



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

फोन 07926305065-

टेलीफोनस07926305136



DIN- 20230164SW000071767B

रजिस्टर्ड टाक ए.सी. द्वारा

- क. आवृत्त संख्या : File No : GAPPL/ADC/GSTP/1506/2022-APPEAL /3686 - 91
- ख. अपील आवेदक संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-216/2022-23**  
दिनांक Date : **23-01-2023** जारी करने की तारीख Date of Issue : **23-01-2023**  
श्री मिहिर रायका अवर अयुक्त (अपील) द्वारा पारित  
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)
- ग. Arising out of Order-In-Original No. **31/AC/Div-I/RBB/2021-22 DT. 29.12.2021** issued by Assistant Commissioner, CGST & CX, Division-I, Ahmedabad South
- घ. अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**M/s. Snatch Exports Private Limited, 75, New Cloth Market, Outside Raipur Gate, Sarangpur, Ahmedabad-380002**

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-In-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.chgsta.gov.in">www.chgsta.gov.in</a> 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 <a href="http://www.chgsta.gov.in">www.chgsta.gov.in</a> .



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

**M/s. Snatcch Exports Private Limited**, 75, New Cloth Market, Outside Raipur Gate, Sarangpur, Ahmedabad 380 002 (hereinafter referred as 'Appellant') has filed the present appeal against Order No. 31/AC/Div-I/RBB/2021-22 dated 29.12.2021 (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST, Division - I, Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

**2(i).** Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAUCS3801L1ZO had filed a refund claim of Rs.9,53,376/- for the period of July'2017 to March'2018 on account of 'Refund of accumulated Input Tax Credit (ITC) due to export of Goods & Services without payment of Tax' under Section 54(3) of the CGST Act, 2017. During verification of said claim it was observed that they had claimed duty drawback at higher rate, i.e. Rate "A" on the goods exported. Further, it was noticed that the claimant had also availed Input Tax Credit (ITC) on their inputs/input services during the relevant period. Accordingly, a deficiency memo was issued to the claimant. In response, the claimant vide letter dated NIL submitted on 14.11.2019 have stated that they have taken Drawback at higher rate up to September'2017 and hence requested that appropriate refund is to be disallowed to them. Since, the claimant had availed higher rate of drawback in the Shipping Bill for July-2017 to September-2017 on the goods exported and claimed refund of ITC on export of goods and services without payment of tax hence they were not entitled for refund of ITC for above said period. As per Section 54(3) of the CGST Act, 2017 "no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of Central Tax or claims refund of the integrated tax paid on such supplies.." Accordingly, refund claim was processed on 17.01.2019 as under :

Period	Amount of Refund claimed (Rs.)				Amount sanctioned (Rs.)				Amount rejected				Remarks
	IGST	CGST	SGST	Total	IGST	CGST	SGST	Total	IGST	CGST	SGST	Total	
July 17 to Mar 18	363902	296157	295107	955166	63002	242582	242582	548166	200010	52575	52575	385160	PMF 03 issued

**2(ii).** Further, the department has observed that Rule 12 and 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Notification No. 131/2016-Customs (N. No. dated



31.10.2016 as amended vide Notification No. 59/2017-Customs (N.T.) dated 29.06.2017 and Notification No. 73/2017-Customs (N.T.) dated 26.07.2017 provides as under during the relevant period, under the heading "Notes and conditions" -

*"(12A) The rates and caps of drawback specified in columns (4) and (5) of the said Schedule shall be applicable to export of a commodity or product if the exporter satisfies the following conditions, namely:-*

*(a)(i) the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, that no input tax credit of the central goods and services tax or of the integrated goods and services tax has been and shall be availed on the export product or on any of the inputs or input services used in the manufacture of the export product, or (ii) if the goods are exported on payment of integrated goods and services tax, the exporter shall declare that no refund of integrated goods and services tax paid on export product shall be claimed;*

*(b) the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, that the exporter has not carried forward and shall not carry forward the amount of Cenvat credit on the export product or on the inputs or input services used in the manufacture of the export product, under the Central Goods and Services Tax Act, 2017 (12 of 2017)."*

The Department has further observed that Circular No. 37/11/2018-GST dated 15.03.2018 issued from F. No. 349/47/2017-GST, provides as under :-

**"2. Non-availment of drawback :** *The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of central tax.*

2.1 This has been clarified in paragraph 8.0 of Circular No. 24/24/2017 - GST, dated 21st December 2017. In the said paragraph, reference to "section 54(3)(ii) of the CGST Act" is a typographical error and it should read as "section 54(3)(i) of the CGST Act". It may be noted that in the said circular reference has been made only to central tax, integrated tax, State / Union territory tax and not to customs duty leviable under the Customs Act, 1962.

Therefore, a supplier availing of drawback only with respect to basic customs duties shall be eligible for refund of unutilized input tax credit of central tax / State tax / Union territory tax / integrated tax / compensation cess under the said provision. It is further clarified that refund of eligible credit on account of



State tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax."

**2(iii).** Further, it was observed by the department that the claimant had availed ITC as well as Drawback under Category "A" at higher rate during the period from July-2017 to September-2017. However, the claimant had mis-declared that they had not availed ITC at the time of export. The said mis-declaration was done before Customs Authority while claiming drawback at higher rate. Further, it was only after raising the query by department the claimant agreed to the fact and submitted in writing vide their letter submitted to department on 14.11.2019. Thus, it resulted into mis-declaration/mis-statement on the part of claimant that they had not availed ITC at the time of export, whereas they had availed the ITC. Accordingly, the department has referred Section 16 of the CGST Act, 2017 which read as under :

*"16(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person...."*

Further, the Section 41(1) of the CGST Act, 2017 provides as under :

*"41(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger...."*

In view of above the department has observed that the claimant has violated the provisions of Section 16 & 41(1) of the CGST Act, 2017 in as much as they failed to ensure the eligibility of ITC while availing Drawback at higher rate simultaneously.

**2(iv).** Further, while disposing the refund claim, the department has rejected the claim of Rs.3,85,160/- and subsequently issued the PMT-03 on 17.12.2019 as shown in table at para 2(i) above. Accordingly, in view of above, the re-credited amount of ITC is required to be recovered from the claimant as the same is not eligible to them in terms of the provisions and violations as mentioned in above paras.

**2(v).** Further, the department has referred the Section 74(1), 74(9) and 122(2) of the CGST Act, 2017 which is reproduced as under :

*"74(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..."

"74(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order."

"122(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,-

(a) .....

(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."

In view of above, the department has noticed that the claimant has rendered themselves liable for recovery and penal action under Section 74(1) & 74(9) as well as Section 122(2) of the CGST Act, 2017. Accordingly, the department has issued a Show Cause Notice to the claimant under F. No. V/Div-I/Ref-GST/04/Snatcch/Drawback/19-20 dated 04.03.2021. The said SCN has been adjudicated by the adjudicating authority vide impugned order and passed order as under :

- i. Disallowed the wrongly availed ITC of CGST of Rs.3,85,160/- and order for recovery of same under Section 74(1) of the CGST Act, 2017.
- ii. Recovery of interest at appropriate rate on wrongly availed ITC under Section 50 of the CGST Act, 2017.
- iii. Imposed penalty of Rs.3,85,160/- under Section 74(9) read with Section 122(2) of the CGST Act, 2017.

3. Being aggrieved with the impugned order the appellant has filed the present appeal on dated 25.03.2022. The appellant in the appeal memorandum has stated that -

- They have filed the refund of accumulated ITC due to export of goods and services without payment of tax for the period of July 2017 to March 2018 for amount of Rs.9,53,376/-



The department had issued deficiency memo on dated 18.09.19 and advised to file fresh refund application. Accordingly, they had submitted

- fresh manual refund application RFD-01 for refund amount of Rs.5,68,216/-.
- Earlier they had filed online RFD-01 for refund of Rs.9,53,376/- dtd.1.04.2019 and said amount was debited from ITC ledger. Later on to comply deficiency memo, they had filed manual RFD-01 for refund of Rs.5,68,216/-. Difference between online RFD-01 and manual RFD-01 was Rs.385160/-, the said deducted ITC was re-credited to the ITC Ledger on dated 28.12.2021.
  - The learned Assistant Commissioner has allowed refund as per the fresh manual RFD-01 where they have not claimed refund of ITC up to Sept.'17 as they have availed drawback in respect of Central Tax. So, their fresh RFD-01 manual refund application is as per Section 54(3) of the CGST Act, 2017.
  - As regards to Rule 12 and 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, please note that CGST Act, 2017 implemented w.e.f. 1.07.2017 and it is new levy, there were so many hurdle and difficulty to understand law and file the return, file refund claim.
  - They have disclosed the ITC in 3B returns as per purchase made, but they have not utilized the said ITC, so there is no question of revenue loss. There was no intention to miss-declaration / misstatement to the Govt. but it is happened as law was difficult to understand at its initial stage of implementation and several confusion were also there.
  - Their sales transactions are almost export and the ITC always remains un-used in GSTIN credit ledger. The learned Assistant Commissioner has issued PMT-03 on 28.12.2021 and re-credited the ITC ledger by Rs.385160/-. During PH of the SCN, they have submitted ITC ledger where it was proved that they have not utilized ITC and disallowed ITC of refund of Rs.385160/- was in custody of the Govt. during the period from 10.04.2019 to 28.12.2021.
  - For the period from 01.07.2017 to 09.04.2019 ITC of Rs.385160 was not utilized by them and for the period from 10.04.2019 to 27.12.2021 it was under Govt. custody as not re-credited to them. They are not liable to pay interest on wrongly availed ITC under Section 50 of the CGST Act, 2017 as they have not utilized the said ITC till date. They relied upon the judgment delivered by Hon'ble Patna High Court in the matter of M/s. Commercial Steel Engineering Vs. State of Bihar, Appeal Number : Civil Writ Jurisdiction Case No. 2125 of 2019 date of judgment order : 27.06.2019.



- To comply the deficiency memo issued in connection with online RFD-01, they have filed fresh manual RFD-01 with letter dated 14.11.2019 and corrected mistake as mentioned in deficiency memo and stated themselves regarding the drawback, so it is very clear that they do not have any intention to hide the fact, to miss-declare or to misstatement. The learned Assistant Commissioner has allowed refund considering fresh manual RFD-01 and rejected refund amount of Rs.385160/- is not utilized by them till date. Hence, penalty should not be imposed under Section 74(9) read with Section 122(2) of the CGST Act, 2017.

In view of above, the appellant has made prayer that appeal should be allowed considering above grounds and interest & penalty should not be recovered and imposed.

4. Personal Hearing in the matter was held on 22.08.2022 through Virtual mode, wherein Mr. Amrish J. Amin, Advocate was appeared on behalf of the 'Appellant' as authorized representatives. During PH-he has stated that they want to submit additional submission, which was approved and 07 working days period was granted for the same. Accordingly, the appellant has submitted the additional submission vide letter dated 29.08.2022 wherein they reiterated the submissions made in grounds of appeal. The appellant has also submitted copy of ITC ledger from 01.07.2017 to 27.08.2022 in support of their claim that they have not utilized the ITC in question.

**Discussion and Findings :**

- 5(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 additional submission made by appellant. I find that the appellant has filed a refund claim of Rs.9,53,376/- under category 'Refund of accumulated Input Tax Credit (ITC) due to export of Goods & Services without payment of Tax' for the period of July 2017 to March 2018. While verifying the refund claim the department has noticed that the appellant has claimed the duty drawback at higher rate i.e. Rate 'A' on the goods exported and also the appellant has availed Input Tax Credit on their input/input services during relevant period. Accordingly, the department has issued a deficiency memo to the appellant and in response to same the appellant has filed fresh manual refund application for refund of Rs.5,68,216/- and reformulated that as they have taken Drawback at higher rate up to September 2017, hence appropriate refund



may be disallowed to them. Accordingly, the department has rejected the refund claim of Rs.3,85,160/- and issued the PMT-03.

**5(ii).** Further, I find that the department has observed that in terms of Section 54(3) of the CGST Act, 2017 that refund of ITC shall not be allowed, if the supplier of goods or services or both avails drawback in respect of Central Tax or claims refund of Integrated Tax paid on such supplies. Further, I find that the department has referred the Rule 12 and 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Noti. No. 59/2017-Customs (NT) dtd. 31.10.16 as amended by Noti. No. 59/2017-Customs (NT) dtd. 29.06.17 and Noti. No. 73/2017-Customs (NT) dtd. 26.07.17. According to which, prescribed rate of drawback shall be applicable if exporter satisfies conditions that no input tax credit of the CGST or IGST has been and shall be availed on the export product or on any of the inputs or input services used in the manufacture of export product. Further, I find that the department has also referred Circular No. 37/11/2018-GST dtd. 15.03.2018.

**5(iii).** Considering the above facts, the department has noticed that the appellant has availed the ITC as well as Drawback under Category 'A' at higher rate during period July 2017 to September 2017 however, appellant has mis-declared that they had not availed ITC at the time of export before the customs authority while claiming the drawback at higher rate. Further, it was noticed by department that at the time of filing refund claim only, the appellant has submitted that they had claimed drawback at higher rate for goods exported. Accordingly, the department has concluded that it is mis-declaration/mis-statement on the part of appellant that they had not availed ITC at the time of export, whereas they had availed the ITC.

In view of above facts, a SCN was issued to the appellant and same was decided by the adjudicating authority vide impugned order, against which the appellant has preferred the present appeal.

**5(iv).** I find the appellant in the present appeal mainly contended that they have availed the ITC but not utilized the said ITC of Rs.3,85,160/- during 01.07.2017 to 09.04.2019 and for the period from 10.04.2019 to 27.12.2021 it was under Govt. custody as not re-credited to them. Further, I find that the appellant has contended that said ITC was re-credited in their ITC Ledger on 28.12.2021. The appellant has produced the copy of ITC ledger for the period of 01.07.2017 to 27.08.2022 in support of their claim that said ITC of Rs.385160 is not utilized by them.





**5(v).** On going through the impugned order I find that the appellant has raised all these submissions before the adjudicating authority. I find that the adjudicating authority has given findings that appellant had mis-declared that they had not availed ITC at the time of export before the Customs Authority thus charges framed under SCN are beyond doubt. Further, the adjudicating authority has held that the appellant has not only mis-represented before the department about non-availment of Cenvat but also claimed higher drawback on export of goods; that the said facts comes to their knowledge only when appellant filed the claim in question; that these acts of omission and commission renders the appellant liable for penal action; that thus, till the date of filing of the claim, the facts were suppressed from the department by the appellant.

**5(vi).** In view of above facts, I find it pertinent to refer Section 16 and Section 41(1) of the CGST Act, 2017. I find that according to said provisions it is very much clear that the every registered person has to ensure before availing of ITC about the prescribed conditions and restrictions regarding eligibility of ITC. In the present matter I find that the appellant has claimed higher rate of drawback and in this regard, there is condition that no ITC of CGST or IGST has been or shall be availed on the export product or on any of the inputs or input services used in the manufacture of export product. Therefore, I find that the appellant has violated the prescribed conditions and availed the Input Tax Credit.

**5(vii).** Further, I find that it is on record that the appellant has filed refund claim of accumulated ITC due to export without payment of tax for the period July 2017 to March 2018 and on being pointed out by the department that they had claimed higher rate of drawback hence they are not entitled for refund. Accordingly, the appellant has filed revised fresh manual refund application and informed that appropriate amount of refund may be disallowed. So, it is very much clear that the appellant has accepted the view of department.

**5(viii).** Further, I find that the adjudicating authority has imposed the equal amount of penalty of Rs.3,85,160/- on the appellant in the present matter in terms of Section 74(9) read with Section 122(2) of the CGST Act, 2017. Accordingly, the relevant provisions are reproduced 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 willful 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.

74(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

**\*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,-

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

(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.

According to above provisions equal amount of penalty can be imposed in the matter when input tax credit wrongly availed or utilised by/for reason of fraud or any wilful misstatement or suppression of facts. Here in the present matter the appellant has availed the ITC as well as Drawback under Category 'A' at higher rate during period July 2017 to September 2017 however, they have mis-declared that they had not availed ITC at the time of export before the customs authority while claiming the drawback at higher rate. Further, I find that appellant has claimed refund of accumulated ITC due to export without payment of Tax and when pointed out by department they accepted their mistake. Accordingly, I find that it is mis-declaration/mis-statement on the part of appellant as they have suppressed the material facts from the department as discussed in foregoing paras.

6. Considering the above facts, I find that the adjudicating authority has rightly passed impugned order vide which disallowed the ITC to the tune of Rs.3,85,160/-. Further, in view of above discussions, I find that the adjudicating authority has rightly imposed equal amount of penalty of Rs.3,85,160/- In terms of provisions of Section 74 read with Section 122(2) of the CGST Act, 2017. However, as regards to ordered for recovery of said ITC with interest under Section 50 of the CGST Act, 2017, I find that the appellant is contending in the present appeal that they have not utilized the said ITC of Rs.3,85,160/- and in support of same produced



the copy of their ITC Ledger. On going through the same I find that the balance of ITC always remains more than Rs.3,85,160/- during the relevant period in the appellant's ITC Ledger, thus, it transpire that the appellant has not utilized the said ITC.

Considering the above facts, I hereby referred the provisions of Section 50 (3) of the CGST Act, 2017, the same is 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*

[As per Section 110 of the Finance Bill, 2022 this amendment has been with effect from 1<sup>st</sup> 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. However, in the instant case I find that the appellant has not utilized the ITC and therefore, demanding interest under Section 50 of the CGST Act, 2017 is not justified.

7. In view of above discussions, I upheld the *impugned order* confirming the demand of wrongly availed ITC of Rs.3,85,160/- and imposition of penalty of Rs.3,85,160/-. However, I set aside the demand of interest. The *impugned order* is modified to the above extent. Hence, the appeal is partially allowed and partially rejected.

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: 23.01.2023

Attached  
123.01.23  
(Dilip Jadav)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

By B.P.A.D.

To,  
M/s. Snatch Exports Private Limited,  
75, New Cloth Market, Outside Raipur Gate,  
Sarangpur, Ahmedabad 380 002.



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-South.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-I, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

