



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, अम्बावाडी अहमदाबाद ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN NO. : 20221264SW000000BD69

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/08/2022 / 5668 - 93

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-68/2022-23

दिनांक Date : 08-12-2022 जारी करने की तारीख Date of Issue : 09-12-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

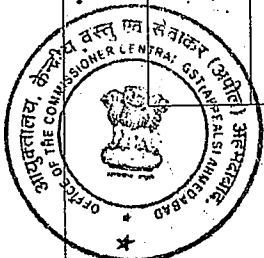
Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No ZR2409210190899 dated 14.09.2021 issued by the Assistant Commissioner, Central Goods and Service Tax, Division Kalol, Gandhinagar Commissionerate

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

- M/s Lalit Brijkishore Agrawal [GSTIN: 24AICZPA8994J1ZD]
(Trade Name: M/s Alpa Textile)
3252, GIDC Chhatral, Phase-III, B/h. Mangalam Alloys,
Nr. Capital Cross Road, Chhatral, Kalol, Gandhinagar - 382721

(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 - (iii) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (iv) A sum equal to <u>twenty five per cent</u> 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 अपीलार्थी 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-APPEALBrief Facts of the Case:

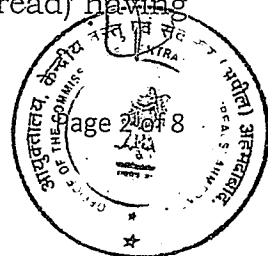
M/s. Lalit Brijkishore Agrawal (GSTIN: 24AICZPA8994J1ZD) (Trade Name : M/s. Alpa Textile), 3252, Phase-III, B/h. Mangalam Alloys, Nr. Capital Cross Road, Chhatral, Tal - Kalol, Gandhinagar - 382721 (hereinafter referred as 'appellant') has filed the present appeal against Order No. ZR2409210190899 dated 14.09.2021, passed in the Form-GST-RFD-06 (hereinafter referred to as 'impugned order') issued by the Assistant Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate (hereinafter referred as 'the adjudicating authority') by rejecting refund claim of Rs. 12,17,150/-.

2. Briefly stated the facts of the case are that the 'appellant' has filed online present appeal on 28.12.2021. The 'Appellant' had filed refund application vide ARN NO. AA240721121385K on account of accumulation of ITC due to inverted duty structure for refund of Rs. 12,17,150/- [CGST Rs. 6,08,575/-, SGST Rs.6,08,575/-] for the financial year 2019-20 in the month of September 2021. In response to the said refund claim a Show Cause Notice No. ZP2409210005988 dated 01.09.2021 was issued to the 'appellant' citing the reason "Delay in Refund Application" and Remark was also mentioned as "Claim for the month of April & May 2019 is time barred. For the remaining period, reconciliation of various values as per Rule 89 of CGST Rules, 2017, the eligible refund amount appears to be 'Zero'."

2.1 Further, the 'appellant' was asked to furnish reply to the SCN within 15 days from the date of service of SCN dated 01.09.2021 and a personal hearing was also offered to the 'Appellant' on 03.09.2021. Upon receiving of the reply, the adjudicating authority has rejected the subject refund claim vide impugned order dated 14.9.2021 stating that "I hereby reject an amount of INR 0 to M/s. Lalit Brijkishore Agrawal having GSTIN 24AIZPA8994J1ZD under sub-section () of section) of the Act/ under Section - of the Act" and a remark was also mentioned as "The claim is partly time barred and for the eligible period the claim amount works out to zero. Hence rejected."

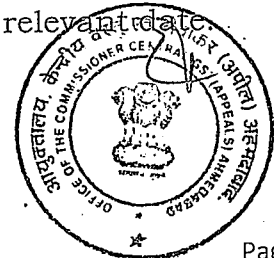
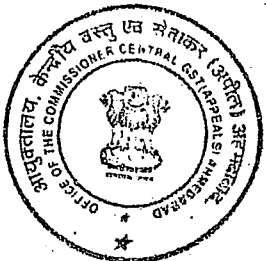
2.2 Being aggrieved with the impugned order dated 9.9.2021 the appellant has filed the present appeal on 28.12.2021 wherein they stated that-

- The appellant engaged in the business of manufacture and supply of Woven fabrics of cotton which falls under ITC HSN Code 52019 and attracts GST5@, for this they procure raw materials (inputs) like (a) transmission or conveyor belts or belting of Textile material having ITC (HSN-5910) at 12%GST (b) cotton yarn (other than sewing thread) having



ITC (HSN-5205) at @5% GST (3) woven fabrics of manmade synthetic staple fibre having ITC (HSN-5515) at @5% GST (d) synthetic filament yarn (other than Sewing thread) having ITC (HSN-5402) at @12% GST.

- Their outward supply being the supply of Woven fabrics of Cotton attracts @5% GST and inward supplies of various inputs as mentioned above attracts GST rates @12% & 5% which causing inverted duty structure;
- The appellant filed refund application vide ARN NO. AA240721121385K dated 30.07.2021 on account of accumulation of ITC due to inverted duty structure amounting to Rs.12,17,150/- (CGST Rs. 6,08,575/-, SGST Rs.6,08,575/-) for the period April 2019 to March 2020. In reply, they have been served with SCN No. ZP2409210005988 dated 01.09.2021 by asking that why the refund should not be rejected for a. claim for the month of April & May 2019 is time barred and b. for the remaining period, reconciliation of various values as per Rule 89 of the CGST Rules, 2017, the eligible refund amount appears to be Zero.
- The appellant accepted that the claim for the month of April & May 2019 is time barred, but they have filed revised refund working for the eligible period i.e June-2019 to March-20 amounting to Rs. 11,03,771/- which was not time barred by stating that the eligible refund amount not to be 'Zero' alongwith revised sales details and revised ITC as per GSTR-2A.
- That the impugned SCN fails to provide reasoning, with pre-determined mindset to reject the refund amount as a whole without offering any logical inference with the Law for that they relied upon case law SBQ steels Ltd Vs. Commissioner of Cus., C.Ex & ST, Guntur 2014(300) ELT 195 (AP), CCE Vs. Shemco India Transport 2011 (24) STR 409 (Tri-Del.) and Amrit Food Vs. CC 2005 (190) ELT 433(SC).
- Since the impugned SCN is itself is vague, cryptic and untenable in law, and hence impugned order being a non-speaking, gross violation of natural justice and hence to be set aside and deserves to be quashed in toto.
- The appellant submit that as per Section 54 of the CGST Act, 2017 every refund claim is to be filed within 2 years from the relevant date.

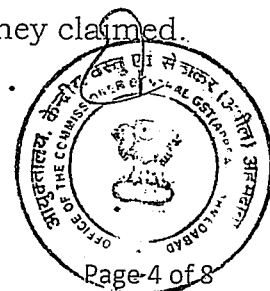


- The appellant does not dispute time barred refund claim for the month of April 2019 and May 2019, however, for the remaining period i.e for June 2019 to March 2020 of refund they have filed refund claims well within the prescribed time limit as per Section 54 of the CGST Act, 2017 read with Section 89 of the CGST Rules, 2017.
- Refund is allowed under Section 54(3) of CGST Act, 2017 only in two cases i.e a) Zero rated supplies made without payment of tax and b) Inverted duty structure. Their present case falls in inverted duty structure category and in view of such inverted duty structure they are admissible to claim the refund of unutilized ITC accumulated on account of that under Section 54 of CGST Act, 2017 read with Rule 89 of CGST Rules, 2017.
- The appellant submitted that they had provided detailed working of the eligible refund for the period June-2019 to March-202 in the prescribed format the in consonance with the provisions of Section 54 of CGST Act, 2017 read with Rule 89 of CGST Rules, 2017 and hence the impugned Order In Original rejecting the refund deserved to be set aside.

PERSONAL HEARING :

3. Personal Hearing in the matter was held on 6.10.2022 wherein Mr Pratik Trivedi, CA & Authorized Representative appeared on behalf of the 'Appellant'. During the P.H., he has submitted the executive summary. He has nothing more to add to their written submission.

However, the appellant submitted their additional submission on 5.12.2022 by stating that there was some clerical mistake in calculation of refund working supplied in appeal memorandum wherein the appellant had by mistake added credit notes value in sales value instead of same to be deducted and hence appellant submitted the revised calculation sheet for refund application considering the corrected values. As per revised calculation with corrected values would lead to refund amount eligibility to Rs. 13,96,640/- instead of Rs.11,03,771/-. Further, they added that the refund claimed by the appellant i.e Rs. 11,03,771/- are the lowest of the eligible refund amount they claimed.



Discussions and findings:

4. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on records. At the outset, I find that the impugned order was communicated to the appellant on dated 14.09.2021 and present appeal was filed online on dated 3-12-2021 (physical copy submitted on 28-12-2021) i.e after a period of two months hence the appeal was filed within the time limit prescribed under Section 107 of the Act. Further, the refund application for the period April-2019 to May-2019 is time barred as already accepted by the appellant hence no dispute for the refund amount for the period from April 2019 and May 2019. Further, refund for the remaining period June-2019 to March-2020 was also filed by the appellant on 30.07.2021. However as per Hon'ble Supreme Court's Order dated 10-1-2022 in suo-moto writ petition (C) NO.3 of 2020 in MA No.665/2021, excluding the period from 1-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 1-3-2022 in filing appeals and as per the Notification 13/2022-Central Tax dated 5th July 2022 issued by CBIC clarifying the period of 01.03.2020 to 28.02.2022 to be excluded for the purpose of time limit for application of the refund, I hold that the present appeal as well as filing of refund application for the period June-2019 to March-2020 is not disputed by the adjudicating authority and is also not hit by time limitation factor.

Further, the appellant has submitted that the order of rejection of refund claim on the grounds that for the eligible period the refund claim amount works out to zero is not legal and proper and non-speaking order. However, the adjudicating authority has not disputed about the admissibility of the refund claim for the eligible period from June-2019 to March-2020 of unutilized input tax credit on account of rate of tax on inputs being higher than the rate of tax on output supplies i.e on account of inverted duty structure under Section 54 of the CGST Act, 2017 and Rule 89 of the CGST Act, 2017. So, the issue before me to decide that the refund claim for the eligible period i.e from June-2019 to March-2020 is zero or not.

5. I have carefully gone through the facts of the case available on records and submissions made by the 'Appellant' in the Appeal Memorandum as well as written submissions and documents available on records.

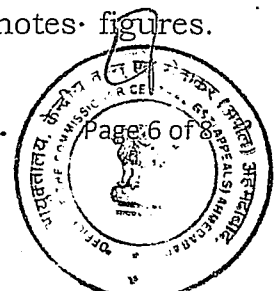


I find that the 'Appellant' had preferred the refund claim on account of "Refund on account of accumulation of Input Tax Credit due to inverted duty structure" for the amount of Rs. 12,16,150/-. In response to the said refund application a Show Cause Notice No. ZP2409210005988 dated 1.9.2021 was issued to the appellant proposing rejection of refund claim for reasons mentioned as "Delay in Refund application" and "Amount inadmissible Rs. 12,17,150/-" with Remarks "Claim for the month of April and May 2019 is time barred. For the remaining period, reconciliation of various values as per Rule 89 of CGST Rules, 2017, the eligible refund amount appears to be "Zero"." In reply to the above referred SCN dated 1.9.2021, the appellant filed their reply online on 1.9.2021 stating that they accepted that claim for the month of April and May, 2019 is time barred. But for the remaining period, reconciliation of various values as per Rule 89 of CGST Rules, 2017 the eligible refund amount appears to be **not "Zero"**, and in support they attached ready summary sheet for the period from 1.6.2019 to 31.03.2020 by showing outward sales figures as per GSTR-1 and ITC as per GSTR-2A. However, I find that without considering their reply, the adjudicating authority has passed the impugned order "I hereby reject an amount of INR 0 to M/s. LALIT BRIJKISHORE AGRAWAL having GSTIN 24AIZPA8994J1ZD under sub-section () of Section) of the Act / under section - of the Act" and Remarks "The claim is partly time barred and for the eligible period the claim amount works out to zero. Hence rejected."

5.1 I find that the adjudicating authority has not mentioned any substantial reasons and any computation on the basis of which they arrived at that for the eligible period the claim amount works out to zero for rejection of refund claim for the period from June -2019 to March -2020.

5.2 Further, I find that vide letter F.No. GEXCOM/REV/MISC/427/2022-CGST-DIV-KLL-COMMRTE-GNR dated 1.12.2022, the Assistant Commissioner, CGST, Division Kalol, has submitted that "this office is not able to substantiate the calculation of Net Input Tax Credit figure i.e Rs. 56,55,969/- arrived at by the then officer at the time of processing the claim. Moreover, calculation method or sheet is not available in system."

6. I find that the appellant has submitted inventory-wise / invoice-wise outward sales figures for the period from June 2019 to March 2020 along with filing of appeal memorandum wherein they included credit notes figures.



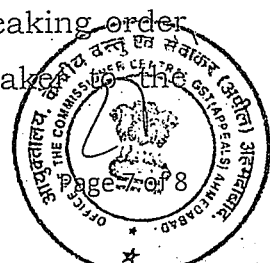
Further, I find that vide their submission letter dated 5.12.2022 the appellant submitted the revised calculation sheet by excluding the credit notes figures from their outward sales figures for the period from June 2019 to March 2020 which were included by mistake due to clerical mistake and submitted that as per revised calculation (as per Annexure-II) they are admissible for refund amounting to Rs. 13,96,640/-. The details are as under :

REFUND WORKING AS PER CLERICAL MISTAKE IN REFUND APPLICATION AND APPEAL MEMORANDUM :

Scenarios- B	Tax Head	Turnover of Inverted Rated supply of goods and services (1)	Tax payable on such inverted rated supply of goods and services (2)	Adjusted total turnover (3)	Net input tax credit (4) edit the net itc to exclude, the itc availed on input services and the itc of refund claim under 89(4A) & (4B)	Maximum Refund amount to be claimed
[A]	[B]	[C]	[D]	[E]	[F]	[G] = [F/E*C]- [D]
Revised as per corrected sales Credit Note as per refund submission	IGST	142278324	7120230	142278324	8516869	1396640
	CGST					
	SGST					
	CESS					
	TOTAL	142278324	7120230	142278324	8516869	1396640

However, I find that the appellant has claimed Rs.11,03,771/- instead higher amount of refund Rs. 13,96,640/- as per revised calculation after correcting their clerical mistake.

6.1 From the above facts and submissions, I am of the opinion that the refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies. I also find that the adjudicating authority has not given any substantial reasons and evidences for rejecting the refund claim and erred gross mistake while passing the impugned order. The giving of reasons is one of the fundamentals of a speaking order and reasons are live links between the mind of the decision taken by the

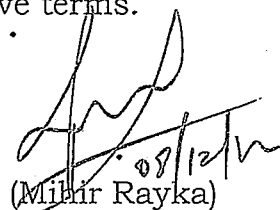


controversy in question and the decision or conclusion arrived at. Hence, I find that the impugned order is non-speaking, not proper and legal in the eyes of law.

7. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being non-speaking, not legal and proper and accordingly, I allow the appeal of the "*Appellant*" without going into merits of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017. Therefore, any claim of refund filed in consequence to this order may be examined by the appropriate authority for its admissibility on merit in accordance with Section 54 of the CGST Act, 2017 and Rules made thereunder. The '*Appellant*' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

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

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

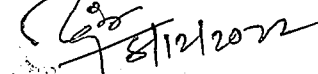


(Mihir Rayka)

Additional Commissioner (Appeals)

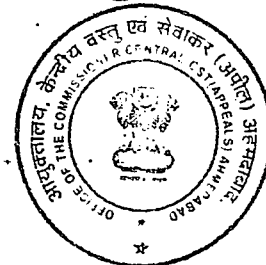
Date: 8.12.2022

Attested



(TEJAS J MISTRY)

Superintendent, Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,

M/s. Lalit Brijkishore Agrawal, (GSTIN: 24AICZPA8994J1ZD)
(Trade Name : M/s. Alpa Textile), 3252, Phase-III, B/h. Mangalam Alloys,
Nr. Capital Cross Road, Chhatral, Tal - Kalol, Gandhinagar - 382721

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, Gandhinagar Commissionerate
4. The Dy/ Assistant Commissioner, CGST & C.Ex, Division-Kalol, Gandhinagar Commissionerate.
5. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate.
6. Guard File..
7. P.A File