



# आयुक्त ( अपील ) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

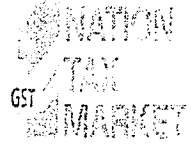
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20240464SW000000E7C3

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1044/2024-APPEAL / 4130-23

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 03 /2024-25

दिनांक Date : 12.04.2024 जारी करने की तारीख Date of Issue : 16.04.2024

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. 239/AC/Div-I/MPU/2023-24 dated 13.09.2023 issued by The Assistant Commissioner, CGST Division-I, Ahmedabad-South Commissionerate.

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

Appellant	Respondent
M/s Gautam Steel Centre, 6, Gautam Estate, Nr. Chakudia Mahadev Temple, Opp. Municipal Garden, Rakhiyal, Ahmedabad, Gujarat-380023	The Assistant Commissioner, CGST Division-I, Ahmedabad-South Commissionerate

(A) इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(i) National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.

(ii) State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para (A)(i) above in terms of Section 109(7) of CGST Act, 2017

(iii) Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.

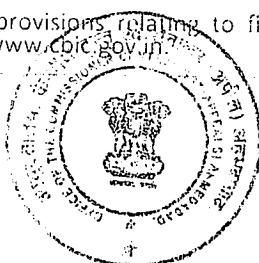
(B) Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.

(i) Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying  
(i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and  
(ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.

(ii) The Central Goods & Service Tax ( Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

(C) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbic.gov.in](http://www.cbic.gov.in) को देख सकते हैं।

For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website [www.cbic.gov.in](http://www.cbic.gov.in)



ORDER-IN-APPEALBrief Facts of the Case :

M/s. Gautam Steel Centre, 6, Gautam Estate, Near Chakudia Mahadev Temple, Opposite Municipal Garden, Rakhiyal, Ahmedabad, Gujarat-380023 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. 239/AC/Div-1/MPU/2023-24 dated 13.09.2023 (date of communication of the order appealed against is 25.09.2023) (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST & C.Ex., Division- 1, Ahmedabad South Commissionerate (hereinafter referred as 'Adjudicating Authority').

2(i). Briefly stated the fact of the case is that the 'Appellant' are engaged in trading of Ferrous and Non-Ferrous Alloys and have registered under GST with Registration Number 24AAGFM5262J1Z7. The detailed scrutiny of the GST returns for the period from July 2017 to March 2018 has been carried out in respect of the appellant and discrepancy found out communicated to the appellant vide ASMT 10 dated 29.04.2022. Vide ASTM-10 query was raised that ITC of Rs. 24,13,369/- in CGST and Rs. 5,85,151/- in SGST has been availed in GSTR 3B for July 2017.

2(ii). The appellant in their reply vide ASMT 11 dated 10.05.2022 intimated that they have claimed the TRAN-I ITC in GSTR 3B of July 2017 for CGST Rs. 19,32,974 and SGST Rs. 1,04,757. Further they have also filed TRAN-1 electronically on 30.11.2017 by which they have claimed ITC in their electronic credit ledger for CGST Rs. 19,32,974/- and SGST Rs. 93,98,512/-. While filing the GSTR-3B return for April 2018 they have reversed the ITC of Rs. 19,32,974/- under the head of CGST and Rs. 93,98,512 under the head of SGST/-. But they had not paid the interest on this excess availment of ITC and utilization thereof during the filing of GSTR 3B returns for earlier period.

3. The department did not agree with reply of the appellant and hence DRC-01 A dated 02.09.2022 having been issued to the appellant. Further SCN issued on 20.09.2022 and hereafter, the adjudicating authority vide impugned order has confirmed the demand of interest for wrong availment and reversal of ITC amounting to Rs. 1,36,129/- (CGST Rs. 34,303/- and SGST Rs. 1,01,823/-) under the provisions of Section 50(3) read with the provisions of Section 140(1) and Section 73(1) of the CGST Act 2017 on the following grounds:-

- that the vide Notification No. 69/2018- Central Tax dated 31.12.2018 the tax payer who obtained the GSTIN as per procedure lay down in the notification No. 31/2018 Central Tax dated 06.08.2018 can file their

GSTR-3B return for the period from July, 2017 to February, 2019 on or before 31st day of March, 2019;

- that the noticee nowhere argued, contested and submitted any proof that they have got the GSTN after following the procedure mentioned in the Notification No. 31/2018 dated 06.08.2018 hence, the benefit of the Notification No. 69/2018 dated 31.12.2018 cannot be granted to the noticee;
- that noticee has availed and utilized inadmissible / Excess Credit under the head of CGST and SGST and reversed the same in GSTR-3B of April- 2018 filed on 12.06.2018 and not paid the interest which is payable as per Section 50 (3);

4. Being aggrieved with the impugned order dated 13.09.2023, the appellant has filed the present appeal on 26.12.2023 on the following grounds:-

- The appellant denies all the allegations/ observations raised in the DRC-01 order of demand of interest;
- the appellant wants to submit that there was some mistake in filing of returns which had already been rectified by the appellant himself suo-moto. Further, the due dates of filing of GSTR-3B returns had been extended for the period of July-17 to Feb-18 upto 31.03.2019, the interest liability for such period is not justifiable at all;
- the appellant wants to draw attention towards the fact that as per Notification No.69/2018, the notification No.35/2017 has been amended by extending due date of filing GSTR-3B returns upto 31.03.2019;
- In the notifications no. 35/2017-Central Tax & 16/2018- Central Tax, the due date of filing GSTR-3B returns for the period of July-17 to November-2018 has been extended upto 31.12.2018;
- That when the due date of filing of GSTR-3B has been extended upto 31.03.2019, there would be no question of interest on excess utilization of ITC. Thus, in view of above submission, there is no interest liability when the appellant has suo-moto reversed the ITC in the GSTR-3B of April-2018 i.e. before 31.03.2019. So, the appellant hereby requests you to drop the proceedings in the interest of justice;
- that being the first year of GST era in 2017-18, there were certain mistakes in filing of GSTR-1 & GSTR-3B returns. There was also some clerical and procedural lacuna on part of the appellant that by mistake the appellant had availed excess amount of ITC and part thereof also utilized against the output tax liability. However, on coming to know about such mistake, the appellant also reversed the ITC in GSTR-3B of



Apr-18. It is also undisputed fact that the appellant had reversed the excess amount of ITC suo-moto. There was just some procedural lacuna which can be allowable;

In view of the above the appellant requests to drop the demand of interest liability in the interest of law and justice.

**Personal Hearing:**

5. Personal Hearing in the matter was held on 06.03.2024 wherein Shri Vipul Khandhar, C.A. appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted that they have filed all the GSTR-3B within the time limit extended vide Notification 69/2018 and other relevant Notifications 35/2017. Since all returns have been filed within time limit, no interest is payable. Further due process of law has also not been follow by Ld. Adjudicating Authority by issuing corrigendum to SCN. He further reiterated the written submissions and requested to allow appeal.

**Discussion and Findings :-**

6. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is whether the demand of interest of Rs. 1,36,129/- (CGST Rs. 34,303/- and SGST Rs. 1,01,823/-) for wrong availment and reversal of ITC under the provisions of Section 50(3) read with the provisions of Section 140(1) and Section 73(1) of the CGST Act 2017 is legal and proper or otherwise.

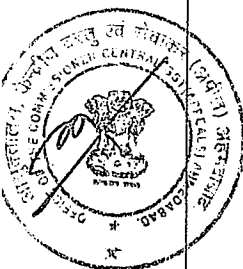
7. On carefully going through the submissions of *appellant* it is observed that the appellant has claimed the TRAN-I ITC in GSTR 3B of July 2017 for CGST Rs. 19,32,974 and SGST Rs. 1,04,757. Further they have also filed TRAN 1 electronically on Rs. 30.11.2017 by which they have claimed ITC in their electronic credit ledger for CGST Rs. 19,32,974/ and SGST Rs. 93,98,512/-. While filing the GSTR-3B return for April 2018 they have reversed the ITC of Rs. 19,32,974/- under the head of CGST and Rs. 93,98,512 under the head of SGST/-. But they had not paid the interest on this excess availment of ITC and utilization thereof during the filing of GSTR 3B returns for earlier period.

8(i). In this regard the appellant contended that as per Notification No.69/2018, the notification No.35/2017 has been amended by extending due date of filing GSTR-3B returns upto 31.03.2019. That when the due date of filing of GSTR-3B has been extended upto 31.03.2019, there would be no question of interest on excess utilization of ITC. Thus, there is no interest

liability when the appellant has suo-moto reversed the ITC in the GSTR-3B of April-2018 i.e. before 31.03.2019.

**8(ii).** In this regard, the sequence of the notification and words of the notification are mentioned as under:

Sr. No.	Notification No. & Date	Purpose of the Notification	Remarks
1	35 Central Tax dated 15.09.2017	Last date for filing of return in FORM GSTR-3B for the month of August 2017 to December-2017	Proviso inserted in the first paragraph of this notification vide notification No. 46/2018 Central Tax dated 10.09.2018 as under
2	16/2018. Central Tax dated 23.03.2018	Last Date for filing of return in FORM GSTFI-3B for the month of April-2018 to June 2018	Provided that the return in FORM GSTR-3B of the said rules to be filed for the period from July, 2017 to November 2018 by the taxpayers who have obtained Goods and Services Tax Identification Number (GSTIN) in terms of Notification No. 31/2018-Central Tax dated the 06th August, 2018 published in the Gazette of India vide number G.S.R.742(E), dated the 06th August, 2018, shall be furnished electronically through the common portal on or before the 31st day of December, 2018.
3	31/2018 Central Tax dated 06.08.2018	Vide this notification the special procedure for application is prescribed the persons who did not file the complete Form GST REG 26 of the Central Goods and Services Tax Rules, 2017 but received only a Provisional Identification Number (PID) till the 31 st December, 2017 where in the	
4	46/2018 Central Tax dated 10.09.2018	Purpose of this notification is to inform the last date of filing of GSTR-3B for the Tax payer who obtained the GSTIN as per the notification No. 31/2018 Central Tax dated 06.08.2018	For the said purpose the Proviso was inserted in the Notification No. 35/2017 Central Tax dated 15.09.2017 & 16/2018- Central Tax dated 23.03.2018
5	69/2018 Central Tax dated 31.12.2018	Vide this notification the Proviso amended which is inserted in the first paragraph of this notification 35/2017 Central Tax dated 15.09.2017 & 16/2018- Central Tax dated 23.03.2018 as under: July, 2017 to November, 2018" and "31 st day of December. 2018". the words, figures and letters "July, 2017 to February 2019"and "31 st day of March, 2019.	Vide this notification the last date of filing of GSTR-3B for the Tax payer who obtained the GSTIN as per the notification No. 31/2018 Central Tax dated 06.08.2018 is amended as under: GSTR-3B for the period from July, 2017 to February 2019 to be filed on or before"31 st day of March 2019"



**8(iii).** On the basis of above said notifications, it is observed that for filing the GSTR 3B returns last date was extended till 31.03.2019 for those taxpayers who had not migrated into the GST Regime and not filed the complete Form GST REG 26 but were having a Provisional Identification Number (PID) as provided by the State Commercial Tax / Central Excise/Service Tax Department for logging in the GST Portal. The benefits of the above said notifications were not extended to those taxpayers who had already got their GSTIN. In the instant case the appellant was already registered with the GSTIN having GSTIN Number 24AAGFM5262JIZ7 and the above said notifications are not related to the appellant. Hence, the benefit of the Notification No. 69/2018 dated 31.12.2018 cannot be granted to the appellant.

**9.** In view of the above discussions, I find that the demand of interest for wrong availment and reversal of ITC amounting to Rs. 1,36,129/- (CGST Rs. 34,303/- and SGST Rs. 1,01,823/-) under the provisions of Section 50(3) read with the provisions of Section 140(1) and Section 73(1) of the CGST Act 2017 is legal and proper. Accordingly, the impugned order of the adjudicating authority is upheld.

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.

*(Adesh Kumar Jain)*  
12/04/2024  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)  
Date: 12.04.2024

Attested

*(Sandheer Kumar)*  
12/04/24  
(Sandheer Kumar)  
Superintendent (Appeals)

By R.P.A.D.

To,  
M/s. Gautam Steel Centre,  
6, Gautam Estate,  
Near Chakudia Mahadev Temple,  
Opposite Municipal Garden, Rakhiyal,  
Ahmedabad, Gujarat-380023.

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 Dy./Asstt. Commissioner (RRA), CGST & C. Ex, Ahmedabad South.
5. The Dy./Asstt. Commissioner, CGST & C. Ex, Division- 1, Ahmedabad South Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
- ✓ 8. P.A. File.

