IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11064 of 2025

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

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Approved for Reporting	Yes	No
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ANAS ENTERPRISE
Versus
UNION OF INDIA & ANR.

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Appearance:
UCHIT N SHETH(7336) for the Petitioner(s) No. 1
DEEPAK N KHANCHANDANI(7781) for the Respondent(s) No. 2
MR PRADIP D BHATE(1523) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 16/07/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Since a short issue is involved in the matter, the same is taken up for final disposal.

2. The present petition is filed for quashing and setting aside the order dated 17.06.2025, passed in FORM-GST-RFD-06 by the respondent No.2, rejecting the refund claim of the excess payment of interest.

3. Learned advocate Mr.Uchit Sheth, appearing for the petitioner has submitted that despite the petitioner having pointed out the judgement of this Court rendered in the case of *Arya Cotton*

Industries and Anr. vs. Union of India and anr., (2024) 130 GSTR 81, respondent No.2 has passed the impugned order. It is submitted that subsequently, in view of the judgement passed by this Court, a Proviso to Rule 88B of the Central Goods and Services Tax Rules, 2017 (for short "CGST Rules") has been introduced, which also finds to be in favour of the petitioner however, the respondents have refused to apply the same retrospectively.

4. The petitioner, who is engaged in the business of manufacturing and sale of chewing tobacco, filed belated returns for the months of July-September 2017, June 2020 and March-June 2021. All the amount of tax as per such returns were deposited in the Electronic Cash Ledger before the due date for filing returns for all the months, barring the month of April, 2021. It appears that there was some audit objection raised with regard to the interest computed and paid on 01.06.2023 by filing FORM GST DRC-03. The audit report issued on 23.06.2023 mentions about the levy of interest and thereafter, an advisory was issued to the petitioner asking to pay interest because of belated filing of returns. Subsequently, a notice was issued on 17.01.2025, demanding interest on the basis of belated filing of returns. It was responded by the petitioner vide the letter dated 04.04.2025. The petitioner

also pointed out the decision of this court in the case of **Arya Cotton Industries and Anr. (supra).** Thereafter, formal refund application dated 19.04.2025 was filed on online GST portal along with calculation of refund.

5. A deficiency memo was issued with reference to such refund application. Accordingly, the petitioner immediately refiled the refund application on 27.04.2025 however, a notice was issued on 10.06.2025 to the petitioner proposing to reject the refund application on the ground that the amendment made in Rule 88B of the CGST Rules is prospective in nature and hence, the refund application of the petitioner for the period prior to amendment deserves to be rejected. The petitioner again responded on 16.06.2025, pointing out the order of this Court and reiterating his request however, the respondent No.2 passed the order dated 17.06.2025, rejecting the refund application by holding that amendment to Rule 88B of the CGST Rules is prospective in nature. The same is impugned in the present writ petition.

6. Learned advocate Mr.Uchit Sheth, while pointing out the Minutes of 53rd meeting of the GST Council, held on 22.06.2024, has submitted that the amendment to Rule 88B of the CGST Rules by introducing the Proviso thereunder was, in

fact, made pursuant to the decision of this Court in the case of **Arya Cotton Industries and anr. (supra).** Thus, it is urged that the impugned order is required to be quashed and set aside.

7. Opposing the present writ petition and the foregoing submissions, learned Senior Standing Counsel Mr.Khanchandani, at the outset has submitted that the petitioner has an alternative remedy of filing an appeal under section 107 of the Central Goods and Services Tax Act, 2017 (for short "CGST Act") before the Additional Joint Commissioner (Appeals) and hence, the petition may not be entertained. Further, it is submitted that the Proviso, which was introduced with effect from 10.07.2024 under Rule 88B of the CGST Rules will apply prospectively and hence, the impugned order may not be interfered with.

8. We have heard the learned advocates appearing for the respective parties.

9. It is pertinent to note that the respondent authority has denied the grant of refund of excess amount of interest by rejecting the application of the petitioner only for the reason that the Proviso to Rule 88B of the CGST Rules only applies prospectively, by ignoring the judgement of this Court rendered in the case of **Arya Cotton Industries and anr. (supra).** The petitioner repeatedly pointed out the said

decision in his replies however, the respondents have not acceded to the request and examined the case of the petitioner in light of the said judgement. The relevant paragraphs of the judgement rendered by the Coordinate Bench of this Court in the case of **Arya Cotton Industries and anr. (supra)** are as under:

> *"12. As per the above explanation, the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in electronic cash ledger. Therefore, when the return is filed by the assessee in Form GSTR-3B and if there is sufficient balance available in the electronic cash ledger, than liability as per the return is simply offset against such balance by debit in electronic cash ledger. Hence, the tax paid at the time of deposit into electronic cash ledger which is adjusted against liability at the time of filing of return is merely setting off of the amount from electronic cash ledger to be utilised for payment of tax liability as per the return filed. Therefore, the amount in the electronic cash ledger is nothing but in nature of advance tax lying in the account of the assessee which cannot be withdrawn or utilised in any manner by the assessee except for payment of tax liability as per the return filed.*
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> *13. Section 50 of CGST Act provides for interest on delayed payment of tax. Proviso to Section 50(1) refers to interest on tax payable in respect of supplies made during a tax period and declaring the return for the said period furnished after the due date in accordance with the provisions of Section 39 shall be payable on the portion of the tax which is paid by debit in electric cash ledger. It appears that the respondents have literally interpreted the words "interest shall be payable on that portion of the tax which is paid by debit in the electronic cash ledger". The debit in electronic cash ledger is on the date of filing of the return and therefore, interest is calculated till date of filing of return*

ignoring the fact that the assessee might have deposited the amount in electronic cash ledger prior to the date of filing of belatedly return for and various return may reasons. Be filed Debiting of electronic cash ledger is only adjustment of the amount of deposit made in the electronic cash ledger. Therefore, on plain reading of the provisions of Section 50(1) which applies for calculating levy of interest on delayed payment of tax cannot be literally interpreted to the effect that interest is payable on the amount which is already deposited and utilised for the payment and thereafter adjusted for payment of tax is contrary to the fundamental principle for charging interest which is compensatory in nature. If the mechanical and literal interpretation is done by the respondent is accepted, the same would convert the interest into the nature of penalty. It appears that for the purpose of introduction of the proviso to Section 50(1), is with regard to remove the controversy which earlier existed as to whether interest is leviable on gross tax liability without considering admissible input tax credit or whether it was only applicable on net tax liability paid by the taxable person. The GST Counsel in his 31st meeting decided to incorporate proviso to Section 50 of the Act so as to clarify that interest was leviable only liability and accordingly, the on net tax proviso was introduced prospectively by Finance Act, 2019 and notified vide notification No.63/2020 dated 25.08.2020 and thereafter, in the 39th meeting of the GST Counsel, it was decided to apply the proviso with effect from 01.07.2017 by Finance Act, 2021. The retrospective of the provisio was notified by notification No.16 of 2021 dated June 1, 2021.

14. Therefore the purpose of introduction of the proviso to Section 50 was only to clarify with regard to levibility of the interest on net tax liability liability of the and not assessee. On gross tax The proviso has therefore nothing to do with the period for which the interest is to be levied.

15. Therefore, the interest can be levied only from the due date of payment of tax till the deposit of such tax in the electronic cash ledger on demand of interest even for subsequent period from the date of *deposit in electronic cash ledger till date of filing of return is therefore not tenable."*

10. We may assert that the respondents have not denied that the case of the petitioner is squarely covered by the aforesaid observations of this Court. It appears that pursuant to the decision rendered by this Court on 14.06.2024, the 53rd meeting of GST Council, held on 22.06.2024, introduced the Proviso to Rule 88B of the CGST Rules in line of the judgement of this Court, which was inserted vide Notification No.12/2024 dated 10.07.2024, with effect from 10.07.2024.

11. The Proviso to Rule 88B of the CGST Rules reads as under:

"Provided that where any amount has been credited in the Electronic Cash Ledger as per provisions of sub-section (1) of section 49 on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return."

12. Thus, the respondent, though have not denied that the case of the petitioner is governed by the decision of this Court, but curiously, refused to apply the ratio laid down by this

Court by contending that the Proviso to Rule 88B of the CGST Rules applies prospectively.

13. This is a classic case of selective denial. On one hand, they acknowledge that the ratio of the decision in case of **Arya Cotton Industries and anr. (supra),** applies to the claim of interest, but, simultaneously, they deny by taking shelter under the self-determined prospective effect of Rule 88B of the CGST Rules. The respondents were supposed to process the application filed by the petitioner for refund in light of the aforesaid judgement, but instead, they chose an alternative route to reject the application by applying the analogy that the Proviso to Rule 88B of the CGST Rules would apply prospectively.

14. Thus, the impugned order rejecting the application of the petitioner is not only arbitrary, but suffers from total non-application of mind to the decision rendered by this Court despite having been pointed out by the petitioner repeatedly.

15. Hence, we are inclined to accept the writ petition. The impugned order dated 17.06.2025 is hereby quashed and set aside. The recovery notice

dated 17.01.2025 is also quashed and set aside. We direct the respondents to grant refund of excess amount of interest in terms of the refund application filed by the petitioner along with statutory interest of 6% per annum. The necessary order processing the refund application shall be passed within a period of six weeks, failing which such amount would carry a further interest of 12% per annum. for each week of delay. We also impose a cost of Rs.5,000/- on the respondent, which shall be deposited before the registry of this Court within a period of one week from the date of receipt of this order.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

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