



सत्यमेव जयते

आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1819/2021

/2234 - 2239

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-37/2022-23**

दिनांक Date : **29-06-2022** जारी करने की तारीख Date of Issue : 29-06-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZT2405210559251** dated **31.05.2021** issued by Assistant Commissioner, Central Goods and Service Tax, Division Himmatnagar, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s BMD Private Limited

Survey No. 774, BMD Private Limited,

Gambhoi Harsol Road, Hathrol,

Sabarkantha, Gujarat - 383030

(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

This appeal has been filed under Section 107 of the Central Goods and Service Tax Act, 2017 by M/s. BMD Private Ltd. Survey No. 774, BMD Pvt. Ltd. Gambhoi Harsol Road, Hathrol, Sbarknatha, Gujarat-383030 [hereinafter referred to as 'the appellants'] against the Order-in- Original No. ZT2405210559251 dated 31.05.2021 (hereinafter called as the "impugned order") passed by the Assistant Commissioner, Central GST, Division Himmatnagar (hereinafter called as the "adjudicating authority").

2. BRIEF FACTS OF THE CASE

2.1 The appellant having GSTIN 24AABCB2235N1ZU is engaged in manufacturing of automotive furnishing fabric. Output products of the Appellant are taxable at the rate of 5% and 12% whereas input goods used to manufacture the said goods are taxable at rate higher than 5% and input services used are taxable at 18%. During the period of April 2019 to March 2020 (hereinafter referred to as " impugned period"), the appellant made purchase of various imputes used in manufacture of output product and availed various services for the said purposes and hence availed input tax credit for Rs. 2,41,48,972/- (integrated tax of Rs. 1,68,56,375/-, central tax of Rs. 36,46,298/- state tax of Rs. 36,46,298/- in FORM GSTR-3B. However, Rs. 2, 41,48,972/- have been considered for the purposes of impugned refund. That output supplies for Rs. 21,10,74,182/- were made during the period out of which supplies amounting to Rs. 19,46,47,527/- are covered under inverted duty structure as well as reported in Form-1.

2.2 That the break-up of input tax credit (input and input services), inverted duty turnover and total turnover is as under:

Tax period	Input	Input Services	Inverted duty turnover	Total turnover
April 2019 to March 2020	2,30,01,868	11,47,105	19,46,47,527	21,10,74,182

2.3 That the Appellant filed an Application of Refund dated 11.05.2021 in Form GST RFD-01 for tax period 'April 2019 to March 2020' with ARN AA240521027084R with the reason "Refund on account of ITC accumulated due to inverted Tax structure" The computation details are under :-

Turnover of Inverted rated supply of goods and services	Tax payable on such inverted rated supply of goods or services	Adjusted total turnover	Net input tax credit.	Maximum refund amount to be claimed
(1)	(2)	(3)	(4)	5 =[(1*4/3)-2]
19,46,47,527	1,81,49,459	21,10,74,182	2,41,48,972	41,20,142



2.4 The adjudicating authority had issued a show cause notice no. ZY2405210412128 in FORM GST RFD-08 on 24.05.2021 for the impugned period denying the refund of Rs. 11,78,652/- on account of the reason extracted hereunder :-

(i) All input service ITC which claimed in RFD-01	11,47,105	Reduced from net ITC
(ii) All input goods ITC not appearing in GSTR-2A but claimed in RFD-01	1,31,014	Reduced from net ITC
Total amount reduces from net ITC	1278119	

The net effect of which is shown below:-

Particulars	Inverted Rated Turnover (a)	Tax payable on inverted supply (b)	Adjusted Total Turnover (c)	Net ITC (d)	Eligible Refund [(a/c*d)-b]
As per RFD-01	19,46,47,527.31	1,81,49,458.91	21,10,74,181.66	2,41,48,970	41,20,142
As per RFD-08	19,46,47,527.31	1,81,49,459.91	21,10,74,181.66	2,28,70,851.37	29,41,489.45
Amount inadmissible					11,78,652

2.5 That as per Rule 92(3) of CGST/GJST rules the Appellant was required to furnish a reply to Show Cause Notice within 5 days of receipt of such notice in Form GST RFD-09. Therefore, reply was to be submitted by appellant till 29.05.2021. The appellant submitted a reply to the above said show cause notice duly in Form RFD-09 on 28.05.2021.

2.6 Further, the adjudicating authority issued impugned order on 31.05.2021, rejecting the refund claim due to the reason that as per para No. 53 of Circular No. 125/11/2019-GST dated 18.11.2019 held that no allow the refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit; As per SC order in case of M/s. Mufatlal Industries Ltd. Vs. UOI:- the principles laid down in this judgement should be applied to the fact situation obtaining in individual cases and should be disposed of accordingly; Department has filed appeal before SC against Gujarat High Court's Order in case of M/s. VKC footsteps India Pvt. Ltd. Vs UOI.

2.7 Appellant has submitted that no order rejecting the refund can be issued without affording an opportunity for personal hearing. In terms of provisions the respondent has to issue rejection order only after giving an opportunity of being heard to the appellant.

2.8 The appellant has placed reliance of judgment as given below in support their contention:-

- (i) Apex Court in A.S. Motors Private Limited v. Union of India, reported in (2013) 10 SCC 114,
- (ii) Judgment of Hon'ble High Court of Madras in case of Gayatri Cashes v. Assistant Commissioner of GST and Central Excise, Cuddalore reported as 2018(12) TMI 1405
- (iii) Supreme court of India in case of CCT v. Shukla & Bros., (2010) 4 SCC, Supreme court of India.



2.9 That Rule 89(5) of the CGST Rules /GJGST Rules provides the mechanism which is completely in violation of Section 54(3) of CGST Act. The appellant has relied upon the following Judgment in support of their contention:-

- (i) **State of Jammu & Kashmir v. TrilokiNath Khosa & Ors. reported in AIR 1974 SC 1.**
- (ii) **State of A.P. Mc Dowell & Company & Ors., reported in [1963]3 SCC 709**
- (iii) **Navtej Singh Johar & Ors. Vs. Union of India, [W.P(Cri.) No. 76 of 2016], passed by the Constitution Bench of Supreme Court of India.**

The appellant has submitted that keeping in mind these principles, take closure look at the relevant provisions.

2.10 Appellant has further submitted that Section 54 of the CGST Act provides the substantive right to claim refund of any unutilized input tax credit at the end of tax period. The appellant further Section 54 makes it clear that the person making 'inverted rate supply', shall be eligible to claim refund of 'unutilized input tax credit' under this section. Therefore, refund of unutilized input tax credit is a vested right of the person doing the inverted rated supply ; as soon as the goods or services or both are so supplied , the said rights vested in the assessee by virtue of section 54(3). The section also provides that refund of input tax credit can be claimed at end of any tax period.

2.11 Further it has been submitted that from the chain of amendments the refund of unutilized input tax credit has been restricted only to inputs and too by way of making retrospective amendments in the rules.

2.12 Section 54(3) of CGST Act provides the substantive right to the assessee making inverted rated supply to claim refund hence, the refund of " unutilized input tax credit" is the vested right of the Assessee. However, the formula results in taking away the vested right of the assessee by restricting it to ITC availed on inputs only. Thus same is ultra virus the Articles 14, 19(1)(g), 265 and 300 A of the Constitution of India for being manifestly arbitrary, lacking legislative competence and discrimination ; as also being unreasonably affecting the right to carry on business; and taking away the property of petitioner without there being any law as also taxing without authority of law.

2.13 The appellant also placed the reliance the following court cases

- (i) Paragraph 28 of Agriculture Marketing Committee Versus Shalimar Chemical Works Limited -1997(5) TMI 424 (SC):

(ii) CIT, Delhi v. National Raj Traders, reported at AIR 1980 SC 485 = TMI2—Supreme Court, wherein it has been held that as per the principle of *casus omissus*, omissions cannot be supplied by the Court except in the case of clear necessity and when reason for it found corners of the statute itself.

- (iv) Maxwell on Interpretation of Statutes (12th Edn) at para 33.

(v) Hon'ble Madras High Court in case of Nirma Limited reported as (2012) 281 ELT 321 (Mad.) held that the law is not brooding omnipotence in the sky but a pragmatic instrument of social order, as was opined by Lager Bench of the Apex Court in Carew & Co. Ltd. v. Union of India (1975) 2 SCC 791= 1975 (8) TMI 91-SC. It was further held in held in that case if the language of the statute does not admit of the construction sought; wishful thinking is no substitute for that, thereby holding that purposive interpretation is always progressive in nature.



(vi) The appellant has further placed the reliance on the judgment of the 7-judge Bench of the Hon'ble Supreme Court in Re Kerala Education Bill, 1957 Reference under Article 143(1) of the Constitution of India, AIR 1958 SC 956= 1958 (5) TMI 47- Supreme Court of India wherein it was held that " Even the legislature cannot do indirectly what it certainly cannot do directly". Similarly, a Constitution Bench of the Hon'ble Supreme Court in State of Punjab v. Devans Modern Breweries Ltd, (2004) 11 SCC 26 =2003 (11) TMI 628 – Supreme Court of India held that" it is well-settled principle of law that a thing which cannot be done directly cannot be indirectly", Relying on these judgments, it has been humbly contended by the Appellant that there is a total bar of imposing restriction on the refund eligible to be claimed under inverted duty structure.

(vii) The appellant has further placed reliance of judgment of Hon'ble Gujarat High Court. The Hon'ble Gujarat High Court has declared explanation a) to Rule 89 (5) of the GST Rules as ultra – Virus the Act and has upheld the refund of 'Input services' is also available under inverted duty structure.

(viii) The appellant has further submitted that they are not in agreement with the change introduced vide Circular Number 135/05/2020-GST dated 31.03.2020 wherein refund has been intended to be restrictive only to the extent of invoices appearing in Form GSTR-2A because of the reason that entire input tax credit claimed by the appellant is termed as provisional as per Section 16(2)(c) of the Act read with Section 41 thereof and has been decided by the Government to be sanctioned dully to them. So deviation with the policy decision without any justification in law is not valid.

The appellant has humble prayed to kindly drop the impugned order issued in form RFD-06 issued by the respondent in the matter and allow the refund for the amount of Rs. 11, 78,652/- for the period of April 19 to March-20 with consequential relief (s) and allow interest on refund sanctioned; wherein period of sixty days as computed form date of filing of application for refund

3. Personal Hearing

Personal hearing in the case was held through virtual mode was held on 18.05.2022. CA, Medini Aggarwal authorized representative of the appellant was attended, the personal hearing. He has asked for 03 working days to submit the additional information which was duly granted. The appellant has submitted additional submissions through mail on 20.06.2022. The appellant in their additional submissions that Hon'ble Supreme Court has pronounced its verdict in the same matter on 13.09.2021 in case of VKC Food Steps India Pvt. Ltd. Supreme Court on its landmark judgment of the Madras High Court, thereby rejecting the refund of input services in the case of inverted duty structure; however, it is pertinent to mention here that, after hearing both sides Honorable Supreme Court considering the complexity of the issue, went in favor of Madras High Court, but with a recommendation to the GST Council to remove this anomaly of law. The appellant has further submitted that Supreme Court has not outright rejected the submissions of the assessee and asked to GST council to reconsider formula and remove the anomalies.

4. Findings and submissions

4.1 I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum as well as additional submission dated 20.06.2022 of the 'Appellant'.



I find that the 'Appellant' had presented the refund applications of the ITC accumulated due to Inverted Duty Structure. The adjudicating authority has allowed the said refund of accumulated ITC except ITC of Input Services. In the present issue, it is observed that the appellant has raised their contention that the impugned orders have been passed by the adjudicating authority, without granting an opportunity of being heard to them and therefore violated the principles of natural justice. It is observed from the records attached with the appeal memorandum that a notice for rejection of application of refund in "FORM-GST-RFD-08" has been issued by the adjudicating authority stating that refund application is liable to be rejected on account of the reason mentioned in RFD -08, further it was also directed to appellant to furnish a reply to the notice within fifteen days from the date of service of the notice and appellant was also directed to appear before the adjudicating authority on 29.05.2021. It is observed that the appellant did not attend personal hearing without giving any reason. I also find that the appellant has submitted the reply on 28.05.2021. I also find that the appellant did not request for adjournment of personal hearing. I find that the adjudicating authority is also bound to process the refund claim and issue the orders in a time bound manner, as prescribed under the provisions of Section 54 of the CGST Act, 2017 and Rule 92 of the CGST Rules, 2017. In the present case, I observed that the appellant did not attend the PH before the adjudicating on given date. Hence, I do not find any force in the said contention of the appellant that the principles of natural justice have not been followed by the adjudicating authority while issuing the impugned orders.

4.2 I find that the appellant has submitted that the Rule 89(5) of the CGST Rules/GJGST Rules provides the mechanism which is completely in violation of the parent Act i.e. the express provision of Section 54(3) of CGST Act. Section 54 of the CGST Act provides the substantive right to claim refund of any unutilized input tax credit at the end of any tax period. The appellant has further submitted that bare reading of the section 54 makes it clear that the person making 'inverted rated supply' shall be eligible to claim refund of 'unutilized input tax credit' under this section. Therefore, refund of unutilized input tax credit is a vested right of the person doing the inverted rated supply ;and as soon as the goods or services or both are so supplied, the said right gets vested in the assessee by virtue of section 54(3). To support their contention they have relied upon various judgments.

4.3 Regarding merits of the case, I find that in these cases, the appellant has filed refund claims for refund of ITC accumulated due to inverted tax structure in terms of Section 54 (3) of CGST Act, 2017 read with Rule 89 (5) of CGST Rules, 2017. The adjudicating authority vide impugned orders rejected part of claim amounting to Rs.11,78,652/- which pertains to ITC availed on input services and ITC on input invoices not matched/reflected in GSTR2A. The appellant filed the present appeal to set aside the impugned order on the basis of various case laws and decision of Hon'ble Gujarat High Court in M/s.VKC Footsteps case.

At the outset, I go through the statutory provisions and instructions governing admissibility of refund of ITC accumulated due to inverted tax structure as under :

Rule 89 (5) of CGST Rules, 2017

"(5). In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount= {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.



Explanation:- For the purposes of this sub-rule, the expressions- (a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules 4(A) or (4B) or both; and (b) "Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4)."

5. Further, CBIC vide Circular No. 79/53/2018-GST Page 10 of 10 26/2018-Central Tax dated 13.06.2018 has clarified as under:

Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. Accordingly, in order to align the CGST Rules with the CGST Act, notification No. 26/2018-Central Tax dated 13.06.2018 was issued wherein it was stated that the term Net ITC, as used in the formula for calculating the maximum refund amount under rule 89(5) of the CGST Rules, shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. In view of the above, it is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

6. Further CBIC vide Circular No.125/44/2019-GST dated 18-11-2019 further given clarification as under :

53. Sub-section (3) of section 54 of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, subsection (59) of section 2 of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted tax structure.

7. In view of above, I find that as per explanation given under Rules 89 (5) of CGST 2017, for determining the quantum of ITC eligible for refund, the amount of input tax credit availed only on inputs is to be taken in account for arriving 'Net ITC' in the formula. In other words, ITC availed on input services and capital goods are kept out of the purview of the formula for arriving the Net ITC. Accordingly, the provisions of Section 54 (3) and Rule 89 (5) envisage grant of refund of accumulated ITC availed on inputs only and not to accumulated ITC availed on inputs services and capital goods. The clarifications issued by the Board vide Circulars mentioned above also mandate the view that the intention of the Law is to allow refund of unutilized ITC availed on inputs only and not to allow refund of ITC availed on inputs services and capital goods.



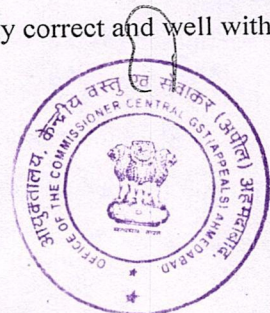
8. With regard to the decision of Hon'ble High Court of Gujarat in the case of VKC Footsteps India P.ltd Vs UOI in SCA No.2792 of 2019, I find that Hon'ble High Court of Gujarat held that the Explanation to Rule 89 (5) of CGST Rules, 2017 which denies unutilized input tax paid on input services as part of ITC accumulated on account of inverted tax structure as ultra vires the provisions of Section 54 (3) of CGST Act, 2017 and accordingly ordered the Department to allow the claim of refund filed by the petitioners considering the unutilized ITC of input services as part of 'net ITC' for the purpose of calculation of refund claim as per Section 54 of CGST Rules, 2017 read with Rule 89 (5) of CGST Rules, 2017. Consequently, the appellant has filed refund claim claiming refund of ITC availed on both inputs and input services under inverted tax structure.

However, against the said decision of Hon'ble High Court of Gujarat, Department has filed Civil Appeal No.4810 of 2021 before the Hon'ble Supreme Court of India. Hon'ble Supreme Court vide common Order dated 13-9-2021 decided the Civil Appeal filed by the Department against Gujarat High Court's decision in VKC Footsteps India P.ltd.

The operative part of decision of Hon'ble Supreme Court so far as it relates to vires of Rule 89 (5) of CGST Rules, 2017 is reproduced below :

The Division Bench of the Gujarat High Court having examined the provisions of Section 54(3) and Rule 89(5) held that the latter was ultra vires. In its decision in VKC Footsteps India Pvt. Ltd. (supra), the Gujarat High Court held that by prescribing a formula in sub-Rule (5) of Rule 89 of the CGST Rules to execute refund of unutilized ITC accumulated on account of input services, the delegate of the legislature had acted contrary to the provisions of sub-Section (3) of Section 54 of the CGST Act which provides for a claim of refund of any unutilized ITC. The Gujarat High Court noted the definition of ITC in Section 2(62) and held that Rule 89(5) by restricting the refund only to input goods had acted ultra vires Section 54(3). The Division Bench of the Madras High Court on the other hand while delivering its judgment in Tvl. Transtonnelstory Afcons Joint Venture (supra) declined to follow the view of the Gujarat High Court noting that the proviso to Section 54(3) and, more significantly, its implications do not appear to have been taken into consideration in VKC Footsteps India Pvt. Ltd. (supra) except for a brief reference. Having considered this batch of appeals, and for the reasons which have been adduced in this judgment, we affirm the view of the Madras High Court and disapprove of the view of the Gujarat High Court.

Thus, the vires of Rule 89 (5) of CGST Rules, 2017 vis a vis Section 54 (3) of CGST Act, 2017, its constitutional validity and legality were upheld by the Apex Court. Consequently, the Order of Hon'ble High Court of Gujarat, terming the explanation to Rule 89 (5) of CGST Rules, 2017 as ultravires Section 54 (3) of CGST 2017 has become void and inconsequential. Therefore, for the purpose of grant of refund of accumulated ITC under inverted duty structure the provisions contained under Section 54 (3) of CGST Act, 2017 read with Rule 89 (5) Of CGST Rules, 2017, no longer call for any further interpretation and should be given full effect and followed. Since, the provisions of Rule 89 (5) of CGST Rules, 2017, in clear and unambiguous terms,takes into consideration ITC availed on inputs only for the purpose of determining the quantum of refund, I find that the Order passed by the adjudicating authority allowing refund of ITC availed on inputs and rejecting the ITC availed on input services is legally correct and well within the frame work of Law.



Regarding rejection of refund involved on input invoices not reflected in GSTR2A, I refer to CBIC Circular No.135/05/2020 – GST dated 31-3-2020, wherein it was clarified as under:

9. Guidelines for refunds of Input Tax Credit under Section 54(3) 5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant. 5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.


As per above Circular, refund of ITC under invoices which are not reflected in GSTR2A is not allowed. Since the Circular is binding on Department Officers, I find that the adjudicating authority has rightly rejected refund to the extent involved on invoices which are not reflected in GSTR2A.

10 The appellant in their additional submission further contended that the Hon'ble Supreme Court has not outrightly rejected the submission of the assessee and asked the GST Council to reconsider the formula and remove the anomalies. In this regard, I find that Hon'ble Supreme Court has asked GST Council only to remove the anomaly in the formula but does not categorically allowed refund of ITC on input services. Further till date no amendment was made either under CGST Act or Rules framed under in the light of above direction. Therefore, at the stage of proceedings, the extant provisions of CGST Act and Rules will be applicable to the subject issue.

11 In view of above, I find that the impugned order passed by the adjudicating authority rejecting refund of Rs.Rs.11,78,652/- is well within the framework of Law and in accordance with decision rendered by Hon'ble Supreme Court and CBIC Circular. Therefore, I do not find any infirmity in the order passed by the adjudicating authority. Further none of the submission made by the appellant in their appeal support their entitlement for refund. Accordingly, I upheld the impugned order and reject the appeal filed by the appellant.

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

The appeals filed by the 'Appellant' stand disposed off in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: .06.2022

Attested

(H. S. Meena)

Superintendent

Central Tax (Appeals)

Ahmedabad



By R.P.A.D.

To,

M/s. BMD Private Ltd.

Survey No. 774, Gambhoi Harsol Road,

Hathrol, Sabarknatha, Gujarat-383030

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Commissionerate- Ahmedabad –Gandhinagar
4. The Assistant Commissioner, CGST & C.Ex, Division-Himmatnagar. Gandhinagar
Commissionerate-
5. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate-.
- ✓ 6. Guard File..
7. P.A. File

