



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



0792630506- टेलीफैक्स 07926305136



DIN NO. : 20230164SW00008187E8

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1896/2022 / 7206-12

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-84/2022-23**

दिनांक Date : **11-01-2023** जारी करने की तारीख Date of Issue : 12-01-2023

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **02/RM/SUPDT/GST/2021-22** dated **31.03.2022** issued by the Superintendent, Central Goods and Service Tax, AR-I, Division Kadi, Gandhinagar Commissionerate

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

M/s Annapurna Rice & Oil Mill [GSTIN: 24AAFFS6556C1ZA]

Opp-GEB, Kadi Kalol Road,

Kadi, Mehsana (N.G.), Gujarat - 382715

| | |
|-------|---|
| (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

BRIEF FACTS OF THE CASE :

M/s Annapurna Rice & Oil Mill, Opp-GEB, Kadi Kalol road, Kadi, Mehsana, Gujarat-382715 (hereinafter referred to as *the 'Appellant'*) has filed the present appeal against the Order in Original No. 02/RM/SUPDT/GST/2021-22 dated 31.03.2022 (hereinafter referred to as the *'impugned order'*) passed by the Superintendent, CGST & C. Ex., AR-I, Division-Kadi, Gandhinagar Commissionerate (hereinafter referred to as *the 'adjudicating authority'*).

2. Briefly stated the facts of the case are that the *'Appellant'* is holding GST Registration No. 24AAFFS6556C1ZA and has filed the present appeal on 23.06.2022. The *'Appellant'* had have been issued a Show Cause Notice No. IV/1(b)-18/CIR-X/AP-66/2019-2020 dated 19.04.2021 on the grounds that

- The appellant is engaged in supply of taxable goods viz. Cotton Bales, Cotton Seed Oil ("Wash Oil"), Bhagru and Cotton Seed Oil Cake (Commonly known as "Khol") falling under Tariff Heading No. 5201, 1512, 1522 & 2306 respectively. The appellant also availing facility of Input Tax Credit.
- During the course of audit of the financial records of the appellant, it revealed that the appellant had supplied "Cotton Seed Oil Cake (Khol)" valued at Rs. 24,30,980/- (CGST @2.5% Rs. 60775 + SGST @2.5.% Rs. 60775 = Total Rs. 1,21,550/-)without payment of tax to their buyers for further supply of the same. On being asked by the audit party, the appellant deposed that Cotton Seed Oil Cake are generally being used as animal feed and animal feed is exempt from payment of tax as per Notification No. 02/2-17-Central Tax (Rate) dated 28th June 2017. Hence, the appellant has not paid the tax on supply of Cotton Seed Oil Cake (known as Khol) during the period from 01.07.2017 to 21.09.2017.
- Vide Notification NO. 01/2017-Central Tax (Rate) dated 28th June, 2017 (Sr No. 107) of CGST and the following goods attracted GST @ 5% (CGST 2.5%, SGST 2.5%)
"Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading 2304 or 2305 [other than aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake]."
- Further, Notification 2/2017-Central Tax (Rate) provides exemption from the whole of the Central Tax to "Aquatic feed including shrimp fees and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake" (Sl. No. 102)



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- Subsequently, an amendment to the aforesaid Notification No. 1/2017-Central Tax (Rate) dtd 28.6.2017 of CGST and corresponding SGST arracting GST@5% was effected vide notification no. 27/2017-Central Tax (Rate) dated 22.09.2017. The amendment revised the description of goods at **Serial No. 107** with the following effect :-

For the words -

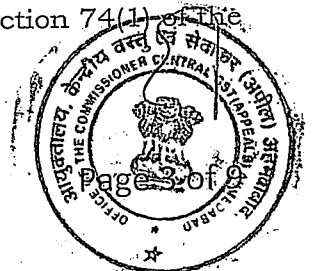
“other than aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake”.

The words “other than cotton seed oil cake” were substituted

- Simultaneously, the said Notification NO. 2/2017-Central Tax has been amended vide Notification NO. 28/2017 -Central Tax (Rate), dated 22nd September, 2017 vide which after Sl. No. 102 and the entries relating thereto, the following serial number and entries has been inserted, namely:-

| | | |
|-------|------|-----------------------|
| "102A | 2306 | Cotton Seed Oil Cake” |
|-------|------|-----------------------|

- Considering the above, it is clear that the “Cotton Seed Oil Cake” when supplied for the purposes other than aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed attracted GST@5%. However, effective from 22.09.2017 supply of Cotton Seed Oil Cake for any purposes including aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed was exempted from GST. The tax payer had made supplies of “Cotton Seed Oil Cake (Khol)” valued at Rs. 24,30,980/- (CGST @2.5% Rs. 60775 + SGST @2.5.% Rs. 60775 = Total Rs. 1,21,550/-) without payment of tax to the various persons / traders for the purpose of other further supply by them as well. Therefore, the benefit of exemption from payment of tax under Notification No. 02/2017-Central Tax (Rate), dated 28.06.2017 was not available to the taxpayer for supply other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed. Therefore, the appellant were liable to pay the applicable taxes with interest alongwith penalty under Section 74(5) of the CGST Act, 2017 in view of the Notification NO. 01/2017-Central Tax (Rate) dated 28.06.2017. The taxpayer has not agreed to the above observation made by the audit party.
- Therefore in view of the above, the subject Show Cause Notice issued under Section 74(1) and Section 50(1) of the CGST Act, 2017 and IGST Act, 2017.
- Further, the adjudicating authority has adjudicated the impugned order by confirming the demand of Rs. 1,21,550/- and ordered to recover the same under Section 74(10) of the CGST Act, 2017 and Section 20 of the IGST Act, 2017 alongwith interest under Section 50(1) of the CGST Act, 2017. Also imposed a penalty of Rs. 1,21,550/- on the appellant under Section 74(1) of the CGST Act, 2017.

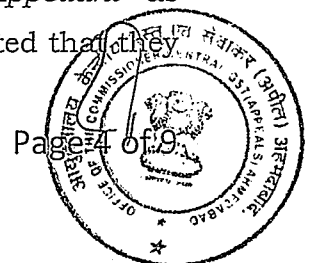


3. Being aggrieved with the impugned order, the appellant has filed the present appeal on 23.06.2022. The appellant contending on the grounds that

- The adjudicating authority has not given any cogent reason for not allowing exemption from payment of tax under Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017 and adopted casual approach. The adjudicating authority has not disputed the fact that the cotton seed oil cake is not cattle feed and has also not given any evidence or cogent ground that the buyers have purchased the cotton seed oil cake for supply to others.
- The adjudicating authority has not disputed the fact that Cotton Seed Oil Cake is having any other use other than Cattle Feed.
- The appellant objected the impugned order entirely as being fallacious and incorrect and based entirely on assumptions and presumptions, which is arbitrary and legally not tenable and also contrary to the settled law position by various Courts of Law.
- The adjudicating authority has erred in law and violated principle of Natural Justice by not issuing GST Form DRC-01A (Intimation) before issuance of SCN and deprived an opportunity to the appellant to settle the matter with lesser amount of penalty.
- The adjudicating authority has also erred in law and also violated principles of natural justice by not considering the grounds raised by the appellant and legal submissions made by the appellant. The adjudicating authority also not given reasons under which provisions of law, notification, circular empowers them to interpret the law in the manner the adjudicating authority interpreted.
- They relied upon on Advance ruling Authority in the matter of
 1. M/s Uttara Impex Private Limited AAR Maharashtra NO. GST-AAR-25/2018-19/B-88 dated 14.8.2018
 2. M/s. Adani Wilmar Limited Advance Ruling Order NO.20/2021, dated 27.12.2021- Madhya Pradesh
 3. M/s. Madhurya Chemicals, Advance Ruling Order No. MAH/AAAR/RS-SK/31/2020-21 dated 23.11.2020.
- The appellant contended that the proper officer has not issued intimation before SCN in specified form DRC-01A in electronic form under the provision of sub-rule(1) of Rule 142 of CGST Rules, 2017 and they have not been given opportunity under Section 74(5) of the CGST Act, 2017, hence not liable for penalty under Section 74 of the CGST Act, 2017.

PERSONAL HEARING :

3. Personal Hearing in the matter was held on 22.11.2022 & 1.12.2022, wherein Mr. Piyush Patel, appeared in person on behalf of the 'Appellant' as Authorized Representative. During the personal hearing he has reiterated that they have nothing to add more to their written submission till date.



DISCUSSION AND FINDINGS :

4. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal, I find that the adjudicating authority has not disputed about the classification of product i.e "Cotton Seed Oil Cake" and has not disputed that the product "Cotton Seed Oil Cake" is a cattle feed. I find that the dispute arisen in the present case is, during the period 01.07.2017 to 21.09.2017 the product "Cotton Seed Oil Cake" is not exempted from GST and hence attracted GST @5%. So, issue before me is to whether exemption of GST on "Cotton Seed Oil Cake" is applicable during the period from 01.07.2017 to 21.09.2017 or not under notification No. 2/2017-CT (Rate) dated 28.6.2017 and amended Notification Nos. 27/2017-CT (Rate) & 28/2017-CT (Rate) both dated 22.09.2017.

Before deciding the issue, I refer to the relevant extract of the Notification Nos (i) 01/2017-Central Tax (Rate), dated 28.06.2017 (ii) 02/2017-Central Tax (Rate), dated 28.06.2017 (iii) 27/2017-Central Rate (Tax) dated 22.09.2017 and (iv) 28/2017-Central Rate (Tax) dated 22.09.2017, respectively :

Notification NO. 01/2017-Central Tax (Rate), dated 28th June 2017 :

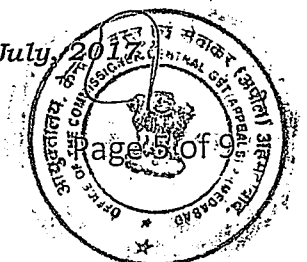
"G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of Section 9 of the Central Goods and Service Tax Act, 2017 (12 of 2017), the Central Government on the recommendations of the Council, hereby notifies the rate of Central tax of-

- (i) 2.5 per cent, in respect of goods specified in Schedule -I
- (ii)
- (iii)
- (iv)
- (v)
- (vi)

Schedule I - 2.5%

| S.No | Chapter Heading / Sub-heading / Tariff item | Description of goods |
|------|---|--|
| (1) | (2) | (3) |
| 107 | 2306 | Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats of oils, other than those of heading 2304 or 2305 [other than aquatic feed including shrimp feed and prawn fee, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake] |

2. This notification shall come into force with effect from the 1st day of July, 2017



Notification NO. 02/2017-Central Tax (Rate), dated 28th June 2017 :

“G.S.R. (E).-In exercise of powers conferred by sub-section(1) of section 11 of the Central Goods and Service Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby **exempts intra-State supplies of goods**, the description of which is specified in column (3) of the Schedule appended to this notification, falling under the tariff item sub-heading, heading or chapter, as the case may be, as specified in the corresponding entry in column(2) of the said Schedule, from the whole of the central tax leviable thereon under section 9 of the Central Goods and Service Tax Act, 2017 (12 of 2017).

| Schedule No | Chapter Heading / Sub-heading / Tariff item | Description of goods |
|-------------|---|---|
| (1) | (2) | (3) |
| 102 | 2302, 2304, 2305, 2306, 2308, 2309 | Aquatic feed including shrimp feed and prawn fee, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake |

.....
2. This notification shall come into force with effect from the 1st day of July, 2017.”

Notification No. 27/2017-Central Tax (Rate), dated 22nd September 2017 :

“G.S.R (E).- In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government on the recommendations of the Council, hereby makes the **following amendments** in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 1/2017-Central Tax (Rate), dated 28th June 2017, published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i), vide Number G.S.R. 673(E), dated the 28th June, 2017, namely:-

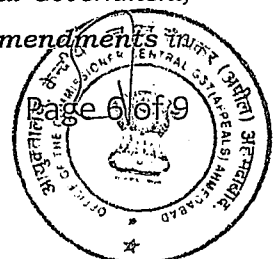
In the said notification,-

(A) In the Schedule I - 2.5%,-

.....
(vii) In S. No. 107, in column(3), for the words “**other than aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake**”, the words “**other than cotton seed oil cake**”, shall be substituted;”

Notification No. 28/2017-Central Tax (Rate), dated 22nd September 2017 :

“G.S.R (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the **following amendments** in the



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the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 2/2017-Central Tax (Rate), dated 28th June 2017, published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i), vide Number G.S.R. 673(E), dated the 28th June, 2017, namely:-

In the said notification,-

(A) In the Schedule,-

.....

(viii) after S. No. 102, for the entries in column (2), the entries "2301, 2302, 2308, 2309", shall be inserted, namely:-

| | | |
|-------|------|-----------------------|
| "102A | 2306 | Cotton Seed Oil Cake" |
|-------|------|-----------------------|

4.1 Now, regarding the effective date of Notification relating to the applicable rate of tax on a supply, I refer to Section 9(1) and 2(80) of the CGST Act, 2017, which states as under:

SECTION 9. Levy and collection. - (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

The term "notified" has been defined under the Act. The text of the provision is as under:

SECTION 2(80): "notification" means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly:

4.2 In Civil Appeal No. 6071 of 1999, Union of India Vs M/s. Ganesh Das Bhojraj, the Honorable Supreme Court has held that the **effective date of notification is the date of the publication in the official gazette.** The H'ble Supreme Court has upheld the decision in Pankaj Jain Agencies Vs. UOI & Others (1994) 5 SCC 198 and have reiterated the decision in B.K. Srinivasan & Others Vs. State of Karnataka & Other (1987) 1 SCC 658, 672, that notification will take effect only when it is published through the customarily recognized official channel viz. the official gazette.



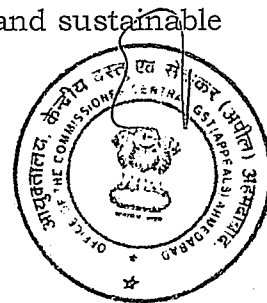
4.3 A combined reading of the provisions of Section 9(1), 2(80) of the CGST Act, 2017 and the Apex Court order in the matter of M/s. Ganesh Das Bhojraj leads to the conclusion that the **effective date of a Notification is the date of its publication in the Official Gazette.**

4.3.1 However, it may be noted that the provisions and the judgement of the H'ble Apex Court is with respect to Notification, in which the effective date has not been specifically mentioned. Where the date on which notification is to take effect is mentioned in the body of the notification itself, the effective date shall be such date.

4.3.2 In case of a notification in the body of which the effective date is not written, the effect of the amending notification thus shall be the date on which the amending notification is published in the Official Gazette. Therefore, the effective date for the levy of the amended rate of tax as per amended Notification No. 1/2017-Central Tax (Rate) and No. 2/2017-Central Tax (Rate) shall be the date on which Notification No. 27/2017-Central Tax (Rate) and Notification No. 28/2017-Central Tax (Rate) were published in the Official Gazette.

4.4 From the above, I hold that the exemption benefit on "Cotton Seed Oil Cake" is not applicable to the appellant during the period from 01.07.2017 to 21.09.2017, and will take effect only from 22nd September, 2017 i.e the date of Notification published in the Official Gazette. I further find that the contentions of the appellant on relied upon Advance Rulings as mentioned in Para 3 above are not squarely applicable in this case.

4.5 In view of the above and considering the judgement of the H'ble Apex Court in this case, I find that the impugned order is right, legal and proper and sustainable in the eyes of law.

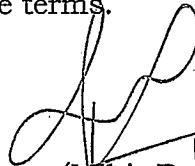


5 As regards to the appellant's contention that the impugned order is passed on the basis of without considering the reply & documents and also passed without giving an opportunity of personal hearing to the appellant, I find that in the present case, the adjudicating authority has granted an opportunity of personal hearing to the appellant on 3.12.2021 as per Para 18 of impugned order and the appellant was being heard in person before passing the impugned order. This is evident that the adjudicating authority has concluded the matter after considering their reply & documents by giving an opportunity of being heard to the appellant. Therefore, I find that the adjudicating authority has not violated the principle of natural justice in passing the impugned order vide which confirmed the demand communicating the valid or legitimate reasons before passing the impugned order and find the impugned order sustainable in the eyes of law.

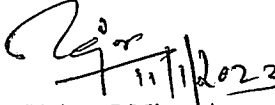
6. In view of the above and on the basis of above discussions, I therefore reject the present appeal.

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

7. The appeal filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)
Additional Commissioner (Appeals)
Date: 21.1.2023

Attested


(Tejas J Mistry)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,
M/s Annapurna Rice & Oil Mill [GSTIN -24AAFFS6556C1ZA],
Opp-GEB, Kadi Kalol Road, Kadi, Mehsana (N.G), Gujarat-382715.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Gandhinagar Ahmedabad.
4. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate.
5. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-Kadi, 3rd Floor, Janta Super Market, Kalol, Gandhinagar Commissionerate.
6. The Superintendent, CGST & C.Ex, AR-I, Div-Kadi, Gandhinagar Commissionerate.
7. Guard File.
8. P.A. File

