



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 ☎ 07926305065- टेलीफैक्स 07926305136



DIN NO. : 20210564SW0000618317

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/226 to 229/2020-ADMN / 1387 TO 1392

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-01 to 04/21-22**
 दिनांक Date : **21-05-2020** जारी करने की तारीख Date of Issue : 25-05-2021

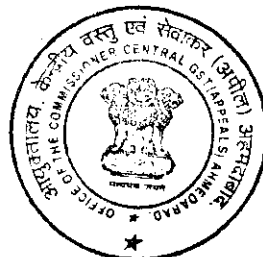
श्री मोहित अग्रवाल अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mohit Agrawal, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **77 to 80/RF/HMT/19-20** all dated **27-01-2020** issued by Assistant Commissioner, Central GST, Div-Himatnagar, Gandhinagar Commissionerate

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Yogesvar Stones, (GSTIN: 24AAWPT4330J1Z8)
 Gr. Floor, Below Aaradhana Hostel,
 B/s Grand Camby, Nr. Sola Overbridge,
 Thaltej, Ahmedabad-380054

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER IN APPEAL

M/s. Yogesvar Stones having their office at Gr. Floor, Below Aaradhana Hostel, B/s Grand Camby, Nr. Sola Overbridge, Thaltej, Ahmedabad-380054 (*hereinafter referred to as 'appellants'*) have filed all four present appeals against Order No. 77 to 80/RF/HMT/19-20 all dated 27.01.2020 passed in FORM-GST-RFD-06 (*hereinafter referred to as 'impugned orders'*) issued by the Assistant Commissioner, CGST, Division-Himatnagar, Commissionerate-Gandhinagar(*hereinafter referred to as 'adjudicating authority'*).

2. Briefly stated that the appellant is holding GST Registration number 24AAWPT4330J1Z8 and engaged in the business of Readymix Concrete(RMC). The details of the four refund claims filed by the appellant are as under:

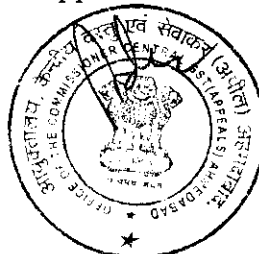
Date of Application of refund	Refund of Month (F.Y. 2017-18)	Amount Involved in Rs.	FORM-GST-RFD-06 Order No.	Date of Order	Appeal No.
01-05-2019	August	96290	77/RF/HMT/19-20	27-Jan-2020	GAPPL/ADC/GSTP/226/2020-APPEAL
01-05-2019	September	30949	78/RF/HMT/19-20	27-Jan-2020	GAPPL/ADC/GSTP/227/2020-APPEAL
01-05-2019	October	41564	79/RF/HMT/19-20	27-Jan-2020	GAPPL/ADC/GSTP/228/2020-APPEAL
01-05-2019	November	5222	80/RF/HMT/19-20	27-Jan-2020	GAPPL/ADC/GSTP/229/2020-APPEAL

Above mentioned refund claims were filed before the adjudicating authority, under Section 54 of CGST Act,2017, on account of Supplies to SEZ unit/SEZ Developer with payment of tax. The adjudicating authority vide impugned orders rejected the refund claims on the basis of non-submission of required documents physically in support of claim and non-submission of original copy of declaration by SEZ unit/SEZ Developer mentioning that they have not availed any ITC on the same supplies. The adjudicating authority also find that the appellant has not submitted the require documents physically in support of claim. Since the issue involved is identical for different periods, therefore, all the four appeals are taken up for decision vide this common order.

3. Being aggrieved with the impugned orders, the appellant filed the present appeals wherein, inter alia, stated that:

- Section 54(1) of CGST Act allows refund of IGST paid on zero rated outward supplies;
- Non issuance of Show Cause Notice or equivalent opportunity of being heard not given prior to issue of the impugned order is against principles of natural justice.
- The appellant has submitted the required declaration under Rule 89(2)(f). In this regard appellant would wish to draw attention to Rule 89(2) of the CGST Rules, 2017 as amended by Notification No. 03/2019-CT dated 29.01.2019 with effect from 01.02.2019.
- The appellant had already submitted original copy of the declaration as mentioned in the new provision of Rule 89(2)(f) at the time of manual submission of documents on 31.05.2019. Still, out of abundant caution, the appellant had also submitted a photocopy of the declaration as sought under the earlier sub rule as well.
- The impugned order is incorrect as it rejects whole refund amount.

4. A personal hearing in the matter was held on 21-04-2021. Shri Shenal Thakkar(C.A.) appeared before me for personal hearing on dated 21.04.2021 on behalf of M/s Yogesvar Stone through video conferencing mode in appeal no. GAPPL/JC/GSTP/226 to 229/2020-APPL-Ahmedabad. He re-iterated submission made in appeal memorandum and requested to consider their appeal.



5. I have gone through the records of the case, the impugned orders, the grounds of appeals. The issue to be decided in the present appeal is whether the impugned orders rejecting the refund claims are correct, legal, proper or otherwise.

6. Prima facie, I find that the appellant had filed aforesaid refund claims under Section 54 of CGST Act, 2017 on account of Supplies to SEZ unit/SEZ Developer without payment of tax. I find that the adjudicating authority has rejected all four refund claims on the basis of non-submission of required documents physically in support of claim and non-submission of original copy of declaration by SEZ unit/SEZ Developer mentioning that they have not availed any ITC on the same supplies. Further, I find that the appellant has mentioned in grounds of appeal that he has submitted the required declaration under Rule 89(2)(f). In this regard appellant would wish to draw attention to Rule 89(2) of the CGST Rules, 2017 as amended by Notification No. 03/2019-CT dated 29.01.2019 with effect from 01.02.2019. In this context, before moving forward, let me first reproduce the relevant Rule 89(2) of CGST Rules, 2017 which is re-produced here below.

Rule : 89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1)

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in subsection (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods;

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

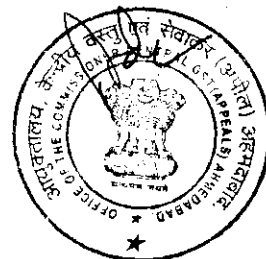
(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit



has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax; 146 Substituted vide Notf no. 03/2019-CT dt. 29.01.2019 wef 01.02.2019 for —a declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer Page 92 of 161

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

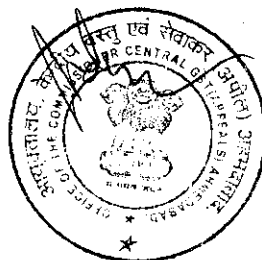
Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;

Explanation.— For the purposes of this rule—

- (i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression “invoice” means invoice conforming to the provisions contained in section 31;
- (ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

Further I find that as per Rule 89(2) of CGST Rules, 2017 the application shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant.

7. Further, I find that the adjudicating authority has given opportunity by issuing deficiency memo in FORM-GST-RFD-03 for rectification of deficiencies. Further, I find that the adjudicating authority has clearly mentioned in the impugned orders that no reply has been received from the claimant side. Hence, I observed that the adjudicating authority has therefore rightly decided the matter based on record which were available with him. I observed that a deficiency memo was issued for refund application reference no. AA240817009443A dated 31.05.2019. I observed from the deficiency memo that the appellant have mentioned the Outward Taxable Supplies (Zero rated) amounting to Rupees ZERO in Column no. 3.1 (b) in Form GSTR-3B in the relevant period and in GSTR-1 at column no. 6A in the same period. Further the appellant mentioned exports invoices value as Rs. 0/- but the appellant have claimed refund on account of supplies to SEZ Unit/SEZ Developer (with payment of tax). Further I find that the appellant has not submitted any documents in respect of above mentioned deficiency.



8. In view of the above, I do not find any force in the contentions of the appellant in respect of their claim. Further, I find that the appellant has not submitted the required documents as per Rule 89(2) of CGST Rules, 2017 in absence of which eligibility of refund cannot be determined.

9. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority vide "impugned orders". In view of above discussion, I reject all four appeals filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


The appeal filed by the appellant stand disposed off in above terms.

(मोहित अग्रवाल)

अपर आयुक्त(अपील्स)

Date : 21-05-2021

Attested


(B. S. Meena)
Superintendent (Appeals)
CGST, Ahmedabad.
By R.P.A.D.



To,

M/s. Yogesvar Stones
(GSTIN: 24AAWPT4330J1Z8)
Gr. Floor, Below Aaradhana Hostel,
B/s Grand Camby, Nr. Sola Overbridge,
Thaltej, Ahmedabad-380054

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, Central Tax, Gandhinagar Commissionerate.
4. The Assistant Commissioner CGST, Div-Himatnagar, Gandhinagar Commissionerate..
5. The Assistant Commissioner, System, Central Tax, Gandhinagar Commissionerate..
6. Guard File.
7. P.A.