
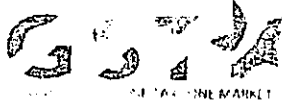


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद -- उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D
फ़ा.सं./F.No. GST/15-47/OA/2022

DIN-20230964WT000000CE2D
आदेश की तारीख/Date of Order: - 08.09.2023
जारी करने की तारीख/Date of Issue :- 08.09.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 32/JC/ LD /GST/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति में 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GADT/TECH/SCN/GST/39/2023 dated 19.04.2023 issued to M/s SKF Technologies India Pvt.Ltd., having GSTIN 24AAACC4393D1Z0 Mile stone-Kandla 333, Village-Kerala, Taluka-Bavla, Ahmedabad, Gujarat, 382220.



BRIEF FACTS OF TEH CASE

M/s. SKF Technologies India Pvt Ltd, having their principal place of business at Mile Stone Kandla, Village:- Kerala, Ahmedabad (herein after referred as 'taxpayer') are holding Goods and Service Tax Identification No: 24AAACC4393D1Z0 for manufacturing and supplying taxable goods viz balls or Roller bearing falls under the HSN Code-8482, ball or roller bearings-other, including combined ball or roller bearing of HSN Code 84828000.

2. The audit of the financial records of the said taxpayer was conducted for the period from July, 2017 to March, 2020 and subsequently Final Audit Report No: - GST/1412/2020-21(GST) in the Form GST-02 was issued to the said taxpayer. In the said Final Audit Report, only one revenue base objection i.e Revenue Para No:- 1 of the said Final Audit Report remained unsettled. In this show cause notice all sections/provisions of CGST Act, 2017 (hereinafter referred to as "the said Act") have been referred as 'parimateria' to the same parallel provisions under the Gujarat GST Act, 2017. Further, provisions of IGST Act, 2017 as made applicable vide Section 20 thereof in reference to applicability of provisions of CGST Act, 2017.

3. During the course of audit, on verification of the Electronic Cash Ledgers it was observed that in the following months of Financial Year 2017-18, the tax payer has made delayed payment of GST (in electronic cash ledger) after the due dates as provided under Section 39(1) of the CGST Act, 2017. Therefore, it was noticed that the said taxpayer is liable to pay interest under provisions of the CGST Act, 2017. Total interest liability on the late payment made by the taxpayer during period July 2017 to Dec 2017 is worked out to Rs.12,49,817/-. The detailed calculation of interest liability for said period is calculated as under: -

Return Month	Net Tax cash Liability paid	Delay days	Interest Payable
July-2017	6678143.00	148	487413.00
August-2017	6208370.00	125	382708.00
September-2017	6779893.00	95	317633.00
October-2017	1188743.00	64	37519.00
November-2017	1064304.00	34	17845.00
December-2017	1509284.00	9	6699.00
TOTAL	23428737.00		12,49,817.00

3.1 From the above, it appeared that during the period from July 2017 to December 2017, the said taxpayer had paid net tax in cash amounting to Rs 23428737.00 from their electronic cash ledger, on a date later than the due date specified under Section 39(1) Section 39(7) of CGST Acts, 2017 read with

Rule 61 of CGST Rules, 2017, therefore, the said taxpayer have deliberately failed to discharge their GST liability on or before the due date of GST payment. Thus, it appeared that the said delayed payment of GST totally amounting to Rs.23428737.00 is required to be demanded from the taxpayer under Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017. However, the said taxpayer, after the due date has paid the entire tax amount and it appeared that the said amount of tax paid by the taxpayer after due date is required to be adjusted and appropriated towards the proposed demand of GST, and interest on the tax amount under Section 50(1) of the said Act is to be recoverable from the said taxpayer as discussed at para no. 3 above.

4. Section 39 of the CGST Act, 2017 reads as under:

"39. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) to (6)

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

In view of the above discussion, it appeared that M/s SKF Technologies India Pvt Ltd has contravened Section 39 of the CGST Act, 2017 as discussed hereinabove.

4.1. Rule 61 of the CGST, Rules, 2017, as amended reads as:

"61. Form and manner of submission of monthly return.-

(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner."

(2) Every registered person required to furnish return, under sub rule (1) shall, subject to the provisions of Section 49, discharge his liability towards tax, interest, penalty , fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in Form GSTR – 3B”

5. GSTR-3B return was introduced in Rule 61 of the CGST Rules, 2017 under which sub-rule (5) was inserted vide Notification No.17/2017-CT dated 27.07.2017 and became part of the statute. The said taxpayer appeared to have erred in not reflecting the correct information relating to outward supplies and inward supplies and failed to pay the correct amount of GST on their outward supplies. Thus, the said taxpayer appeared to have contravened the provisions of Section 39 of the CGST Act, 2017 read with Rule 61(5) of the CGST Rules, 2017.

6. Sections 50 of CGST Act 2017: 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. Interest on delayed payment of tax.

(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.

6.1. Rule 88B, with effect from the 1st July, 2017, after rule 88A, the following rule shall be deemed to have been inserted vide notification 14/2022 – Central Tax dated 05.07.2022, namely: -

Rule–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 person in the return for the said period and the said return is furnished after the due date in accordance with 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, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the **electronic cash ledger**, for the period of delay in filing the said*

return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

7. INVOCATION OF SECTION 74 of the CGST Act:

Section 74 of the CGST Act, 2017:

"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 utilized by reason of fraud, or any willful 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 utilized 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.

(2) to (6)

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(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.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty percent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded, "

8. The Government has from the very beginning placed full trust on the taxpayer and accordingly measures like self-assessments, etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of taxpayer; therefore, the governing statutory provisions create a

liability on taxpayer when any provision is contravened or there is a breach of trust placed on the taxpayer.

9. It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act' 2017 /Gujarat GST Act'2017which reads as "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for the tax period as specified under section 39." It appeared that the said taxpayer has knowingly failed to furnished the return within due date as specified under Section 39(1) of the CGST Act, 2017 read with Rule-61 of the CGST Rules, they also failed to discharged tax liability within the time specified under sub section 7 of section 39 of the said Acts.

10. Since the said taxpayer was liable to self-assess the liability to pay tax, they had an obligation to furnish the correct and complete information.

11. It was noticed that the taxpayer had not paid the tax within the prescribed due dates on the outward supplies made by them. Further they had also not paid interest on the GST payments made at a date later than due date. It, therefore, there is a case of suppression of facts with intent to delay the payment of tax; payment of interest. It appeared that non-payment of interest is required to be demanded/recovered from them under the provisions of Section 74(1) and Section 50(1) of the CGST Act, 2017 /Gujarat GST Act, 2017 read with the provisions of Section 20 of the IGST Act, 2017.

12. Explanation 2 to Section 74 of the CGST 2017 has defined suppression as under:

"Explanation 2.-For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer"

13. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC-0 1 A was issued to the said taxpayer on 31.03.2023 intimating their liability under Section 74(5) of the CGST Act, 2017 to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 10.03.2023.

13.1. The taxpayer have submitted their reply vide letter dated 10.04.2023 wherein they contested against the demand raised under Section 74(1) of CGST Act 2017 and did not agree with the invocation of Section 74 etc. The submissions made by the said taxpayer regarding revenue payable are not

found tenable. The contentions raised by them do not appear to have any merit so as to drop the proposal of issuing the show cause notice. Accordingly, to protect the Government revenue, SCN is being issued under Section 74(1) of CGST Act, 2017 in this case.

14. Therefore, A SCN No. GADT/TECH/SCN/GST/39/2023 dated 19.04.2023 was issued to M/s SKF Technologies India Pvt Ltd called upon to show cause as to why:

- (i) Tax amount of Rs.2,34,28,737.00 (CGST Rs.710,055/- + SGST Rs.1,66,18,492/- + IGST Rs.67,39,190/-) Rupees Two Crore Thirty Four Lakh Twenty Eight Thousand Seven Hundred and Thirty Seven only) not paid within the prescribed time limit specified under sub section 7 of Section 39 of the CGST Acts, 2017 should not be demanded and recovered from them, under the provisions of Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017.
- (ii) Since the Tax amount mention at (i) above has already been paid by them, why the same should not be appropriated against aforesaid demand;
- (iii) Interest amount of Rs.12,49,817.00 (CGST Rs..2,756/- SGST Rs.10,05,101/- + IGST Rs.2,41,960/-) Rupees Twelve Lakh Forty Nine Thousand Eight Hundred and Seventeen only)should not be charged and recovered from them on the tax mentioned at (i) above, under the provisions of Section 74(1) read with Section 50(1) of the CGST Act,2017/ Gujarat GST Act,2017along with the Rule 88B of the CGST Rule 2017;
- (iv) Penalty should not be imposed on them under section 74(1) of CGST Acts, 2017/Gujarat GST Act, 2017.

DEFENCE REPLY

15. The taxpayer vide their letter dated 23.05.2023 submitted their reply to SCN wherein they stated that with reference to the SCN in question, there is no tax demand which is outstanding and the entire tax due has been paid along with the GSTR 3 B Returns of the respective months. Further this fact has also been accepted and not disputed by the authorities as evident from point (i) of the Para 14 of SCN. The only amount in question is the interest on late filing of GSTR3 B, which was pending due to technical glitch of the portal. They highlighted that the tax amount paid as per the GSTR 3 B returns is not

questioned or disputed. Further there is no additional tax liability which is due on the assessee. Neither the tax is short paid by the assessee. Accordingly invoking the provisions of Section 74 for the same is bad in law. Since the tax liability and tax paid amount is not disputed, there cannot be a question of fraud or suppression of facts or wilful misstatement on the part of the assessee. They have relied upon decision of the Hon'ble High Court of Gujarat in case of Merrrs Vishnu Aroma Pouching Pvt. Ltd Vs Union of India (2020)(38)G.S.T.L. 289 (Guj.). While deciding the issue in favour of assessee, Hon'ble High Court held that the assessee had dully discharged his tax liability by depositing the requisite fund in Cash ledger and without any fault of assessee but because of the technical glitch the same could not be offset, therefore it will be in interest of justice not to fasten interest liability upon the assessee.

15.1. They further detailed the reasons for delay in filing GST returns. According to them due to technical issue faced in the GST portal on filing of GST TRAN 1, they were unable to file the GST return in the initial months. The details shown in the GST TRAN 1 were wrongly getting added to the liability of the assessee. They have also informed to the department in this matter vide their letter dated 25.09.2017. In spite of above technical issue being faced, the said assessee still deposited the liability to be paid in cash, in their cash ledger within the due dates. Thus, the assessee had deposited the tax with government and were not able to debit the ledger only on account of a technical issue caused by the GST Portal.

15.2. When they have made payment from their bank account the amount got deposited in the Electronic Cash Ledger (Credit to Electronic Cash Ledger). At the time of filing of the return they have offset the liability and the amount deposited to electronic cash ledger and credit to electronic liability register. This liability get offset when assessee file the return.

PERSONNAL HEARING

16. The personal hearing in this matter is fixed on 13.07.2023, on mutual arrangement, the personal hearing is held on 27.07.2023 and Shri Dugeshkumar Kathuria, tax expert & authorised representative attended the P.H. on behalf of the assessee and he reiterated their written submissions dated 23.05.2023. He further requested to decide the SCN on merits.

Discussion and findings

17. I have carefully gone through show cause notice, written submissions and submissions made during personal hearing by the said taxpayer and the records of the case available on record.

17.1. I find the mot issue requires to be death with first is regards non-payment of interest on payment of tax made in their monthly returns after due date filing GSTR-3B requires and later the consequence of provisions of section 74 of the CGST Act, 2017.

17.2. I find that the show cause notice alleged that during the period from July 2017 to December 2017, the said taxpayer had paid net tax in cash amounting to Rs. 2,34,28,737/- from their electronic cash ledger, on a date later than the due date specified under Section 39(1) Section 39(7) of CGST Acts, 2017 read with Rule 61 of CGST Rules, 2017.

18. In the backdrop of the aforesaid fact, it would be relevant to quote some of the provisions of the CGST Act, which are as under:-

Section-39

“39. Furnishing of returns. - (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form, manner and within such time as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed:

PROVIDED that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.”

Section 39(7)

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

PROVIDED that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein.”

Section 50

“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.

(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 (1) 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.”

Rule 61 of the CGST, Rules, 2017

“61. Form and manner of submission of monthly return.-

(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”

(2) Every registered person required to furnish return, under sub rule (1) shall, subject to the provisions of Section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in Form GSTR – 3B”

19. A bare reading of the provisions of Section 39(1) read with Section 39(7) of the CGST Act would reveal that every registered person is liable to furnish returns (GSTR-3B) and pay tax due as per such return not later than the last date on which he is required to furnish such return or within 20th day of the succeeding month.

20. From combined reading of the provisions of Rule 61(1) & 61(2) of the CGST Rules, 2017, it appeared that Every registered person required to furnish returns as specified under sub-section (1) of section 39 in FORM GSTR-3 to discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and includes the details in the return in Form GSTR-3B. Now on the opposite side, without filing of GSTR-3B returns the tax liability considered stood pending for payment and the amount credited in electronic cash ledger would be considered as deposit only.

21. For better understanding the issue, I take a look into the electronic cash ledger submitted by the said taxpayer and find the details of payment date wise (credit & debit entry) as under:-

Sr. No	Date of Deposit	Reporting date by Bank	Description	Tax period if applicable	Transaction type	IGST	CGST	SGST
1	25.08.2017	25.08.2017	Amount Deposited	-	Credit	1083751	0	5594369
2	20.09.2017	20.09.2017	Amount Deposited	-	Credit	698200	21353	5510171
3	18.10.2017	18.10.2017	Amount Deposited	-	Credit	1265994	14160	5513900
4	20.11.2017	20.11.2017	Amount Deposited	-	Credit	1144420	22162	22162
5	20.12.2017	20.12.2017	Amount Deposited	-	Credit	1061464	1420	1420
6	19.01.2018	19.01.2018	Amount Deposited	-	Credit	1485363	11961	11961
1	23.01.2018	23.01.2018	Reverse Charge	Jul-17	Debit	1083751	0	5594392
2	23.01.2018	23.01.2018	Reverse Charge	Aug-17	Debit	698200	21352	5488818
3	23.01.2018	23.01.2018	Reverse Charge	Sep-17	Debit	1265994	14160	5499739
4	23.01.2018	23.01.2018	Reverse Charge	Oct-17	Debit	1144419	22162	22162
5	23.01.2018	23.01.2018	Reverse Charge	Nov-17	Debit	1061464	1420	1420
6	31.01.2018	31.01.2018	Reverse Charge	Dec-17	Debit	1485362	11961	11961

From the above, it is apparent that the payment of tax amounting to Rs. 2,34,28,737/- due for the period from July 2017 to December 2017 has been credited in the taxpayer's electronic cash ledger by depositing the said amount in their Bank between 25.08.2017 to 19.01.2018 which was deposited before the due date of payment of tax and five days late in case of tax period of July 2017.

Further, it can also be seen that the amount of tax has been debited from the electronic cash ledger on 23.01.2018 & 31.01.2018 by filing of GSTR-3B returns for the said tax period. The debiting of tax from electronic cash ledger can only be considered as discharged of tax liability by the taxpayer. Thus, I find that without filing of GSTR-3B for the tax period, the tax liability cannot be treated as discharged as per provisions of CGST Act and rules and regulations made there under.

22. Further, section 50 of the Act contains provisions relating to levy of interest on delayed payment of tax on his own. The liability of interest would automatic be arisen if the tax due is paid after due day of payment of tax as prescribed. I relying upon the judgement of Hon'ble Jharkhand High Court in case of Mahadev Construction reported at 2020 (36) G.S.T.L. 343 (Jhar.), wherein it was held that

“Liability of interest is automatic, the same is required to be adjudicated in event of an assessee disputes in computation or vary leviability of interest, by initiation of adjudication proceeding under section 73 or section 74 of the CGST Act.”

22.1. Further, I also rely upon the Judgement dated 19th December, 2019 of Hon'ble Madras High Court as elaborated at para 21 in the judgement of Hon'ble Jharkhand High Court in case of Mahadev Construction reported at 2020 (36) G.S.T.L. 343 (Jhar.), wherein it was held that

“27. A careful perusal of the above said provision would show that every person who is liable to pay tax, but fails to pay the same or any part thereof within the period prescribed shall, on his own, pay interest at such rate not exceeding 18% for the period for which the tax or any part thereof remains unpaid. Thus, sub clause (1) of Section 50 clearly mandates the assessee to pay the interest on his own for the period for which the tax or any part thereof remains unpaid. The liability to pay interest is evidently fastened on the assessee and the same has to be discharged on his own. Thus, there cannot be any two view on the liability to pay interest under Section 50(1) of the said Act. In other words, such liability is undoubtedly an automatic liability fastened on the assessee to pay on his own for the period for which tax or any part thereof remains unpaid.

28. Sub-section (2) of Section 50 contemplates that the interest under sub-section (1) shall be calculated in such manner as prescribed from the day succeeding the day on which such tax was due to be paid. Sub-section (3) of Section 50 further contemplates that a taxable person who makes an undue or excess claim of input tax credit under Section 42(10) or undue or excess reduction

in output tax liability under Section 43(10) shall have to pay interest on undue or excess claim or such undue or excess reduction, at the rate not exceeding 24 per cent.

29. A careful perusal of sub-sections (2) and (3) of Section 50 thus would show that though the liability to pay interest under Section 50 is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, more particularly, when the assessee disputes with regard to the period for which the tax alleged to have not been paid or quantum of tax allegedly remains unpaid. Likewise, whether an undue or excess claim of input tax credit or reduction in output tax liability was made, is also a question of fact which needs to be considered and decided after hearing the objections of the assessee, if any. Therefore, in my considered view, though the liability fastened on the assessee to pay interest is an automatic liability, quantification of such liability certainly needs an arithmetic exercise after considering the objections if any, raised by the assessee. It is to be noted that the term "automatic" does not mean or to be construed as excluding "the arithmetic exercise". In other words, though liability to pay interest arises under Section 50 of the said Act, it does not mean that fixing the quantum of such liability can be unilateral, especially, when the assessee disputes the quantum as well as the period of liability. Therefore, in my considered view, though the liability of interest under section 50 is automatic, quantification of such liability shall have to be made by doing the arithmetic exercise, after considering the objections of the assessee. Thus I answer the first issue accordingly."

The above decisions are relying merely on the applicability of interest on delay discharging of tax liability. The fact regards delay payment of tax are under dispute hence the interest on delayed payment of tax is squarely applicable in the present case and the same is required to be recovered from the said taxpayer under the provisions of Section 50 (1) of the CGST Act, 2017/Gujarat GST Act, 2017.

23. On the contrary the taxpayer relying upon the judgement of the Hon'ble High Court of Gujarat in the matter of Messrs Vishnu Aroma Pouching Pvt. Ltd. Vs. Union of India (2020 (38) G.S.T.L 289 (Guj.) in their support as High Court held that the petitioner had duly discharged the tax liability within the period prescribed thereof, however it was only on account of technical glitches in the System that the amount of tax paid by the petitioner had not been credit to the Government account. I find the facts involved in the case are not relevant with the facts of case in my hand. As in that case the details of the liability of tax were not reflected in electronic liability ledger of taxpayer and accordingly the same was not reflected at the time of filing of GSTR-3B, however, taxpayer have discharged the tax liability due before due date whereas in the instant case the

GSTR-3B returns were filed after due date and there was delayed in discharging of the tax liability on part of the taxpayer. However, I find that the order of Hon'ble High Court of Gujarat is appealed before the Hon'ble Supreme Court of India by the department which was dismissed by the Hon'ble Supreme Court of India on ground of time barred in filing appeal as reported at 2021 (50) G.S.T.L. 337 (S.C.).

24. On submission regards the taxpayer have deposited the amount in electronic cash ledger within due dates however, they were unable to debit the said amount to Government from their electronic cash ledger due to this technical issue caused by GST Portal which was resolved only on filing the GST returns. I agree that the taxpayer would have faced the technical glitches or systems related problems in GST regime at the time of its implementation, however, being revenue authority, I would not be like to stand beyond the statutory provisions of CGST Act, 2017 and Rules and Regulations as made thereunder and again I retreat that the GSTR-3B returns is mandate returns and the same is needs to be filed for discharging the tax liability from the taxpayer's electronic liability register. In this case, the said taxpayer had filed GSTR-3B after due date for the period from July-2017 to December-2017 and accordingly they have delayed in discharging their tax liability by way of filing of GSTR-3B which correctly attract Interest on delay discharging of tax liability to Government under the provisions of Section 50(1) of the CGST Act, 2017 read with Section 50(1) of the Gujarat GST Act, 2017 and Rule 88B of the CGST Rules, 2017.

25. As of now, looking to facts of case, I find that it is an undisputed fact on record that the liability of tax amount of Rs. 2,34,28,737/- has not been discharged within due date in the instant case due to non-filing of GSTR-3B returns within the prescribed time limit as specified under sub-section 7 of the Section 39 of the CGST Act, 2017. I find that the situation could have been happened due to technical glitch faced by the taxpayer at the material time but on resolution of the said problem, it was the prime responsibility of the taxpayer, in the present era of self-assessment, to comply the government procedures and immediately pay the tax due along with applicable interest/fee/penalty, as applicable in terms of CGST/SGST rules and regulations. I find that the said taxpayer has not discharged in tax liability within the prescribed time as specified under Section 39(7) of the CGST Act, 2017. Further, I am of the view that since the tax amount of Rs. 2,34,28,737/- has already been paid against liability of tax by the said taxpayer and the same is required to be appropriated against the said tax liability under provisions of section 74 of the CGST Act, 2017/Gujarat GST Act, 2017.

26. I take up the next limbs of the case regards Invocation of Provisions of Section 74 of the CGST Act, 2017 for imposing appropriate penalty.

26.1. Before going into discussion the charges of suppression of facts in terms of provisions of Section 74 of the CGST Act, 2017, I would like to elaborate the core facts of the case available on records which are as under:-

- (i) The payment of tax for the period under dispute have been paid on 23.01.2018 & 31.01.2018 and also filed GSTR-3B returns much before the audit of records of the taxpayer by the department officer conducted on 12.01.2023.
- (ii) The taxpayer, vide their letter dated 25th September, 2017, have intimated to the department regards non-filing of GSTR-3B Returns for the month of July-2017 & August-2017 due to error thrown on GST Portal causing of TRAN-1 credit issue and attached screenshot of the same and also requested no to recovered interest or late fee from them.

From above facts, it is clear that the taxpayer has *sou moto* filed the GSTR-3B returns and also paid the amount of tax for the period under dispute before any interaction by the department. Rather than this, the taxpayer has also intimated to the department regards facing technical glitch in filing of GSTR-3B for the month of July, 2017 & August-2017.

26.2. I examine the relevant provisions in the matter as under:-

Section 74 of the CGST Act, 2017

Section 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 utilized 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 utilized 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."*

Explanation 2 to Section 74 of the CGST 2017 has defined suppression as under:

"Explanation 2.-For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under

this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer"

26.3. On plain reading of provisions of the aforesaid section, it shows that the show cause notice under Section 74 (1) of the Act, can only be issued if the tax is-

- (i) Not paid or
- (ii) Short paid or
- (iii) erroneously refunded or
- (iv) where input tax credit has been wrongly availed or utilized

In circumstances with intent to evade payment of tax as such

- (i) *by reason of fraud, or*
- (ii) *any wilful misstatement or*
- (iii) *suppression of facts to evade tax*

26.4. As of now looking to facts of case regards delay payment of tax due to technical error faced on GST Portal cannot be counted as fraud or wilful misstatement.

26.5. It is also undisputed fact that the tax amount of Rs. 2,34,28,737/- has already been paid and GSTR-3B returns has also been filed by the said taxpayer much before the audit conducted by the departmental officers, therefore, the terms suppression of fact with intent to evade payment of tax does not fit to apply in respect to tax amount had already been paid. Accordingly, I am of the view that penalty under Section 74 of the Act is not applicable in the instant case.

26.6. Further, I rely upon the explanation (b) to Section 49 of the CGST Act, 2017 reproduced as under:-

"Explanation.—For the purposes of this section,—

(a)....

(b) the expression,-

- (i) *"tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and*
- (ii) *"other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder"*

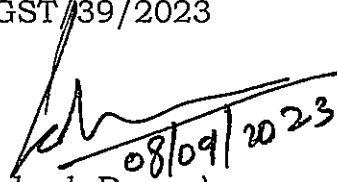
Looking to the above explanation, it appears that interest is part of other dues not part of tax dues, so I am of view that interest is not a part of tax hence invocation of section 74 of the CGST Act, 2017 does not sustain in respect of non-payment of interest on delay payment of tax.

27. In view of the above discussion and findings, I pass the order as under:-

Order

- (i) I confirm the demand of the tax amount of Rs.2,34,28,737/- (CGST Rs. 7,10,055/- + SGST Rs.1,66,18,492/- + IGST Rs.67,39,190/-) Rupees Two Crores Thirty Four Lakh Twenty Eight Thousand Seven Hundred and Thirty Seven only) not paid within the prescribed time limit specified under sub section 7 of Section 39 of the CGST Acts, 2017 and order to recovery the same under the provisions of Section 74(9) of the CGST Act, 2017/Gujarat GST Act, 2017.
- (ii) Since the Tax amount mention at (i) above has already been paid by them, the same is appropriated against aforesaid demand;
- (iii) I hold the liability of Interest of amount of Rs.12,49,817/- (CGST Rs.2,756/- SGST Rs.10,05,101/- + IGST Rs.2,41,960/-) Rupees Twelve Lakhs Forty Nine Thousand Eight Hundred and Seventeen only) on delayed payment of the tax of Rs. 2,34,28,737/-, under the provisions of Section 50(1) of the CGST Act, 2017/Gujarat GST Act, 2017 along with the Rule 88B of the CGST Rule 2017;
- (iv) I do not impose penalty on the taxpayer under Section 74(1) of the CGST Act, 2017/Gujarat GST Act, 2017.

26. The show cause notice bearing F.No. GADT/TECH/SCN/GST/39/2023 dated 19.04.2023 is disposed off in above terms.


(Lokesh Damor)

Joint Commissioner,
Central Excise & CGST,
Ahmedabad North.

Date 08/09/2023

Place: Ahmedabad
F.No. GST/15-47/OA/2023
To,
M/s. SKF Technologies India Pvt Ltd,
(GSTIN No: 24AAACC4393D1Z0)
having their principal place of business
at Mile Stone Kandla,
Village:- Kerala, Ahmedabad

Copy to:-

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, CGST & Central Excise, Division-V Ahmedabad North.
3. The Superintendent, Range-V, Division-V, CGST & Central Excise, Ahmedabad North **with a request to create Form GST DRC-07 electronically in terms of DSR Advisory no.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.**
- ✓ 4. The Superintendent (System), CGST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.