax credit is of no use to the Company, since the Company always has an excess credit balance in its electronic credit ledger. The Company does not have any benefit in claiming excess input tax credit willfully since the credit is ultimately going to be accumulated in its credit ledger.
  - Further, since the Company did not utilize such excess input tax credit availed, there was no revenue loss to the Government.
  - The legislative intent reflected from a purposeful reading of the provisions underlying section 140 alongside the provisions of section 73 and Rules 117 and 121 is that even a wrongly reflected transitional credit in an electronic ledger on its own is not sufficient to draw penal proceedings until the same or any portion thereof, is put to use so as to become recoverable. A copy of the said judicial precedent is attached as Annexure 'I'."





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

PERSONAL HEARING:

5. Personal hearing in this case was held on 29.08.2023. Shri Dhaval Shah, Chartered Accountant appeared in person, on behalf of the appellant as authorized representative. He submitted that in view of the circular No.192/04/2023 dated 17-07-2023 cumulative balance needs to be checked and if sufficient balance is available, no interest is leviable under sub-section 3 of Section 50. This case is identical to the clarification issued vide above circular, thus no interest demand survive, accordingly no penalty is leviable as no contravention has been done. Further they submitted additional written submissions and requested to set aside the OIO. He further reiterated the written submissions.

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 imposition of interest and penalty on late payment of GST on Product development income (March-2020), Excess availment of ITC during 2017-18 & 2019-20), Non-reversal of ITC involved in goods destroyed for which insurance has been claimed, Non-reversal of ITC involved in amount sundry balance written off,

So the issue to be decided in the present appeal is:

Whether the impugned order passed by the adjudicating authority with regard to interest and penalty is proper or otherwise?

6.3. At the foremost, I observed that in the instant case the "impugned order" is of dated 03-03-2023 and as per the records the same is dispatched on 23-03-2023 and received by the appellant on 24-03-2023 and the present appeal is filed on 19.06.2023. 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 I observe that :

- (i) interest amounting to Rs.29,294/- has been ordered to be recovered from the appellant with regard to para 7 of the Audit Report i.e. Non-payment of interest on late payment of IGST on 'Product development Income',

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- (ii) interest on wrongly availed excess IGST of Rs.29740/- under Section 50 of the CGST Act, 2017 read with the IGST Act, 2017 and penalty of Rs. 29,740/- under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and also read with the IGST Act, 2017 has been ordered to be recovered with regard to para 11 of the Audit Report i.e. Excess availment of ITC during 2017-18,
- (iii) interest on wrongly availed excess IGST of Rs.9,22,930/- under Section 50 of the CGST Act, 2017 read with the IGST Act, 2017 and penalty of Rs.9,22,930/- under Section 74(1) of the CGST Act, 2017 read with ordered to be Section 122(2)(b) of the Act CGST, 2017 and also read with the IGST Act, 2017 has been ordered to be recovered with regard to para 13 of the Audit Report i.e. Excess availment of ITC during 2019-20,
- (iv) Interest of Rs.19,008/- on CGST amount has been ordered to be recovered and since the interest of Rs. 17605/- on CGST amount is already paid under Section 74(5) of the CGST Act, 2017, the same has been appropriated, with regard to para 16 of the Audit Report i.e. Non-reversal of ITC involved in amount of Sundry Balance written off.
- (v) penalty of Rs. 46,950/- each on the SGST amount and CGST amount wrongly availed, has been ordered to be recovered under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and also read with SGST & IGST Act, 2017 as applicable and since the amount of Rs.7,043/- has already been paid, the same has been appropriated against their CGST liability, with regard to para 16 of the Audit Report i.e. Non-reversal of ITC involved in amount of Sundry Balance written off.
- (vi) Interest of Rs.43,990/- on CGST amount has been ordered to be recovered and since Rs.43960/- has already been paid, the same has been appropriated, with regard to para 15 of the Audit Report i.e. Non reversal of ITC involved in goods destroyed for which insurance has been claimed from Insurance Company.
- (vii) Penalty of Rs.91,584/- on SGST amount wrongly availed has been ordered to be recovered under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and also read with SGST & IGST Act, 2017 as applicable and since the amount of Rs.13,738/- on CGST amount has already been paid, the same has been appropriated against their liability, with regard to para 15 of the Audit Report i.e. Non reversal of ITC involved in goods destroyed for which insurance has been claimed from Insurance Company.



6.5 I further observe that the contention of the Appellant is that in absence of a sufficient amount of ITC on account of IGST, the output tax liability of IGST of any given month may be paid through the utilization of accumulated ITC of CGST or SGST. Thus, ITC of IGST and ITC of SGST is, in substance, interchangeable in this case.

6.6 As regards the interest liability, the appellant has contended that it shall crystallize if the balance in electronic credit ledger falls below the ITC wrongly utilized and the amount of input tax includes IGST, CGST and SGST.

6.7 Therefore, I refer the following provisions of the CGST ACT, 2017:

Section 49. Payment of tax, interest, penalty and other amounts.-

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of-

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax

<sup>4</sup>[Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;];

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax:

<sup>5</sup>[Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

4. Inserted by s. 20 of The Central Goods and Services Tax (Amendment) Act, 2018 - Brought into force w.e.f. 01-02-2019.

5. Inserted by s. 20 of The Central Goods and Services Tax (Amendment) Act, 2018 - Brought into force w.e.f. 01-02-2019.

6.8 To examine the applicability of interest on Non-payment of GST and wrongly availed and utilized ITC by the appellant, I refer Section 50 of the CGST Act, 2017, which is as under:

*\*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 there under, 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:*

*<sup>1</sup>[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.]*

*(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.*

*<sup>2</sup>[(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]*

*Enforced w.e.f. 1st July, 2017.*

*<sup>1</sup> Substituted (w.e.f. 1st July, 2017) by s. 112 of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021 for*

*"[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.]"*

*Brought into force on 1st June, 2021 vide Notification No. 16/2021-Central Tax dated 1st June, 2021.*

*<sup>2</sup> Substituted (w.e.f. 1st July, 2017) by s. 111 of The Finance Act 2022 (No. 06 of 2022) - brought into force w.e.f 05-07-2022 vide Notification No. 9/2022-C.T. dated 05-07-2022 .*

6.9 Further, the manner of calculating interest has been prescribed under Rule 88B which is reproduced hereunder:

<sup>1</sup> [ Rule 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.

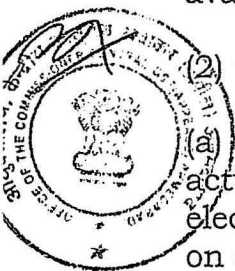
(2) the date of utilisation of such input tax credit shall be taken to be, -

(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.]

1. Inserted vide Notification No. 14/2022-CT dated. 05.07.2022 w.e.f. 01.07.2017.

6.10 As per the above, interest on delayed payment of Tax, 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.

6.11 I find that in the present case, the appellant has issued invoices during the month of March-2020 and were required to discharge IGST amount of Rs.19,80,001/- in GSTR-3B on 20.05.2020 and paid the Tax amount. I find that the Tax amount is belatedly paid. As per the contention of the Appellant that the the GST Law provides that in absence of ITC balance under the IGST head, in the electronic credit ledger, the payment of IGST amount can be made either from the CGST ITC or SGST ITC, and section 49 provides for utilization of CGST and SGST credit against the IGST Liability.

6.12 From the plain reading of Section 49 of the CGST Act, 2017, I find that the payment of IGST is allowed to be made from CGST and SGST if the amount remains after first utilizing the CGST and SGST respectively from the balance of CGST and SGST as in (b) & (c) of Section 49 of the CGST Act, 2017.

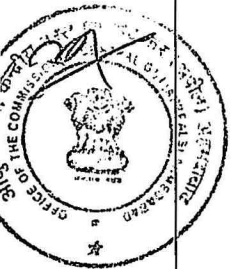
6.13 In view of the above, the impugned order passed by the adjudicating authority that there was no balance of IGST in the electronic credit ledger, hence the interest is payable is not proper and legal.

6.14 Further, the interest on the wrong availment of ITC/ Non reversal of ITC is payable, only if the same is utilized, in the manner as prescribed in Rule 88B above.

6.15 Further, CBIC via Circular No.192/04/2023 dated 17-07-2023 has issued clarification regarding charging of interest under sub-section (3) of section 50 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") in the cases where IGST credit has been wrongly availed by a registered person, which is reproduced here under:

Sl. No.	Issue	Clarification
01	In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance	Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST; it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen

<p>of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered?</p>	<p>below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit</p> <p>Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of CGST Rules.</p>
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6.16 From the above clarification issued by the CBIC, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of

such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of CGST Rules.

6.17 In the instant case, I observe that the adjudicating authority has, vide the impugned order not taken into consideration the balance of CGST and SGST in the electronic credit ledger of the Appellant for payment of IGST/reversal of wrongly /excess availed ITC of IGST. As per the above clarification of the CBIC, the same is to be considered for the calculation of interest under Rule 88B of the CGST Rules. Therefore, I am of the view that the interest is not applicable, if there is balance in electronic credit ledger as explained above. Therefore, I find that the order passed by the adjudicating authority for imposing interest without considering the balance in electronic credit ledger, as explained above is not proper and legal.

6.18 Further, as regards to imposition of Penalty under Section 74(1) of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 and also read with similar provisions of IGST Act, 2017, I refer the same provisions, the text of which is as under:

*Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.-*

*(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

*\*\*Section 122. Penalty for certain offences.-*

*(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-*



(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

6.19 It is observed that the appellant has wrongly availed excess ITC / not reversed the credit inspite of the fact that the same was not eligible to be taken and/or taken double benefit with claim of insurance knowingly, thereby utilized the same with intention to evade payment of GST which have been detected during Audit by the Department, as explained in the foregoing paras.

6.20 In a similar issue, in case of *Munna Traders Vs State of Bihar (Patna High Court) Appeal Number : Civil Writ Jurisdiction Case No. 9032 of 2023 Date of Judgement/Order : 08/08/2023, the Hon'ble High Court has held that:*

*"12. ....that the assessee has defaulted tax payment, based on an excessive claim of input tax credit, later deposited the input tax credit without interest due under Section 50; which attracted the penalty under Section 122. We have already found that there can be no coercion found in so far as the deposit is concerned. The assessee, hence, has admitted the discrepancy with respect to excess claim of input tax credit and paid the amounts due on which interest was also due under Section 50 of the BGST Act. The non-payment of tax due and the failure to pay interest attracted the penalty imposed.*

*.....the allegation of excess claim has been admitted and differential amount paid by the assessee. The penalty levied was proper and a civil liability, attracted on the failure to pay the tax due, on a wrong claim of input tax credit.*


6.21 The above judgment is squarely applicable to the present case. Therefore, I am of the view that the penalty imposed under Section 74(1) of the CGST/GGST/IGST Act, 2017 read with Section 122(2)(b) of the CGST/GGST/IGST Act 2017, read with Section 20 of the IGST Act 2017, vide the impugned order, is proper and legal

7 In view of the above :

- (I) I, uphold the O-I-O confirming the demand and imposition of penalty under Section 74(1) of the CGST/GGST Act, 2017 read with Section 122(2) (b) of the CGST/GGST Act, 2017 and Section 20 of the IGST Act, 2017.

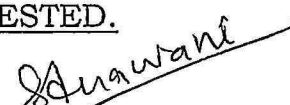
- (II) Allow the appeal with regard to interest payable of Rs.29,294/-on late payment of GST on 'Product development income', under Section 50 (1) of the CGST/IGST Act, 2017, read with IGST Act, 2017,
- (III) As regards interest on Excess availment of ITC/Non-reversal of ITC, the Appellant is directed to submit the electronic credit Ledgers of CGST/SGST/IGST of the relevant periods to the concerned authority for the balance available. The adjudicating authority shall verify the credit ledgers as per the clarification issued by the CBIC vide Circular No.192/04/2023 dated 17.07.2023 and recover the interest as per the amended provisions of Section 50 of the CGST Act, 2017.

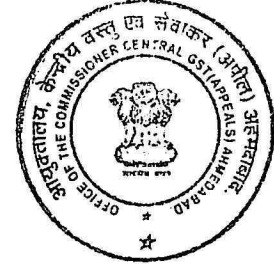
8. The impugned order is modified to the above extent.
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the "Appellant" stands disposed of in above terms.

  
(ADESH KUMAR JAIN)  
JOINT COMMISSIONER (APPEALS)  
CGST & C.EX., AHMEDABAD.

Date : .10.2023

ATTESTED.

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



By R.P.A.D.

M/s. Brussels Laboratories Private Limited,  
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Sarkhej Bavla Highway, Changodar, Ahmedabad,  
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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-IV Ahmedabad-North Commissionerate.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
6. Guard File/P.A. File.