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By **Nidhi, Advocate**

Judgment No.: 080
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Judgment Deals With

Section/Rule	Section 140
Authority	Madras High Court
Case Name	Infac India Pvt Ltd. VS The Deputy Commissioner
Dated	14th September, 2023

Brief Facts:

The petitioner has challenged the impugned Order-in-Original No.02/2020 (RF) dated 31.01.2020 by which, the Department has sanctioned a refund of Rs.16,52,157/-, after adjusting a sum of Rs.9,25,366/- as interest due from the petitioner.

Contention of the Petitioner:

The petitioner could have asked for refund of the amount that was lying unutilized in the Personal Ledger Account under the provisions of the Central Excise Act, 1944, as on 30.06.2017. However, by mistake, the petitioner transitioned the amount lying in its Personal Ledger Account on 23.08.2017 as if it were an Input Tax lying unutilized, in accordance with Section 140 of the CGST Act, 2017.

The petitioner had a substantial balance in its IGST ITC Account on the IGST borne on supplies effected to the petitioner. Instead of utilizing the amount of Rs.25,77,523/-, which was wrongly transitioned under Section 140 of the CGST, 2017 as transitional credit, the petitioner could have utilized Input Tax credit lying unutilized in its IGST ITC Account during the period between 01.11.2018 to 17.02.2019. It is therefore, the case of the petitioner that the issue is neutral and there was no loss to the revenue.

In terms of Section 49(5)(B) of the CGST Act, 2017, the ITC availed on integrated tax has to be first utilized towards integrated tax liability and the remaining amount, if any, can be utilized towards Central Tax or State Tax liability as the case may be. In view of Section 49(5)(A) of the CGST Act, 2017, the petitioner would have been entitled to utilize the proportionate IGST ITC towards tax liability and rightly claim refund under Section 142(3) of the CGST Act, 2017.

Contention of the Petitioner:

As per Section 50(3) of the CGST Act, 2017, for any excess claim of ITC or excess reduction in output tax liability, interest shall be paid at such rate not exceeding 24%.

The GST Acts contemplates to match the Input Tax credit availed by the recipient with the details of outward supply of supplier and the same have been explained in Sections 42 and 43 of the CGST Act, 2017.

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 under Section 140 of the CGST Act, 2017. 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 the CGST Act, 2017 for transitional credit.

Therefore, the amount has been rightly credited back to the petitioner after adjusting a sum of Rs.9,25,366/- towards interest on amount of wrong transitioning and utilization of amount in its Personal Ledger Account into electronic credit ledger, which the petitioner was not entitled to do so.

Findings & Decision of the Court:

There is no doubt 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.

The fact also remains that the petitioner had sufficient balance of Input Tax credit availed on Integrated Tax as borne by the petitioner on the supplies made to the petitioner

In this case, it is noticed that the Input Tax Credit that was available during the period in dispute between 01.11.2018 to 17.02.2019 was ranging from Rs.10,16,52,423/- to Rs.5,19,08,095/-.

The petitioner could have paid the Central and State GST out of the Input Tax Credit availed on Integrated GST borne by the petitioner. The 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, tax liability stands squared up.

The amount of Rs.25,77,523/- that was wrongly transitioned under Section 140 of the Central GST Act, 2017 and utilized towards tax liability has been also refunded. However, while refunding the amount, a sum of Rs.9,25,366/- was deducted towards interest. Deduction of Rs.9,25,366/- towards interest was unnecessary as there was really no loss to the revenue.

Therefore, the impugned order dated 31.01.2020 seeking to adjust a sum of Rs.9,25,366/- towards interest cannot be sustained. To that extent, the impugned order was modified.