



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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By Regd. Post/E-mail

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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1043/2024 / 4९६०-65
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-20/2024-25 and 30.04.2024
(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	01.05.2024
(ङ)	Arising out of Order-In-Original No. CGST-VI/Dem-10/GST/Ratnamani/DC/PMT/2023-24 dated 10.10.2023 passed by the Deputy Commissioner, CGST, Div-VI, Ahmedabad-South	
(च)	Name of the Appellant	Name of the Respondent
	M/s Ratnamani Metals And Tubes Limited, 9th floor Behind Keshav Baug party Plot, Vastrapur, Ahmedabad - 380015	The Deputy Commissioner, CGST, Div-VI, Ahmedabad-South

(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 से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE:**

M/s. Ratnamani Metals and Tubes Ltd, A and B Wing, 9th floor, Behind Keshav Baug Party Plot, Vastrapur, Ahmedabad, Gujarat 380 015 (hereinafter referred to as the "appellant") has filed the appeal on 18.12.2023 against Order-in-Original No. CGST-VI/Dem-10/GST/Ratnamani/DC/PMT/2023-24, dated 10.10.2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Central GST & C.Ex., Division-VI, Ahmedabad South Commissionerate, (hereinafter referred to as the "adjudicating authority").

2. Brief facts of the case is that M/s. Ratnamani Metals and Tubes Ltd are registered with GSTN No.24AABCR1742E1ZV and are engaged in the manufacturing of SS Tubes, Pipes and Carbon Steel Tubes, pipes under HSN Code 7304, 7305, 7306, 7507 and 8108. During audit of records of the appellant for the period from July-2017 to March-2019, one unsettled Revenue Para regarding non-payment of interest on reversal of ITC in the case of delay in payment of value to the supplier beyond stipulated time period of 180 days as per Section 16(2) of CGST Act, 2017 read with Rule 37 of the CGST Rules 2017 was raised. Accordingly show cause notice dated 29.03.2022 was issued asking reasons as to why :

(i) Interest amounting to Rs.27,83,425/- (CGST 1,38,362/- + SGST 38,425 + IGST Rs.25,06,701/-) should not be charged and recovered from them under the provision of Section 50(1) of the CGST Act, 2017 and the corresponding entry of GGST Act-2017 and Section 20 of the IGST-2017 on reversal of ITC.

In reply to the SCN the appellant submitted that the reversal of ITC on account of delay in payment of value to the supplier beyond stipulated time period of 180 days of the date of invoice is not disputed and eligibility to avail the ITC on the inward supplies in terms of Section 16 of the CGST Act-2017 is also not disputed. However, the tax payer has submitted that total ITC balance in electronic credit ledger during the period in dispute was in excess compared to disputed amount of ITC and the adjudicating authority should have levied interest under Section 50(3) of the CGST Act 2017 and not under Section 50(1) of the CGST Act' 2017. Hence, interest is not applicable on reversal of ITC as per Rule 37 of the CGST Act, 2017.

3. The adjudicating authority vide his impugned order confirmed the demand of interest amounting to Rs.27,83,425/- and ordered to recover the same from the appellant under the provisions of Section 50(1) of the CGST Act,

2017 and the corresponding entry of GGST Act 2017 and Section 20 of the IGST 2017 on the following grounds:

- ❖ that since the period covered under dispute is from July'2017 to March'2019, it is clear that Section 50(3) is effective from 05.07.2022 and not applicable in the present case and accordingly he has rightly invoked Section 50(1) of the CGST Act, 2017 for the purpose of determining the applicable interest rate and calculation of interest thereof.

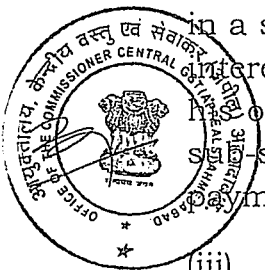
4. Being aggrieved with the impugned order, the appellant preferred appeal on 18.12.2023 before the appellate authority on the following grounds:-

(i) The learned Dy. Com missioner erred in confirming the demand of interest on ITC reversed without utilization. The OIO is in contrary to the amendment brought into Section 50(3) of the Act by notification No.9/2022-Central Tax dated 05.07.2022, by which subsection (3) of Section 50 has been substituted to clarify the liability to pay interest on wrongly availed ITC only when utilized. Section 111 of the Finance Act, 2022 clearly states that sub-section (3) of Section 50 shall be deemed to have been substituted with effect from 01.07.2017, he has ignored the same and went ahead to hold in para 8.5 to para 8.7 that amendment in Section 50(3) is effective from 05.07.2022 and the period involved in the present matter is from July 2017 to March'2019.

(ii) The adjudicating authority has not appreciated that section 50(1) of the Act is not attracted in the facts of present case. The said Section 50(1) applies in a situation where there is tax liability upon a person which remains unpaid, interest on such unpaid tax amount is to be discharged by the said person on his own to the extent such tax remained unpaid. It thus follows that the said section provides for payment of interest on account of delay of non-payment of tax liability.

(iii) Sub-section 3 of section 50 specifically deals with irregular availment of ITC. The substituted sub-section 3 of Section 50 is introduced vide Section 111 of the Finance Act, 2022. It follows that it applies where ITC has been wrongly availed and utilized, interest on such wrongly availed and utilized ITC is leviable. There is no dispute that appellant has not utilized the disputed ITC as appellant at all times during the disputed period had excess ITC balance in its Electronic Credit Account. In the circumstances, con-joint reading of sub-section (1) and sub-section (3) of section 50 it follows that appellant is not liable to pay interest on the disputed ITC, as the same is not leviable under the Section 50.

(iv) The SCN should have been issued covering the unpaid tax liability on account of delay in payment to its suppliers under Section 73 of the Act, whereas the present SCN has been issued under Section 50(1) of the Act which is bad in law. It is submitted that Rule 37(1) of the CGST Rules, 2017 requires a recipient of supply, who has not paid value of supply within a period of 180 days of the date of issue of invoice, to furnish, in Form GSTR-2 for the month. However, as the GSTR-2 had not been made operation during the disputed period in the absence of any other notification, order, clarification to waive such requirement will make the said Rule 37(1) redundant. As regards, Rule




37(3), the same prescribes levy of interest u/s 50. The section 50(2) specifies that interest under sub-section (1) shall be calculated on which such tax was due to be paid and when the machinery provision are not in existent, the levy of interest relying upon the said Rule 37 and Section 50 is bad in law.

With the above submissions, the appellant requested to allow their appeal and waive the interest levied up on them.

PERSONAL HEARING

4. Personal hearing in the matter was held on 07.03.2024, whereby Shri Rahul Gajera, Advocate appeared before me on behalf of the appellant as authorized representative. It is submitted by him that the Adjudicating Authority has mis interpreted the amendment in Section 50(3). The said amendment is effective from 01.07.2017. Therefore they are not liable to pay any interest as it is undisputed fact that they have only availed the said credit but not utilized the same at any point of time. In support they relied upon the OIA No.002-App-ADC/170/2022-23 of M/s. Gopi Textile. In view of the above requested to allow appeal.

DISCUSSION & FINDINGS



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 appellant is mainly contesting the interest levied upon them under Section 50(1) of the CGST Act, 2017 and insists upon that being the issue pertaining to reversal of ITC, it should have been levied under Section 50(3) of the CGST Act, 2017. Further, the contention of the appellant is that as per the amendment in Section 50(3), which is effective from 01.07.2017, they are not liable to pay any interest as they have only availed the said credit but not utilized the same at any point of time.

6. During the course of audit, on going through the GSTR-9 for the financial year 2018-2019, it was found that the appellant has declared details of ITC reversal as per Rule 37 of CGST Rules, 2017 in Part-III of GSTR 9 for the period 2018-19 for non payment of consideration their suppliers. Thus, the appellant had not complied with the provisions laid in Rule 37 of CGST Rules'2017 by not paying the interest as per Section 50(1) of CGST Act, 2017.

7. The relevant text to the provisions of Rules 37 of the CGST Rules, 2017 is reproduced as under:

Rule -37 : Reversal of input tax credit in the case of non-payment of consideration.

[(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is

payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply³[whether wholly or partly,] along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay⁴[or reverse] an amount equal to the input tax credit availed in respect of such supply⁵, proportionate to the amount not paid to the supplier,] along with interest payable thereon under section 50, while furnishing the return in **FORM GSTR-3B** for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section(1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule(2) is paid.

8. I observe that on bare perusal of Rule 37(3) of the CGST Rules, 2017, the appellant is liable to pay interest on the ITC reversal made by them under sub-section (1) of Section 50 of the CGST Act, 2017. I find that the adjudicating authority has levied interest under 50(1) of the CGST Act, 2017 on the entire ITC reversal made by the appellant, whereas I find that Section 50(1) is for charging of interest only on that part of tax, which is paid through electronic cash ledger. The sub-section (1) of Section 50 provides for interest on delayed payment of tax, which is reproduced below:

Section 50. Interest on delayed payment of tax.-

Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

¹[**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.]

[As per Section 112 of the Finance Act, 2021 this amendment has been with effect from 1st June, 2021 retrospectively from 01.07.2017, which has been notified vide Notfn. No.16/2021-Central Tax, dated 01.06.2021.]

From the above discussions and plain reading of the substituted Section 50, it is clear that the interest under Section 50 of the CGST Act, 2017 can only be levied on the net tax liability and not on the gross tax liability where the supplies made during the tax period are declared in the return after the due

ate. Therefore, in terms of amended Section 50, which was given retrospective effect vide Notification No.9/2022-Central Tax dated 05.07.2022, the interest shall be payable only on the net cash tax liability.

9. In the present case I find that the appellant had reversed the ITC availed by them on the delayed payment to their suppliers which was done beyond 180 days, the interest has been demanded on the entire ITC reversal amount of Rs.19,18,033/- CGST, Rs.19,18,033/- SGST and Rs.2,99,32,026/- IGST totaling to Rs. 3,37,68,092/-, as per the GSTR-9 for the period 2018-2019.

10. Considering the foregoing facts, I hereby refer the provisions of Section 50(3) of the CGST Act, 2017, the same is as under :

Section 50 (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]

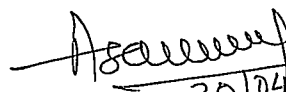
[As per Section 110 of the Finance Bill, 2022 this amendment has been with effect from 1st July, 2017, which has been notified vide Notification No.09/2022-Central Tax, dated 05.07.2022 .

11. In view of the above, it is abundantly clear that interest is leviable only if ITC has been wrongly availed and utilized. In the present matter, the appellant has availed but have not utilized. Further, I find that the balance of ITC in their Electronic Credit Ledger was sufficient to discharge their GST liability for the disputed period ie. from 2017-18 and 2018-19. Therefore I find that the interest amount of Rs27,83,425/- is not leviable on the ITC reversal.

12. In view of the above discussions and facts, I hereby allow the appeal filed by the appellant and set aside the impugned order passed by the adjudicating authority.

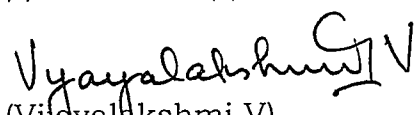
13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the *appellant* stands disposed of in above terms.


30/04/2024
(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .04.2024

// Attested //


(Vijayalakshmi V)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,

M/s. Ratnamani Metals and Tubes Ltd.,
9th floor, Behind Keshav Baug party plot,
Vastrapur
Ahmedabad, Gujarat 380015

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, CGST, Division-VI, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
- ~~6.~~ Guard File.
7. P.A. File

