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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सत्यमेव जयते

DIN- 20230164SW0000555EDA

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1721/2022 -APPEAL /३४९४ - ३५०३

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-219/2022-23**
दिनाँक Date : **30-01-2023** जारी करने की तारीख Date of Issue : **31-01-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **29/AC/Div-I/RBB/2021-22 DT. 29.12.2021** issued by The Assistant Commissioner, CGST & CX, Division-I, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Mangharam Vasumal Ramwani of M/s.Star Impex, C-25, Ground Floor, Sumel Business park-1, Raipur, 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) **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 वेबसाइटwww.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in.

ORDER-IN-APPEAL

Brief Facts of the Case :

M/s. Star Impex (Legal name - Mangharam Vasumal Ramwani), C-25, Ground Floor, Sumel Business Park-1, Raipur, Ahmedabad 380 002 (hereinafter referred as *'Appellant'*) has filed the present appeal on 27.05.2022 under Rule 108 of the CGST Rules, 2017 against the Order-in-Original No. 29/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 24AIOPR0322C1ZO had filed a refund claim for the period of August'2017 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. The claimant had mentioned in their claim that they had claimed drawback at higher rate for the goods exported and therefore, they had filed manual RFD-01A for refund of SGST portion of Rs.4,16,984/- only. Further, it was noticed that the claimant had also availed Input Tax Credit (ITC) on their inputs/input services during the relevant period. Since, the claimant had availed higher rate of drawback in the Shipping Bill for August-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 06.03.2019 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	
August 2017	793859	416984	416984	1627827	0	0	416984	416984	793859	416984	0	1210843	PMT 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.T.) 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 21stDecember 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 duty 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 August-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 at the time of filing refund claim only, the claimant submitted that they had claimed the drawback at higher rate for the goods exported. 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 had rejected the Central Tax portion to the tune of Rs.12,10,843/- (CGST Rs.416984/- & IGST Rs.793859/-) and subsequently issued the PMT-03 on 06.03.2019 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/02/Star-Impex/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 Rs.12,10,843/- (CGST Rs.416984/- and IGST Rs.793859/-) 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.12,10,843/- 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 27.05.2022. 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 August'2017 for

amount of Rs.16,27,827/- (IGST 793859/-, CGST 416984/-, SGST 416984/-).

- They have claimed higher rate of Drawback on the goods exported and claimed refund of ITC on export of goods & Services without payment of tax. Hence, they were not entitled for refund of unutilized ITC.
- Subsequently, they filed manual refund claim under GST RFD-01A for refund of SGST of Rs.416984/- only.
- The Ld. Deputy Commissioner has sanctioned the refund of Rs.416984/- and rejected the Refund of Rs.12,10,843/- (IGST 793859/- + CGST 416984/-) vide impugned order and ordered to re-credit Rs.12,10,843/- to the Electronic Credit Ledger in Form GST PMT-03 under Rule 93(2) of the CGST Rules, 2017.
- The impugned order, demanding interest and penalty is bad in law and same is required to be quashed and set aside in the interest of justice. They referred the Section 50 of the CGST Act, 2017 in this regard.
- The ITC was not credited to appellant's Electronic Credit Ledger till 28.12.21 i.e. a day prior to issuance of impugned order. ITC availed by them was already deposited to the Government by way of debit to its Electronic Credit Ledger and there was no loss to the exchequer. Levying interest on the amount already received will tantamount to collection of interest on the tax already available with Government. Submitted copy of Electronic Credit Ledger wherein the amount of ITC was debited on 28.03.2018 and subsequently credited only on 28.12.2021. In this regard, referred case of Pratibha Processors Vs. UOI, reported in 1996 (88) ELT 12 (SC).
- The amount of ITC claimed was never utilized by them. It can be seen from Electronic Credit Ledger for the period from 01.07.2017 to 07.04.2018, there was no utilization of ITC for payment of Taxes. It is well settled law that interest is to be paid on utilization of ITC and not mere availment, reliance placed on judgment of Hon'ble High Court of Karnataka in the case of Commissioner of C. Ex. & S. Tax Vs. M/s. Bill Forge Pvt. Ltd. reported in 2011-TIOL-799-HC-KAR-CX. Also relied on case of Nova Petrochemicals Ltd. Vs. CCE, reported in 2017 (49) S.T.R. 125 (Tri. Ahmed.), M/s. Commercial Steel Engineering Corporation Vs. the State of Bihar reported in 2019 (7) TMI 1452.
- The Respondent in para 24 of the impugned order has accepted that the re-credit of ITC had not been affected due to technical glitch in system. That as soon as the re-credit was credited to appellant's electronic credit ledger with the amount of ITC which was debited during process of claiming refund of ITC, the appellant paid the amount availed as ITC on

29.12.2021. Submitted copy of DRC-03 which shows payment of ITC on 29.12.2021.

- *The Respondent erred in imposing penalty upon appellant when the appellant bonafidely accepted their unintentional mistake and requested to refund only SGST amount of ITC and immediately made the payment that was wrongly availed but not utilized by them.*
- *The Respondent failed to appreciate that in order to impose penalty under Section 74 of the CGST Act, it is important that the assessee wrongly availed or utilized ITC by reason of fraud, or any willful misstatement or suppression of facts to evade tax. In the present case, the appellant has acted in a bona-fide way and in no way has availed ITC by reason of fraud, or any willful misstatement or suppression of facts.*
- *Referred case of Pushpam Pharmaceuticals Company Vs. Collector of C. Ex. Bombay reported in 1995 Supp(3) SCC 462; Anand Nishikawa Co. Ltd. Vs. Commissioner of C. Ex. Meerut reported in 2005 (7) SCC 749.*
- *The appellant in bona-fide manner has availed ITC, but when informed by the GST Authorities, requested to reject wrong refund of ITC in respect of IGST and CGST. This clearly shows that the Appellant never intended to avail ITC wrongly with mala fide intention.*
- *In view of above submissions, there has been no loss of revenue to the Government, there is no justification for imposing interest and penalty on the Appellant.*

In view of above, the appellant has made prayer that interest and penalty proceedings be dropped; that the Order-in-Original to the extent of demanding interest and imposing penalty may be quashed and set aside.

4. Personal Hearing in the matter was held on 22.11.2022, wherein Mr. Arjun Akruwala, C.A. was appeared on behalf of the *'Appellant'* as authorized representatives. During PH he has stated that they have nothing more to add to their written submissions made till date.

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 observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. However, in view of Hon'ble Supreme Court's order dated

10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020 the present appeal is considered as filed in time. Accordingly, I am proceeded to decide the case.

I find that the appellant has filed a refund claim of Rs.16,27,827/- under category *'Refund of accumulated Input Tax Credit (ITC) due to export of Goods & Services without payment of Tax'* for the period of August 2017. 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 appellant has filed manual RFD-01A for refund of SGST portion of Rs.416984/- only. Accordingly, the department has sanctioned refund of Rs.416984/- (SGST) and rejected the refund claim of Rs.12,10,843/- (IGST 793859/- + CGST 416984/-) 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 August 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.12,10,843/- (IGST 793859/- + CGST 416984/-). While claiming refund of accumulated ITC they have debited said ITC on 28.03.2018 from their electronic credit ledger. Therefore, for the period from 28.03.2018 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, however, immediately on 29.12.2021 they have debited the said ITC from electronic credit ledger vide DRC-03 dated 29.12.2021. In support of their claim that they have not utilized the ITC in question, the appellant has produced the copy of Electronic Credit Ledger of relevant period i.e. F.Y. 2017-18 to F.Y. 2021-22.

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 August 2017 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 for refund of SGST portion only. 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.12,10,843/- 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 willful 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 August 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.12,10,843/-. Further, in view of above discussions, I find that the adjudicating authority has rightly imposed equal amount of penalty of Rs.12,10,843/- 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.12,10,843/- and in support of same produced the copy of their Electronic Credit Ledger. On going through the same I find that they have debited the ITC of Rs.12,10,843/- (IGST 793859 + CGST 416984) in question on 28.03.2018 and even after debit of said ITC they have available balance in their Electronic Credit Ledger of IGST Rs.14,91,541/- & CGST Rs.36,34,940/-. Further, the said debited ITC was re-credited in their Electronic Credit Ledger on 28.12.2021. The appellant immediately on 29.12.2021 has debited the said ITC in question vide DRC-03. Thus, it transpire that the appellant has not utilized the said ITC of Rs.12,10,843/-.

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 1st July, 2017, which has been notified vide Notification No. 09/2022-Central Tax, dated 05.07.2022.]

In view of above, it is abundantly clear that interest is leviable only if the Input Tax Credit has been wrongly availed and utilized. 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.12,10,843/- (IGST 7,93,859/- & CGST 4,16,984/-) and imposition of penalty of Rs.12,10,843/-. 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.

30/01/23

(Mihir Rayka)
Additional Commissioner (Appeals)

Date:30.01.2023

Attested
31.01.23
(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad
By R.P.A.D.

To,
M/s. Star Impex (Mangharam Vasumal Ramwani),
C-25, Ground Floor, Sumel Business Park-1,
Raipur, 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