



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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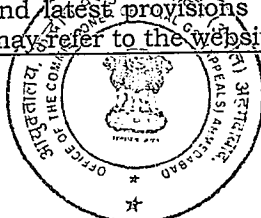


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DIN NO.: 20240564SW000061876B

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2505/2024 5237
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-33/2024-25 and 20.05.2024
(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	20.05.2024
(ङ)	Arising out of Order-In-Original No. CST/WS0604/DEM-03/Aditya/SUP/AK/23-24 dated 16.11.2023 passed by the Superintendent, CGST AR-IV, Division-VI, Ahmedabad South Commissionerate.	
(च)	Name of the Appellant	Name of the Respondent
	M/s Aditya Birla Fashion and Retail Limited, 3 & 4 Ground and First Floor, Abhijeet 3 and 4, Opp Mayurs Bunglow Ellisbridge, Law Garden, Ahmedabad, Gujarat, 380006	The Superintendent, CGST AR-IV, Division-VI, Ahmedabad South Commissionerate

(A)	इस आदेश(अपील) से ब्यथित 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 अपीलार्थी 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 .

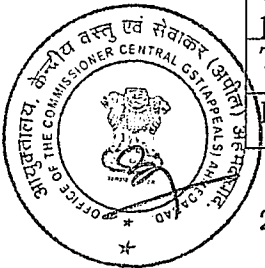


ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Aditya Birla Fashion and Retail Limited, 3 & 4 Ground and First Floor, Abhijeet 3 and 4, Opposite Mayurs Bunglow Ellisbridge, Law Garden, Ahmedabad, Gujarat- 380006 (hereinafter referred as 'Appellant') has filed the appeal against Order-in-Original No. CST/WS0604/DEM-03/Aditya/SUP/AK/23-24 dated 16.11.2023 (hereinafter referred as 'Impugned Order') passed by the Superintendent, CGST & C.Ex., Range-IV, Division-VI, Ahmedabad South Commissionerate (hereinafter referred as 'Adjudicating Authority').

2(i). Briefly stated the facts of the case are that the 'Appellant' are engaged in business of Good and Service under CTH 61, 62 and 64 and have a GST Registration No 24AAECP2371CIZV. The audit of the records of the appellant was conducted for the period from July 2017 to March 2018 by DGA (Central), Ahmedabad. During the course of audit, on scrutiny of GSTR-3B as well as GSTR 9, it was observed that there is excess avilment of ITC under Reverse Charge Mechanism of amount of Rs. 18,78,629/-. The detail is as under:

Particular	CGST	SGST	IGST	Total
Table 4G of GTSR-9 for F.Y. 2017-18 (Inward supply on which tax in to be paid on the reverse charge basis	987118	987118	487745	2461981
Table 3.1(d) of GSTR-3B	285883	285883	11585	583351
Difference	701235	701235	476160	1878630



2(ii). Show cause Notice, dated 25.09.2023 was issued to the appellant as to why the Input Tax Credit wrongly availed and utilized amounting to GST Rs. 18,78,629/-, should not be disallowed and recovered from them, under the provisions of Sections 73(1) of the Act read with the provisions of Section 20 of the IGST Act alongwith interest under the provisions of Section 50(3) of the Act read with the provisions of Section 20 of the IGST Act on the proposed demand and penalty under the provisions of Sections 73(1) of the Act read with the provisions of Section 122(2)(a) of the Act and Section 20 of the IGST Act on the proposed demand of ITC under RCM.

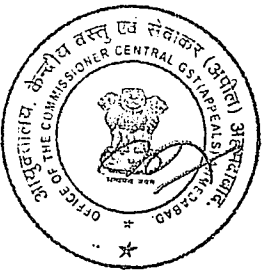
3. Thereafter, the adjudicating authority vide impugned order has confirmed the said demand of ITC amounting to Rs.18,78,629/- under Section 73(1) of the CGST Act 2017 alongwith interest and penalty. As the appellant has made the total tax payment vides DRC-03 dated 30.01.2020

and interest payment amounting to Rs. 5,43,642/- against the interest demand of Rs. 7,24,856/- vide DRC-03 dated 24.02.2023, the adjudicating authority appropriates the said duty liability and interest amount of Rs. 5,43,642/-. Further the adjudicating authority confirm the remaining interest amount of Rs. 1,81,214/- (Rs. 7,24,856/- minus Rs. 5,43,642/-) under the provisions of Section 50(3) of the Act read with the provisions of Section 20 of the IGST Act on the proposed demand and penalty amounting to Rs. 1,87,863/- under the provisions of Sections 73(1) of the Act read with the provisions of Section 122(2)(a) of the Act and Section 20 of the IGST Act on the proposed demand of ITC under RCM.

4. Being aggrieved with the *impugned order* dated 16.11.2023 in respect of interest amount of Rs. 1,81,214/- (Rs. 7,24,856/- minus Rs. 5,43,642/-) and penalty amounting to Rs. 1,87,863/-, the *appellant* has filed the present appeal on 15.02.2024 wherein stated that –

- That there was delay in payment of the tax amount, the *appellant* also paid the applicable interest at the rate of 18% in line with the provision of Section 50(3) of CGST Act, 2017;
- that the rate of interest under Section 50(3) of CGST Act, 2017 has been notified through Notification no 13/2017 – Central Tax dated June 28, 2017. As per the said notification applicable interest rate prescribed for the said Section 50(3) is 18%. In this regard, the *Appellant* would like to highlight that Section 116 of Finance Act, 2022 read with The Sixth Schedule where Notification no 13/2017 has been amended retrospectively, whereby interest under section 50(3) have been reduced from 24% to 18%;
- that *Appellant* had paid the required liability while filing the Annual return for the relevant period and applicable interest was paid before the issuance of the SCN;
- that in light of the subsection 8 of section 73 of the CGST Act, 2017, no penalty shall be payable when tax under sub section (1) or (3) of section 73 of the CGST Act, 20 17, has already been paid within 30 days of issue of show cause notice along with interest under section 50. In the instance case tax and applicable interest was duly paid before the issuance of SCN and hence the levy of penalty is against the provision of law;

In view of the above the *appellant* pray that the demand imposed by the Respondent towards the interest and penalty respectively is against the provision of law and hence the demand ought to be set aside in entirety.



Virtual Hearing:

5. Virtual Hearing in the matter was held on 16.05.2024 wherein Shri Radheshyam Gupta, CA and Shri Mukesh Lakhwani, CA appeared on behalf of the 'Appellant' as authorized representatives. During hearing they have submitted that they have paid the interest @18% and due tax on RCM before the issue of SCN, so there is no liability of penalty under Section 73. Further the rate of interest is 18% which is already paid and not 24% as per Notification no. 13/2017 as amended. 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 issues to be decided in the instant case is whether the Interest payable of demand of Rs. 18,78,629/- which has been calculated on the basis of 24% of the Tax amount instead of Calculating at 18% and penalty imposed under the provisions of Sections 73(1) of the Act read with the provisions of Section 122(2)(a) of the Act and Section 20 of the IGST Act on the proposed demand of ITC, are legal and proper or otherwise.

7. On carefully going through the submissions of *appellant* it is observed that the appellant has availed excess ITC under Reverse Charge Mechanism of amount of Rs. 18,78,629/- as compared to GSTR 3B as well as GSTR 9 returns. On being pointed out by the department the appellant stated that they had paid the tax amount of Rs. 18,78,629/- and interest amount of Rs. 5,43,642/- @ 18% of the tax amount. The appellant contended that Interest Payable of 7,24,856/- which has been calculated on the basis of 24% is not proper and thus the Interest should be levied at 18% instead of 24%. In view of the above the appellant refused to pay the remaining interest amount of Rs. 1,81,214/- (Rs. 7,24,856/- minus Rs. 5,43,642/-) under the provisions of Section 50(3) of the Act read with the provisions of Section 20 of the IGST Act on the proposed demand and penalty amounting to Rs. 1,87,863/- under the provisions of Sections 73(1) of the Act read with the provisions of Section 122(2)(a) of the Act and Section 20 of the IGST Act on the proposed demand of ITC under RCM in light of the sub section 8 of section 73 of the CGST Act, 2017.

8(i). To examine the applicability of interest on wrongly availed and utilized on the wrong availment of ITC of 18,78,629/- by the appellant, I refer Section 50 of the CGST Act, 2017, which is as under:

50. Interest on delayed payment of tax —



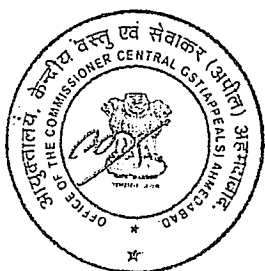
(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own,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

[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 payable on that portion of the tax which is paid by debiting the electronic cash ledger.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

8(ii). The above section was further amended vide Finance Act, 2022 with retrospective effect from 01.07.2017 vide Notification No.09/2022 dated 05-07-2022. The said amended Section 50(3) is reproduced hereunder:



[(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]

8(iii). The manner of calculating interest, for wrongly availed and utilized of ITC, has been amended vide Finance Act, 2022 with retrospective effect from 01-07-2017 Vide Notification No.14/2022-Central Tax dated 05-07-2022. The text of Rule 88B inserted vide the said Notification is reproduced hereunder:

"7. In the said rules, with effect from the 1st July, 2017, after rule 88A, the following rule shall be deemed to have been inserted, namely: -

—88B. Manner of calculating interest on delayed payment of tax. - (1) In case, where the supplies made during a tax period are declared by the registered

8(iv). Further, the rate of interest has been fixed for the purpose of sub section (1) and (3) of Section 50, Sub section (12) of Section 54 and section 56 of the CGST Act, 2017, vide Notification No.13/2017 dated 28-06-2017. Vide clause 115 of the Finance Act, 2022, the same has been amended and the rate of interest is revised from 24% to 18% for subsection (3) of Section 50.

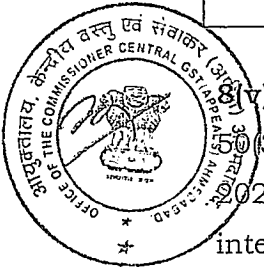
The text of the same is reproduced as under:

“115. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G. S. R. 661(E), dated the 28th June, 2017, issued by the Central Government on the recommendations of the Council, under sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the Central Goods and Services Tax Act, 2017, shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Sixth Schedule, on and from the date specified in column (3) of that Schedule.”

THE SIXTH SCHEDULE

[See section 115(1)]

Notification number and date	Amendment	Date of effect of amendment
G.S.R 661 (E), dated the 28th June, 2017 [No. 349/72/2017-GST, dated 28th June, 2017]	In the said notification, in the Table, against serial number 2, in column (3), for the figures “24”, the figures “18” shall be substituted.	1st July, 2017



8(v). From the above, it is clear that the rate of interest for section 50(3) has been revised from 24% to 18% with retrospective effect from 01-07-2022 vide the Finance Act, 2022. Further as per the amended Rule 50(3) the interest is required to be paid from the date of utilization of wrongly availed credit as amended vide the Finance Act, 2022 with retrospective effect from 01-07-2017. In view of the above, it is observed that the interest @ 18% is payable on the wrongly availed of ITC by the appellant for the period from the date of utilization till the date of reversal of ITC.

9(i). Further the appellant argued that penalty is not imposable when amount of tax and interest are paid voluntarily prior to issue of notice as per section 73(8). In this regard I refer Section 73(8) of the CGST Act, 2017 which is reproduced below:

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

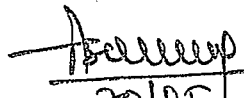
(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

9(ii). In the instant case the appellant had paid the tax vide DRC-03 dated 30.01.2020 and interest Vide DRC-03 dated 24.02.2023 before the issue of Show Cause Notice dated 25.09.2023. Accordingly, as per Section 73(8) of the CGST Act, 2017 the appellant is not liable to pay penalty.

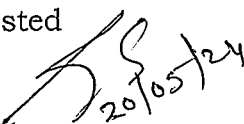
10. In view of the above, I allow the appeal of the "Appellant" as they have already paid the interest @ 18% Vide clause 115 of the Finance Act, 2022, before the issue of SCN and accordingly drop penalty of Rs. 1,87,863/- as appellant had paid the tax and interest prior to issue of notice as per section 73(8) of the CGST Act 2017.

In view of the above discussions, I allowed the appeal of the Appellant to the above extent.

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.


20/05/2024
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 20.05.2024

Attested


(Sandheer Kumar)
Superintendent (Appeals)

By R.P.A.D.

To,
M/s. Aditya Birla Fashion and Retail Limited,
3 & 4 Ground and First Floor, Abhijeet 3 and 4,
Opposite Mayurs Bunglow Ellisbridge,
Law Garden, Ahmedabad, Gujarat- 380006.

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, CGST, Range-IV, Division-VI, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File.
8. P.A. File.

