

**Circular No. 192/04/2023-GST Dated 17<sup>th</sup> July 2023** clarified charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof. The situation covered was in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

**The Circular did** not cover the situation wherein ITC was wrongly availed in CGST and was either partially or fully utilised but the aggregate balance in CGST and IGST was more than the ITC wrongly utilised or a similar case for SGST. The judgement in the matter of **Infac India (P.) Ltd. v. Deputy Commissioner [2023] 155 taxmann.com 436 (Madras) (14-09-2023)** referred hereinunder covers this aspect and provides relief in such cases. The Circular although principally laying down the same principle, for some reason or the other, covered only cases of IGST wrong utilisation and combined balance of CGST, SGST and IGST but did not cover cases of wrong utilisation of CGST/SGST and combined balance of CGST/IGST and SGST/IGST respectively. The judgement now provides that-

**-No Interest wherein there is Wrong availment and utilization of ITC in CGST but balance available in IGST**

**-Amount wrongly availed under CGST allowed to be paid from IGST post facto, therefore levy of Interest unnecessary as there was no loss to the revenue.**

**Held**

**Facts of the case-**

- Petitioner had excess** balance in Personal Ledger Account of Rs 25,77,523/- in Central Excise Act, 1944 as on 30-6-2017 which he could have asked for refund under the provisions of the Central Excise Act, 1944. However, by mistake, the petitioner transitioned the amount lying in its Personal Ledger Account on 23-8-2017 under CGST as if it was an ITC lying unutilized.
- It was admitted** that the petitioner should have claimed refund of the amount lying unutilized in its Personal Ledger Account under section 11B of the Central Excise Act, 1944, read with Section 142(3) of the CGST Act, 2017 instead of transitioning the same as Transitional Credit under the Head CGST.
- However, once the** said amount was transitioned as CGST under the Credit Ledger, output liability in respective months was discharged out of the same although he had substantial balance in its IGST Credit Ledger. The petitioner instead of utilizing the amount of Rs. 25,77,523/-, which was wrongly transitioned under section 140 of CGST Act, 2017 as transitional credit, could have utilized ITC lying unutilized in its IGST Ledger between 1-11-2018 to 17-2-2019.
- Thereafter, taxpayer repaid** the amount wrongly transitioned as Transitional Credit out of IGST which was lying unutilized and applied for refund of amount of Rs 25,77,523/-. The said amount of Rs. 25,77,523/- was refunded, however, while refunding the amount, a sum of Rs. 9,25,366/- was deducted towards interest toward the balance utilised in CGST Ledger by the petitioner.

**Contention by Petitioner-**The petitioner contended that the issue was revenue neutral and there was no loss to the revenue. In terms of Section 49(5)(B) of the CGST Act, 2017, ITC availed on integrated tax had to be first utilized towards integrated tax liability and remaining amount, if any, can be utilized towards Central Tax or State Tax liability and in terms of Section 49(5)(A) of the CGST Act, 2017, the petitioner would have been entitled to utilize the proportionate IGST Credit towards tax liability and rightly claim refund under section 142(3) of the Central Goods and Services Tax Act, 2017.

**Contention by Revenue-**Revenue contended that those tax payers who migrated from VAT and or Central Excise Act, 1944, or Finance Act, 1994 were entitled to carry forward the legacy credit. It was submitted that the petitioner had an option to carry forward legacy credit in its Electronic credit ledger by filing TRAN-1. In the present case, the petitioner had carried forward the legacy credit along with PLA balance of Rs. 25,77,523/- in contravention of provisions of CGST Act, 2017. It was therefore submitted that amount had been rightly credited back to the petitioner after adjusting Rs. 9,25,366/- towards interest on amount of wrong transitioning & utilization of amount in Personal Ledger Account into ECL, which petitioner was not entitled to do.

**Observation by the Court-**The Court observed that petitioner had sufficient balance of ITC availed on Integrated Tax as borne by the petitioner on the supplies made to the petitioner as per Section 49(5)(B) of CGST Act, 2017. The aforesaid amount had to be first utilized towards the Integrated Tax liability and thereafter towards Central Tax liability and the balance if any lying unutilized towards State Tax. Input Tax Credit available during the period in dispute between 1-11-2018 to 17-2-2019 was ranging from Rs. 10,16,52,423/- to Rs. 5,19,08,095/- as detailed below:

Sl. No.	Date	Integrated Tax (in Rs. )
1.	20-11-2018	10,16,52,423.00
2.	19-1-2019	5,19,08,095.00

**The Court observed** that the petitioner could have paid the Central and State GST out of the Input Tax in IGST and amount of Rs. 25,77,523/- was wrongly transitioned under section 140 of the Central GST Act, 2017 and was utilized towards Central and/or State GST. It has been allowed to be re-paid post facto out of Integrated Input Tax Credit which was lying unutilized. Thus, the tax liability stands squared up. However, deduction of Rs. 9,25,366/- towards interest was unnecessary as there was really no loss to the revenue. It would have been different, if tax liability was adjusted earlier out of Input Tax credit availed on State GST borne and was utilized for payment of Central GST by the petitioner under the provisions of the CGST Act, 2017.

**Held by the Court-**Therefore, the impugned order dated 31-1-2020 seeking to adjust a sum of Rs. 9,25,366/- towards interest was to that extent modified by directing to refund the aforesaid sum of Rs. 9,25,366/- to the petitioner.