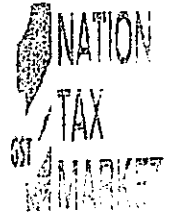




सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएमटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएमटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
Phone: 079 26305065 Fax: 079-26305136  
E-Mail : comnrappl1-cexamd@nic.in

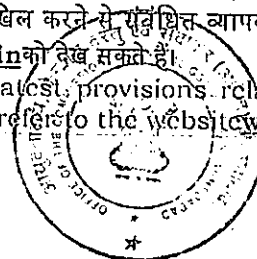


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DIN NO.: 20230864SW000000D838

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/913/2023 /HMIS
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-42/2023-24 and 31.07.2023
(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	14.08.2023
(ङ)	Arising out of Order-In-Original No. 37/AC/D/2022-23/AM dated 14.12.2022 passed by The Assistant Commissioner, CGST, Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Spanker International Pvt Ltd. (GSTIN-24AADCS0455R1Z1), 27, Gopi Estate, B/H Ramdev Masala, Changodar, Ahmedabad, Gujarat-382213

- (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  
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.  
Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
- (i) (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.  
उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से पूर्व उचित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbic.gov.in](http://www.cbic.gov.in) को देख सकते हैं।
- (C) 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-APPEAL****BRIEF FACTS OF THE CASE:**

M/s. Spanker International Pvt Ltd., 27, Gopi Estate, B/H Ramdev Masala, Changodar, Ahmedabad, Gujarat – 382 213 (hereinafter referred to as the “appellant”) has filed the appeal on 20.02.2023 against Order-in-Original No. 37/AC/D/2022-23/AM dated 14-12-2022 (hereinafter referred to as the “impugned order”) passed by the Assistant Commissioner, CGST & C. Ex., Division-IV, Ahmedabad North Commissionerate (hereinafter referred to as the “adjudicating authority”) for wrongly availed transitional credit of Rs. 25,02,634/-.

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AADCS0455R1Z1, have been engaged in the business of manufacturing and supply of industrial automatic doors, PVC doors etc., and also have been providing service of ‘erection, commissioning and installation and GTA service. During the verification of TRAN-1 it was observed that the appellant have transitioned credit of Rs. 39,74,129/- through TRAN-1 for stock as existing, under Section 140 of the CGST Act, 2017. It was observed that the appellant have been taken excess credit of Rs. 25,02,634/- which they have reversed vide DRC-03 No. AD2407210024035 dated 05.07.2021. The appellant have also paid the interest amount of Rs.7,99,236/- vide DRC-03 No. AD2407210135299 dated 06.07.2021. The appellant have not paid the penalty and therefore the same was recoverable under section 73(1) of the CGST Act, 2017 read with Section 122(2) of the CGST Act, 2017. The appellant have paid interest of Rs. 7,99,236/- whereas, they were required to pay interest amount of Rs. 21,17,845/- @24% as per Section 50(3) of the CGST Act, 2017.

Accordingly, a Show Cause Notice F. No. V/27-26/SCN/SPANKAR/TRANS-1/2021-22 dated 1.10.2021 was issued to the appellant for (i) Recovery of interest of Rs. 21,75,845/- on wrongly availed transitional credit of Rs. 25,02,634/- under section 50(3) of the CGST ACT, 2017 read with Section 73(1) of the CGST Act, 2017 and as the appellant has paid the interest of Rs. 7,99,236/- for appropriation of the same against their liability; (ii) imposition of penalty under section 73(1) of CGST Act, 2017 read with section 122(2) of the CGST Act, 2017.

2.2 Subsequently, the adjudicating authority vide OIO No. 37/AC/D/2022-23/AM dated 14.12.2022 has confirmed the demand and order for recovery of interest of Rs. 8,25,887/- on wrongly availed transitional credit of Rs. 25,02,634/- u/s 50(3) of CGST Act, 2017 read with Section 73(1) of CGST Act, 2017 and appropriated amount of Rs. 7,99,236/- paid by the appellant against the same and imposed penalty of Rs. 2,50,263/- on wrong availment and utilization of ITC under section 73(1) read with 73(9) of the CGST Act, 2017 and section 122(2(a) of the CGST Act. 2017.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on 20.02.2023 on the following grounds:

- The adjudicating authority vide impugned order has raised the demand for short payment of liability for the period from July 2017 to March 2018. The appellant prays that the impugned order being contrary to facts and law deserve to be deleted.
- The adjudicating authority has grossly erred in law while levying order by raising demand of Rs. 2,50,263/- for penalty under Section 73(1) read with 73(9) of the CGST Act, 2017 and section 122(2)(a) of the CGST Act, 2017.
- The adjudicating authority has levied penalty of Rs. 2,50,263/- under section 73(1) read with Section 73(9) of the CGST Act, 2017 and Section 122(2)(a) of the CGST Act, 2017 for the reason that the assessee has short paid the total amount of tax liability alongwith interest of Rs. 26,651/-. The adjudicating authority has not considered the contention of the assessee that the tax liability of Rs. 25,02,634/- has been paid alongwith interest of Rs. 7,99,236/- in the requisite time period but due to delayed in verification procedure by the assessing officer the time period has been increased and thus, the interest amount considered by the adjudicating authority has been increased accordingly for that time period to Rs. 8,25,887/-.
- The interest has been calculated by the appellant as per the provision. The appellant had voluntarily deposited the total tax along with interest as per the provisions.
- From the above, it is substantiate that there is not any malafide intention nor any misstatement of facts. Further, the appellant had paid all taxes with interest before the issuance of Show Cause Notice. There is just due to time gap in calculation of interest of Rs. 26,650/- which the appellant also agreed to pay. Thus, the appellant did not have any malafide intention to short pay the liability as per Section 50 of the CGST Act, 2017 read with Section 73(1) of the CGST Act, 2017.

**Subsection (8) of Section 73:**

*“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 the 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.”*

In light of the Section 73(8) and the reasons stated above, the appellant requested to waive off the penalty of Rs. 2,50,263/- on wrong availment and utilization of ITC under section 73(1) read with 73(9) of the CGST Act, 2017 and Section 122(2)(a) of the CGST Act, 2017.

**PERSONAL HEARING :**

4. Personal hearing in the present appeal was held on 11.07.2023 and 25.07.2023, Mr. Sandip Gupta, Chartered Accountant, appeared on 25.07.2023 in person on behalf of the appellant in the present appeal as authorized representative. During P.H. he has submitted that they have paid all dues along with interest before issue of the Show Cause Notice. However, there were some calculation mistake and only Rs. 26,650/- of interest portion has

been paid on 22.02.2023 i.e after issue of Order-In-Original dated 14.12.2023. Since, all tax has been paid before SCN, no penalty is imposable as per Section 73(8) of the CGST Act, 2017. Further, they have submitted their calculation sheet vide email dated 12.07.2021 sent to the department i.e much before issue of SCN and tax (ITC) was already been paid on 5.07.2021 vide DRC-03 No. AD2407210024035 dated 05.07.2021 and interest Rs. 7,99,236/- was also paid on 16.07.2021 vide DRC-03 No. AD2407210135299 dated 16.07.2021. Therefore no penalty should be imposed.

**DISCUSSION AND FINDINGS:**

5. 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

(i) the demand of recovery of interest of Rs. 8,25,887/- on wrongly availed transitional credit of Rs. 25,02,634/- u/s 50(3) of CGST Act, 2017 read with Section 73(1) of CGST Act, 2017 and appropriated amount of Rs. 7,99,236/- paid by the appellant against the interest is legal and proper or otherwise; and

(ii) penalty of Rs. 2,50,263/- imposed under the impugned order passed by the adjudicating authority is legal and proper or otherwise on wrong availment and utilization of ITC under Section 73(1) read with Section 73(9) of the CGST Act, 2017 and Section 122(2)(a) of the CGST Act, 2017?

I have carefully gone through the facts of the case available on records and submissions made by the 'appellant' in the appeal Memorandum as well as during the personal hearing.

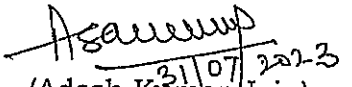
5.2 I find that the adjudicating authority in the impugned order mentioned in Para-2 that during the verification of TRAN-1 it was observed that the appellant have transitioned credit of Rs. 39,74,129/- through TRAN-1 for stock as existing, under Section 140 of the CGST Act, 2017. It was observed that the appellant have transitioned excess amount of Rs.25,02,634/- and availed and utilized the said amount as Input Tax Credit (ITC). Further, the appellant have reversed the wrongly availed and utilized ITC of Rs.25,02,634/- vide DRC-03 No. AD240721002403S dated 05.07.2021. They have also paid interest amount of Rs.7,99,236/- @18% on wrongly availed and utilized ITC. Here I find that the appellant have wrongly availed and utilized excess ITC of Rs. 25,02,634/- and paid excess availed ITC Rs.25,02,634/- along with interest Rs.7,99,236/- before issue of SCN vide DRC-03 No. AD240721002403S dated 05-07-2021 and No. AD2407210135299 dated 16-07-2021 respectively and balance amount of Interest Rs.26,650/- on 22-02-2023 vide DR-03 No. AD2402230149593 dated 22-02-2023 after issue of impugned order. I find that the appellant have availed & utilised inadmissible ITC amounting to Rs.25,02,634/- and paid back after 4 years, therefore violated the provisions of section 140 of the Act, committed by the appellant, thus liable for penalty under section 122(2) (a) of the CGST Act. Since the wrongly availed Transitional Credit have been paid before issue of SCN along with interest

(except interest of Rs.26,650/- which was paid after issue of OIO) no penalty is imposable in terms of Section 73(9) of the CGST Act.

5.3 From the above, I find that the appellant in the present case committed the offence for wrongly availment and utilization of Input Tax Credit (ITC) and paid the wrongly availed credit along with interest before issue of SCN, therefore, in view of the above, the penalty imposed under Section 73(9) of the CGST Act, 2017 is not maintainable, however, the penalty imposed under the provisions of Section 122(2)(a) of the CGST Act, 2017 by the adjudicating authority for violation of provisions of Section 140 of CGST Act is just, legal and proper as per the provisions of Law.

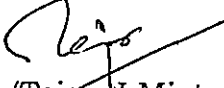
6. In view of the discussion and findings above, I upheld the order issued by the adjudicating authority to the extent of demand of Interest of Rs.8,25,887/-on disallowance of ITC and recovery of interest thereof. I also uphold the penalty of Rs.2,50,263/- under Section 122(2)(a) of the CGST Act, 2017. I set aside the penalty imposed under Section 73(9) of the CGST Act, 2017. The OIO is modified to the above extent.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।  
7. The appeal filed by the appellant stands disposed of in above terms.

  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)

Date:31.7.2023

Attested

  
(Tejas J Mistry)  
Superintendent,  
Central Tax (Appeals), Ahmedabad

By R.P.A.D.

To  
M/s. Spanker International Pvt Ltd.,  
27, Gopi Estate, B/H Ramdev Masala,  
Changodar, Ahmedabad, Gujarat - 382 213

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Commissionerate-Ahmedabad North.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-IV, Sanand, Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File / P.A. File.

