

No interest on wrongly availed Input Tax Credit

F1 Auto Components Limited¹

The Petitioner filed a Writ Petition with the Madras High Court challenging the order for payment of interest on Input Tax Credit ('ITC'), which was wrongly availed but subsequently reversed through adjustment from ITC available in the Electronic Credit Ledger (ECL) and through the Electronic Cash Ledger (Cash).

Facts of the case:

- F1 Auto Components Private Limited ('the Petitioner') wrongly availed ITC of CGST and SGST.
- Tax authorities served a notice to the Petitioner intimating it of wrongful claim of ITC and sought reversal of such ITC.
- Subsequently, the Petitioner paid the amount of wrongly availed ITC through Form DRC-03 by utilisation of ITC lying in ECL as well as in Cash.
- On such reversal amount, the authorities proceeded for recovery of interest from the Petitioner under Section 50 of the CGST Act, which was challenged.

¹ WP No. 6631 of 2021 and WMP No. 7188 of 2021

² Maansarovar Motors P. Ltd. V. Asstt. Commr., Chennai, 2021 (44) GSTL 126 (Mad.)

Judgement of the High Court:

- The issue before the Court was dealt in two parts, viz. levy of interest on amount paid through ECL and Cash, respectively.
- The High Court observed that Section 42 of the CGST Act provides for issuance of notice by the assessing authority in case of mismatch of particulars between ITC availed by the recipient vis-à-vis details of tax invoice furnished by the supplier on GSTN (Common Portal). Thus, Section 42 can be invoked only on account of mismatch due to error / mistake on the GSTN.
- In the instant case, the Petitioner received an intimation as to wrong availment of ITC in GST returns. On receipt of intimation, the Petitioner accepted its mistake and reversed the wrongly availed ITC. Since, it is not a case of mismatch of ITC, Section 42 was considered inapplicable.
- The High Court relied on its judgement in case of Maansarovar Motors P. Ltd.² wherein a batch of writ petitions were filed contesting levy of interest on



payment of tax through reversal of ITC. It was held that no interest shall be payable on the tax liability discharged through utilisation of ITC. Basis this judgment, the High Court held that the Petitioner-taxpayer is not liable to pay interest on the reversal of ITC made through adjustment from ECL.

- The High Court upheld the interest on payment through Cash whilst observing that interest is compensatory and mandatory.

Dhruva Comments:

This judgement reiterates the important ratio that interest on ITC that was wrongly availed and later reversed from and through ECL, is not payable. Yet, the Court did not dwell upon the validity and applicability of Section 42 of the CGST Act *per se*, in as much as it provides for matching, reversal and reclaim of ITC through the original return provisions involving Form GSTR-2 and Form GSTR-3, which have not come into effect and extended indefinitely.

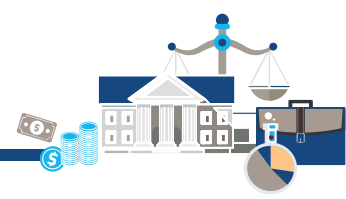
So far as the judgement rules that Section 42 is not applicable on cases other than ITC mismatch, interest on cash component should also not be applicable under Section 50(3). However, it was held to be paid as a compensation.

The judgment shall be relevant in cases where interest is sought at 24 percent, by invoking Section 50(3) read with Section 42, in cases of excess availment of ITC.

Further, the judgment of *Maansarovar Motors (supra)* dealt with the effective date of the proviso to Section 50(1) of the CGST Act and held that interest is not payable on output tax liability discharged through ITC in belated filing of returns. The same could not be *ispo facto* applied where ITC is wrongly availed.

Also, the Madras High Court, in *Refex Industries Limited*³, observed that ITC represents the amount due to an assessee by the Department and opined that interest shall be payable only on the cash component of belated tax payment.

³ *Refex Industries Limited V. Asstt. Commr., Chennai, 2020 (34) GSTL 588 (Mad.)*





ADDRESSES

Mumbai

One World Center, 11th floor,
Tower 2B, 841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad 380015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana 122002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune 411045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
Emaar Square Building 4, 2nd Floor,
Office 207, Downtown,
Dubai, UAE
Tel: + 971 56 900 5849

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Ritesh Kanodia

ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

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