



आयुक्त(अपील) 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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रजिस्टर्ड अफ एपी. प्राय

क फाइल संख्या : File No : GAPPL/ADC/GSTP/3342/2022 / 7916 - 22

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-003-APP-ADC-92/2022-23**
दिनांक Date : 30-01-2023 जारी करने की तारीख Date of Issue : 31-01-2023

श्री मिहिर रायका अफ अफिल (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **01/CGST/AC/RRK/2022-23** dated **25.08.2022** issued by the Assistant Commissioner, Central Goods and Service Tax, Division Himmatnagar, Gandhinagar Commissionerate

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

M/s Harmony Plastics Pvt Ltd [GSTIN: 24AABCH5399D2ZL]
Block/Survey No. 205 / 1 Paiki 2,
Bhavpur, Gambhoi, Himatnagar,
Sabarkantha, Gujarat

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) 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(5) 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)	उप्युक्त अपीलकर्ता को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता को 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:**

This appeal has been filed by M/s. Harmony Plastics Private Limited, Block / Survey No. 205 / 1 Paiki 2, Bhavpur, Gambhol, Teh.- Himatnagar, Dist. Sabarkantha, Gujarat [hereinafter referred to as the "Appellant"] against Order-In-Original No. 01/CGST/AC/RRK/2022-23 dated 25.08.2022 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, Central GST & Central Excise, Division - Himmatnagar, Gandhinagar Commissionerate [hereinafter referred to the "Adjudicating Authority"]

2. Facts of the case in brief, are that the appellant is registered under the Central Goods and Service Tax Act, 2017 vide GST registration number 24AAAABCH5399D2ZL. The appellant is Export Oriented Unit (EOU) and has purchased inputs from registered persons. Such receipts of goods are notified as Deemed Export under Notification No. 48/2017-Central Tax, dated 18.10.2017. Hence, accumulated Input Tax Credit (ITC) on input goods availed by the appellant admissible for refund. Therefore, the refund claim has been sanctioned vide OIO No. 38/RF/HMT/19-20 dated 06.09.2019 by the Assistant Commissioner, CGST, Div-Himmatnagar, Gandhinagar Commissionerate.

2.1 During the course of CERA Audit, the audit officer pointed out that erroneous sanction of refund has been made to the appellant on the grounds that the refund of taxes paid on deemed exports are to be claimed as per procedure laid down in Circular No. 24/24/2017-GST dated 21.12.2017 which states that the procedure regarding procurement of supplies of goods from DTA by EOU/EHTP/BTP unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 [herein after referred to as "the Circular"] needs to be complied with. The Circular dated 6.11.2017 states that the recipient EOU/EHTP/STP/BTP unit shall give prior intimation in a prescribed proforma in "FORM-A" bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to - (a) the registered supplier; (b) the jurisdictional GST officer in charge of such registered supplier; and (c) its jurisdictional GST officer. The appellant (i.e EOU) procured inputs from M/s. Reliance Industries Ltd., Jamnagar (GSTIN:24AACR5055K1ZD) and M/s. Shree Sales Corporation (GSTIN :08ABZPK2014J1ZD1) and paid total tax of Rs.1,16,35,502/- (i.e. CGST Rs. 23,23,941/-, SGST Rs. 23,23,941/- and IGST Rs. 69,87,620/-) on such gross supply. Subsequently, the appellant claimed refund of Rs. 1,13,58,417/- (i.e. least of the balance in electronic credit ledger at the end of tax period, balance in electronic ledger at the time of filing of refund application and Net ITC if deemed export) vide ARN No. AA240719072086Z dated 30.07.2019 under category of EXPRDE (deemed export claimed by recipient).



2.2 On scrutiny of the refund claim by the CERA Audit party, it was found that the declaration furnished by M/s. Reliance Industries Ltd., states that the appellant did not furnish prior intimation in FORM-A. As the appellant did not furnish prior intimation to the registered supplier, jurisdictional GST of the registered supplier and its jurisdictional GST office and did not issue FORM-A to any of these parties, thus the procurements of the appellant were not in accordance with the procedures laid down in Cir No. 14/14/2017-GST, dated 06.11.2017 supra. Non-submission of prior intimation in FORM-A is substantial violation of the procedures laid in the Circular dated 6.11.2017, hence, in view of the above facts, the appellant was not entitled to refund. However, the department has sanctioned the refund claim vide RFD-06 dated 06.09.2019 and payment advice was issued vide RFD-05 dated 06.09.2019 and resulted into erroneous sanction of refund amounting to Rs. 1,12,22,915/- which required to be recovered along with interest.

2.3 Further, a letter dated 07.01.2021 was issued to the appellant to submit the FORM-A & B required as per the Circular dated 6.11.2017. Vide appellant's letter dated 08.01.2021, the appellant have submitted all the FORM-A as required in the Circular dated 6.11.2017 along-with a declaration issued by M/s. Reliance Industries Ltd (RIL). Wherein, M/s. RIL has declared that they have supplied Polyethylene to the appellant (EOU) and received all the FORM-A against their supplies. The CERA Audit party further observed that these FORM-A were for procurement of PP Granules while the goods procured by the appellant under the said refund claim were Low Density Poly Ethylene (LDPE) falling under tariff head 39011020. Thus, the goods supplied by M/s. RIL were not covered by these FORM-A. Further, in its declaration given by M/s. RIL at the time of supply of these goods along with invoice, it has categorically mentioned that the supplies were not supplied against FORM-A. Therefore, on the basis of the above, the appellant was issued a Show Cause Notice No. GEXCOM / ADT / CAG / AP / 54 / 2021 -CGST -DIV -HMT - COMMRT - GANDHINAGAR dated 11.08.2021 and the same has been adjudicated by the adjudicating authority and passed the impugned order on the grounds that the appellant is not entitled for refund in the present case and the refund claim amounting to Rs.1,12,22,915/- sanctioned to the appellant turned into erroneous refund sanctioned which is liable to be recovered from the appellant under Section 73(1) of CGST Act, 2017 along with interest under Section 50 of CGST Act, 2017.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following grounds that:

The impugned order suffers from fundamental factual infirmities and therefore liable to summarily dismissed

- > The appellant submits that the impugned order is based upon erroneous premises, presumptions, conjectures and has been issued without appreciation of the present facts and circumstances.
- > The entire dispute raised in the impugned order rest on the ground that the appellant has not submitted FORM-A as prescribed.



Circular No. 14/14/2017-GST dated 6.11.2017 ("the Circular") and therefore, not entitled for refund claim.

- > The appellants reiterate that they have purchased and procured material Polyethylene (PE) and Polypropylene (PP) in the year 2018-19 from their supplier M/s. Reliance Industries Limited, they also submitted all FORM-A and supplies under the transactions which has been effectuated against FORM-A only. Merely, the appellant has made a typographical error while submitting FORM-A. The FORM-A inadvertently mentioned PP instead of PE. This error can be verified from the fact that the HSN mentioned in FORM-A is 39011090 of PE is correct and not PP. The same HSN is also mentioned by the supplier M/s. Reliance Industries Ltd (RIL) in their invoices to the appellant. Therefore, it is quite evident that the dispute on which the entire impugned order revolves around viz. non-submission of FORM-A, is merely issued on assumptions and presumptions without any cogent reason is *non-est* in the eyes of law and liable to be set aside. For this, the appellant relied upon in the case laws
- Commr. Vs Sree Ganesar Textile Mills Ltd, 2015 (321) E.L.T A270 (S.C.);
 - Commr. Vs Bihariji Manufacture Co. Pvt. Ltd., 2015 (323) E.L.T. A023 (S.C.);
 - Commr. Vs Modern Denim Ltd., 2006 (199) E.L.T A181 (S.C.);
 - Commr of C.Ex & Ser. Tax, Chandigarh-II Vs. Sadhshiv Structural P Ltd, 2017 (357) E.L.T. 834 (Tri.-Chan.);
 - Kirloskar Oil Engines Ltd Vs. Commr. Of Central Excise, Nashik, 2017 (349) E.L.T 299 (Tri.-Mumbai);
 - Wolters Kluwer India Ltd Vs. Commr. Of Service Tax, 2014 (36) S.T.R 396 (Tri.-Del.);
 - Industrial Filter & Fabrics Pvt. Ltd Vs. Commr. Of C.Ex, Indore 2014 (307) E.L.T. 131 (Tri.-Del.);
- > Further, the appellant submits that the judicial precedents relied upon in the impugned order by the department i.e M/s. Mega Jewels Pvt. Ltd [2020 (42) GSTL 353] and M/s. Sigma Electric Manufacturing Corporation P. Ltd [2020 (37) GSTL 346] are not relevant in the present case.

Without prejudice to the above submissions, substantial benefit cannot be denied to the Appellant on account of procedural lapse

- > That in the impugned order it has been findings that the EOU has procured the supplies goods from DTA but failed to follow the procedure as laid down in the Circular dated 6.11.2017 which is mandatory for eligibility of refund as laid down under refund Circular No. 24/24/2017-GST dated 21.12.2017 and the entire premise to seek repayment of the earlier refund granted to the appellant, as they failed to submit as required in terms of the Circular dtd 6.11.2017.



- The appellant refer to the legislation and its purpose / genesis pursuant to which this requirement of FORM A has been prescribed. The present transaction in question pertains to "Deemed Exports" under GST legislation. "Deemed Exports" refers to supplies of goods manufactured in India (and not Services) which are notified as deemed exports under Section 147 of the CGST Act, 2017, which reads as under :

"Deemed Exports.

147. The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India."

Deemed Exports are not zero-rated supplies by default, unlike to regular exports. Hence, all supplies notified as supply for deemed export will be subject to levy of taxes i.e such supplies can be made on payment of tax and cannot be supplied under a Bond / LUT. However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient.

- In exercise of powers conferred under Section 147 of the CGST Act, 2017, the Central Government has issued Notification NO. 48/2-17-Central Tax dated 18.10.2017 wherein the following categories of supply of goods has been declared as Deemed Exports :

Description of Supply

- 1. Supply of goods by a registered person against Advance Authorization.*
- 2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization.*
- 3. Supply of goods by a registered person to Export Oriented Unit*
- 4. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated 30th June 2017 (as amended) against Advance Authorization.*

Thus, the Central Government in its GST council meeting held on 6.10.2017 decided that the supplies of goods by a registered person to EOUEtc would be treated as deemed exports u/s 147 of the CGST ACT, 2017 and refund of tax paid on such supplies can be claimed either by the recipient or supplier of such supplies.

- Rule 89 of the CGST Act, 2017 as amended vide Notification NO. 47/2017-Central Tax dated 18.10.2017 allows either the recipient or supplier of such supplies to claim refund of tax paid on the supplies of goods which have been notified as deemed exports
- Notification No. 48/2017-Central Tax dated 18.10.2017



to this the Circular No. 14/14/2017-GST dated 6.11.2017 prescribed the procedure and safeguards in respect of supplies to EOU / EHTP/STP/ BTP units.

- The provisions laid down under the said Circular reveals that the primary provisions which lays down eligibility criteria (of deemed exports) are prescribed under Section 147 read with Notification No. 48/2017-Central Tax dated 18.10.2017 and Rule 89 of the CGST Rules, 2017. These provisions are essentially the main provisions relevant for a qualification of a transaction to be deemed exports. Once the transaction qualifies as deemed exports, the Circular provides the procedure to claim the benefit of deemed exports by stating various steps viz. FORM A is to be filed, Tax Invoice is to be issued which is later endorsed, then such endorsed tax invoice acts as a proof for deemed export. Further, the Circular also mentions about maintaining of records in FORM B.
- In such situation, the appellant wishes to place reliance on the settled position in law that a **substantial benefit of deemed exports should not be denied to the appellant on account of some procedural lapse** as held in various judgements including but not limited to Amar Remedies Vs. Commissioner of Central Excise - Surat - 2011-TMI-201810-CESTAT, CCE Vapi Vs. DNH Spinners -- 2009 (244) ELT 65 (Tri. Ahmd)
- Hence, non-filing / delay in filing of FORM A, if at all, or typographical error in FORM-A, should be treated as procedural lapse on the part of the appellant in as much as other provisions including main provisions and other procedure aspects have been duly complied with.

The provision providing for a benefit / concession, has to be construed strictly. But once the assessee qualifies the eligibility criteria for any benefit provided under the law, the procedural conditions must be interpreted liberally.

- That the appellant submits that they qualifies the eligibility criteria of deemed exports as prescribed under Section 147 read with Notification NO. 48/2017-Central Tax, dater 18.10.2017 and Rule 89 of the CGST Rules.
- For this, they rely upon the judgments in the case of (i) Commr of Central Excise, New Delhi Vs. Hari Chand Shri Gopal, (2011) 1 SCC 236.
- Further, the submits that in the matters of grant of export benefit (equivalent to deemed exports), the Courts have inter-alia held that **liberal interpretation is to be accorded in respect of technical lapses so as not to deny the substantive benefit for procedural infraction / lapse**, and they place reliance upon in the case of (i) Ford India Pvt Ltd Vs. Asst. Commr of Central Excise, 2011 (272) E.L.T. 353 (Mad.); (ii) Mangalore Chemicals & Fertilizers Ltd. Vs. Deputy Commissioner, 1991 (55) E.L.T. 437 (S.C.)



- Hence, the appellant submits that the alleged non-filing / delay in filing or typographical error in FORM-A, if at all, should be treated as directory / procedural condition in as much as appellant qualifies the mandatory criteria / conditions for deemed exports under Section 147 read with Notification No. 48/2017-Central Tax dated 18.10.2017 and Rule 89 of the CGST Rules, 2017.

The purposive rule of interpretation should be adopted to interpret the relevant legal provisions.

- The appellant submit that it is well settled law that the legal provisions should be construed harmoniously without rendering any of the provisions otiose. The appellant placed reliance in this regard on the decision of the Apex Court in the case of Sultan Begum Vs. Prem Chand Jain, (1997) 1 SCC 373. It is further well settled law that the wordings in a beneficial provision has to be construed keeping in view the said object and purpose of the benefit. The Supreme Court in the case of Tata Oil Mills Co Ltd Vs. CCE, 1989 (43) ELT 183 (SC) has inter-alia held that the object and purpose of an beneficial notification should not be defeated by an unduly narrow interpretation of the language of the notification.
- The appellant are eligible to file refund claim under Section 147 read with Notification NO. 48/2017-Central Tax dated 18.10.2017 and Rule 89 of the CGST Rules, 2017 and the appellant cannot be deprived of the substantial benefit of refund on account of technical errors.
- The appellant further submit that the impugned order issued without authority of law and liable to set aside.

PERSONAL HEARING:

4. Personal hearing in the present case was held on 11.01.2023, Shri Rubbal A Bhandari, Authorized Representative, appeared before the appellate authority on behalf of the appellant and submitted that they have nothing more to add to their written submissions till date. However, they have submitted their additional submissions on 24.01.2023.

DISCUSSIONS AND FINDINGS:

5. I have carefully gone through the present case, written submissions made by the appellant in their appeal memorandum and during the personal hearing and available records. The issues before me are that the case is to be decided on merits as to whether

(i) the appellant/EOU is eligible for Refund of taxes paid on deemed exports are to be claimed as per procedures laid down in Circular No. 24/24/2017-GST dated 21.12.2017 and procedure regarding procurement of supplies of goods from DTA by EOU/EHTP/BTP unit under deemed export as laid down under Circular No. 14/14/2017-2017-GST dated 6.11.2017 with or not;



6. Firstly, I refer to the Section 147 of the CGST Act, 2017, wherein it has been notified certain supplies of goods as deemed Exports, which reads as under:

***147. Deemed Exports**

The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.*

I further, refer to the Notification No. 48/2017-Central Tax, dated 18.10.2017, wherein the following categories of supply of goods have been declared as Deemed Exports:-

Notification No. 48/2017-Central Tax

New Delhi, the 18th October, 2017

G.S.R. (E).- In exercise of the powers conferred by section 147 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the supplies of goods listed in column (2) of the Table below as deemed exports, namely:-

Table

S. No.	Description of Supply
(1)	(2)
1	Supply of goods by a registered person against Advance Authorisation
2	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3	Supply of goods by a registered person to Export Oriented Unit
4	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

Explanation -

For the purposes of this notification, -

1. "Advance Authorisation" means an authorization issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports.
2. Export Promotion Capital Goods Authorisation means an authorization issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015- 20 for import of capital goods for physical exports.
3. "Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.

[F.No. 349/58/2017-GST(P)]"

6.1 In the present case, I find that the appellant is Export Oriented Unit (EOU) registered under Central Goods and Service Tax Act, 2017 vide GST registration number 24AAAABCH5399D2ZL and M/s. Reliance Industries Limited (RIL), is also registered entity under Central Goods and Service Tax Act, 2017 having GSTIN : 24AAACR5055K1ZD. As per records available, M/s. RIL has supplied the



goods to the appellant i.e EOU against FORM-A submitted to them, hence the goods supplied in the present case, would be treated as deemed exports Section 147 of the CGST Act, 2017 and as per Notification No. 48/2017-CT dated 18.10.2017 and qualifies for deemed exports.

Further, the Rule 89 of the CGST Rules, 2017 as amended vide Notification NO. 47/2017-Central Tax dated 18.10.2017, the relevant extract is produced as under:

".....

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 89, in sub-rule (1), for third proviso, the following proviso shall be substituted, namely:- "Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund."

6.2 Further, Section 54 of the CGST Act, 2017 states as under:

"54 (1) Any persons claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section(6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

- a. refund of tax paid on export of goods or services or both or on inputs or input services used in making such zero-rated supplies;
- b. refund of unutilized input tax credit under sub-section (3);
- c. Refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- d. Refund of tax in pursuance of Section 77;
- e. The tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other persons; or
- f. The tax or interest borne by such other class of applicants as the Government may, on the recommendation of the Council, by notification specify;



In view of the above, in the present appeal, I find that from the facts of the case and from the impugned refund order, the appellant has paid total tax amounting to Rs. 1,16,35,502/- (i.e. CGST Rs. 23,23,941/-, SGST Rs. 23,23,941/- and IGST Rs. 69,87,620/-) to their suppliers against supplied goods and also qualifies as deemed exports. Further, it is also observed that the supplier M/s. Reliance Industries Limited (RIL) have declared vide their letter dated 12.08.2019 that they have supplied the goods to the appellant and received all the FORM-A against their supplies to the appellant / EOU. And also made disclaimer and confirmed that they have not claimed any refund of GST amount for the invoices under which they have supplied the goods to the appellant / EOU. Subsequently, the appellant filed their refund claim of Rs. 1,13,58,417/- i.e. least of the balance in electronic credit ledger at the end of tax period, balance in electronic ledger at the time of filing of refund application and Net ITC of deemed export vide ARN No. AA240719072086Z dated 30.07.2019 in form of GST RFD-01A before the refund sanction authority under category of EXPRDE (deemed export claimed by recipient).

6.3 Further, in pursuant to the above provisions as per Section 147 of CGST Act, 2017 read with Notification No. 48/2017-CT dated 18.10.2017 and Rule 89 of the CGST Rules, 2017 amended vide Notification No. 47/2017-CT dated 18.10.2017, the Circular No. 14/14/2017-GST dated 6.11.2017 (‘the Circular’) has been issued by the Central Government under which the procedure and safeguards in respect of supplies to EOU / EHTP / STP/ BTP units- are prescribed, which reads as under :

“(i) The recipient EOU/EHTP/STP/BTP unit shall give prior permission in a prescribed proforma in ‘FORM-A’ bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to -

- (a) The registered supplier;*
- (b) The jurisdictional GST officer in charge of such registered supplier; and*
- (c) Its jurisdictional GST officer.*

(ii) The registered supplier thereafter will supply goods under tax invoice to the recipient EOU / EHTP / STP/ BTP unit.

(iii) On receipt of such supplies, the EOU / EHTP / STP/ BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to -

- (a) The registered supplier;*
- (b) The jurisdictional GST officer in charge of such registered supplier; and*
- (c) Its jurisdictional GST officer.*

(iv) The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU / EHTP / STP/ BTP unit.

(v) The recipient EOU / EHTP / STP/ BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in ‘Form-B’. The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and immediately upon the goods received in, utilized by or removed from the



*The digital records should be kept updated, accurate, complete and available at the said unit at all times of verification by the proper officer, whenever required. A digital copy of Form-B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen Drive, as convenient to the said unit.**

6.4 From the ongoing paras, I find that the adjudicating authority has not disputed about deemed exports taken place in the present case and considered the same as the appellant has qualifies for the deemed export. Thus, the appellant is entitled and eligible to file refund claim as per the CGST Act and Rules made thereunder.

6.5 Now, I further discuss about the procedure followed by the appellant or not as per the Circular No. 14/14/2017-GST dated 6.11.2017. As per para 11 of the impugned order, the adjudicating authority has stated that the appellant have submitted all the FORM-As as required in the Circular dated 6.11.2017 as and when CERA Audit party called upon to submit the same, which is evident that the appellant have complied with one of the essential condition of the procedure laid down in the circular dated 6.11.2017. However, it is also observed from the records that the supplier M/s RIL have declared vide their letter dated 12.08.2019 that they have supplied the goods i.e Polyethylene and Polypropylene to the appellant and received all the FORM-A against their supplies. Further, the supplier M/s RIL has also made disclaimer and confirmed that they have not claimed any refund of GST amount for the invoices under which they have supplied the goods to the appellant / EOU. From the above, I find that the non-filing / delay in filing of FORM-A, if at all, should be treated as directory / procedural condition in as much as appellant qualifies the mandatory criteria / conditions for deemed exports under Section 147 read with Notification No. 48/2017-Central Tax dated 18.10.2017 and Rule 89 of the CGST Rules, 2017.

6.6 Thus, I find that the appellant has complied with the law and fulfilled the required condition for their refund entitlement and eligibility under CGST Act and CGST Rules made there under and rightly claimed the refund under the provisions of CGST Act, 2017. I find that the impugned order to the extent that the appellants are not entitled for refund, without considering the facts / merits of the case, is bad in law. Such a conduct of the adjudicating authority deprives the appellants of the right to refund of GST for which they are entitled and eligible, otherwise.

6.7 In this regard, I rely upon the observations made by the Supreme Court in the case of **Unichem Laboratories Ltd. Vs Collector - 2002 (145) ELT 502 (SC)** :

**13. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law - no less and also no more. It is no part of their duty to deprive as assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly.*



6.8 The further condition of the circular dated 6.11.2017 for the appellant is that they have to obtain pre-approval from the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to -(a) the registered supplier; (b) the jurisdictional GST officer in charge of such registered supplier; and (c) its jurisdictional GST officer. I find that the adjudicating authority in the impugned order has not disputed about the pre-approval from the Development Commissioner in this regard. However, from the documents submitted by the appellant in their appeal memorandum, So far as the intimation given to the jurisdictional GST officer in FORM-A is concerned, I find that from the available records, I find that the appellant have intimated to their jurisdictional GST officer i.e Office of the Superintendent, Range-I, Division - Himmatnagar, from time to time at the time of procurement of the goods procured under LOP No. KASEZ/100%EOU/II/14/2014-15/1821 dated 18.05.2015, as it is evident from the inward dated seal of the department / range office. Further, vide email / letter dated 24.01.2023 the appellant submitted their additional submission underwhich, I also observed from invoices submitted by the appellant that there is one agent M/s. K K Polymers, Jaipur between the appellant / EOU and the supplier M/s. Reliance Industries Limited (RIL), M/s. K K Polymers, Jaipur vide their letter dated 21.08.2019 submitted that they are in receipt of all FORM-A (i.e Raw material Polyethylene and Polypropylene received for the year 2018-2019) which are meant for the supplier M/s. RIL. Thus, it is evident that the FORM-A have also been submitted to the supplier through their agent M/s K K Polymers, Jaipur. So, I find that the appellant has also submitted intimation / FORM-A to the registered supplier and jurisdictional GST officer of the registered supplier, and accordingly the appellant have also fulfilled one of the condition laid down under the Circular dated 6.11.2017.

7. Now, in the impugned order it has been stated by the adjudicating authority that the FORM-A were for procurement of PP granules while the goods procured by the appellant under the instant claim were Low Density Poly Ethylene (LDPE) falling under tariff heading 39011020. Further, it is also observed that the Development Commissioner, KASEZ have permitted the appellant /EOU to procure / import 1. various grades of PP Granules HS Code 39021000 2. Various grades of HDPE Granules HS Code 39019090 and 1. Primary Forms polymers of ethylene, in primary forms and 2. Polymers of polypropylene or other olefins, in primary forms, as Annexure-I [(i.e Exemption Materials - Exemptions subject to as specified in para 6.01 (d) (ii) and (iii) of FTP 2015-2020)] submitted by the appellant in their appeal memorandum. In this regard, the appellant have submitted the disclaimer / declaration of the supplier M/s RIL dated 12.08.2019 that during the period from 01.04.2018 to 31.03.2019 they have supplied Polyethylene and Polypropylene to EOU / appellant against Form-A only and received all Form-A against their supplies. The appellant also contended that due to inadvertent typographical error in FORM-A submitted to the supplier as well as to the jurisdictional GST officer i.e Range Office, they have mentioned PP granules instead of PE Granules, however, the tariff heading declared as 39011090 in all the FORM-A.



Further, GST Rate & HSN Code for Plastics and articles thereof - Chapter 39 are as under:

HSN Code	Description	Rate (%)
39011020	LOW DENSITY POLYETHYLENE (LDPE)	18%
39011090	POLYMERS OF ETHYLENE, IN PRIMARY FORMS - POLYETHYLENE HAVING A SPECIFIC GRAVITY OF LESS THAN 0.94 : OTHER	18%
3902100	PPOLYMERS OF PROPYLENE OR OF OTHER OLEFINS, IN PRIMARY FORMS	18%

From the above table, I observed that the Low Density Polyethylene (LDPE) falls under HSN Code 39011020 which attracts GST rate @18% and Polymers of ethylene in primary forms for which the appellant have been pre-approved by the Development Commissioner, KASEZ, falls under HSN Code 39011090 also attracts GST rate @18%. The appellant further stated that LDPE is sub grade of Polyethylene (PE) bearing HSN 39011090 and attracts GST @18%. So, there is no revenue loss to the government exchequer in terms of revenue. So, the appellant's contention for typographical error while mentioning the product in FORM-A should be considered in terms of revenue aspects. I find that the adjudicating authority has accepted that the appellant had made GST payments (i.e. CGST, SGST & IGST) against the goods supplied to them by the supplier M/s RIL & others and the supplier have not claimed the refund of the same. Thus, the allegation of non entitlement of refund claim or non fulfillment of condition laid down under the Circular dated 6.11.2017 in the impugned order is not proper, tenable and not justifiable. I find that the appellant is rightly entitled and eligible for refund claim as per CGST Act and Rules made thereunder.

8. I find that the appellant's contention that the adjudicating authority has overlooked the submissions of the appellant and not considering the declaration of the supplier to the appellant and typographical error in FORM-A, which are to be considered as procedural lapse. The amount of GST on supply of goods have already been paid by the appellant and endorsement of the tax invoices, not submitted to the jurisdictional GST officer are just procedural which does not directly amounts to non entitlement of their eligibility of refund claim. I find that the adjudicating authority has not considering the merits of the case and adjudicated the impugned order on non-substantiate grounds which resulted into incorrect and improper order in the eyes of law.

9. I find that the procedures are prescribed to facilitate verification of substantive requirement. As long as a fundamental requirement is met other procedural deviation must be condoned, which is also supported in case of *Mangalore Chemicals and Fertilizers Limited Vs. Deputy Commissioner - 1991* (55 STC 437 (SC)), wherein



the H'ble Supreme Court made a distinction between the procedural condition of the technical nature and the substantive condition and held that non-observance of former was condonable while that of the latter was not condonable. I also relied on the decision of the H'ble High Court of Madras in the case of **Ford India Pvt. Ltd Vs. Assistant Commissioner of Central Excise - 2011 (272) ELT 353 (Mad. HC)**, wherein the H'ble High Court held that "... the procedural infraction of Notification/Circulars are to be condoned, if exports have really taken place and that the substantive benefit cannot be denied on procedural lapses...." and "...so long as there is substantive compliance and that the fact of export is not in doubt, rebate being beneficial scheme, cannot be denied on mere technicalities." In this case, supplies (i.e deemed export) made to the appellant /EOU by the supplier and GST payment made to the government exchequer is not in question at all by the adjudicating authority. This is an export beneficial scheme and I find that the adjudicating authority in the impugned order denied the entitlement or eligibility of refund claim on mere technicalities and procedural lapses i.e FORM-A not submitted to the jurisdictional GST officer and supplied goods are PP granules not PE granules, however, in both the cases the appellant has mentioned HSN code 39011090 in their invoices which attracts GST @18%. Hence, the impugned order is not proper and legal and liable to be set aside in the above contexts. Non-submission of FORM-A to the jurisdictional GST Officer and the typographical error in FORM-A, is a mere procedural lapse and on this ground substantial benefit of refund cannot be denied to the appellant without giving any cogent reasons. Further I hold that the appellant has not violated conditions of the Circular No. 14/14/2017-GST dated 06-11-2017. Hence I set aside the impugned order by allowing the present appeal of the appellant.

10. Looking to the facts involved in the matter as discussed in foregoing paras and merits of the instant case, I am of the opinion that the appellant should not be made to suffer any more. Thus, the appeal filed by the appellant is allowed in above terms.

11. अपीलकर्ता द्वारा दिये गये अपील का निचयन उपरोक्त ढर्रेके से किया जाता है।


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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 30.1.2023

Attested


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



By R.P.A.D.

To
M/s. Harmony Plastics Private Limited,
Block / Survey No. 205 / 1 Paiki 2,
Bhavpur, Gambhoi, Teh.- Himatnagar,
Dist. Sabarkantha, Gujarat.

Copy to :

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Pr. Commissioner / Commissioner, Central GST & C.Ex., Gandhinagar Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-Himmatnager, Commissionerate-Gandhinagar
5. The Additional Commissioner, Central Tax (System), Gandhinagar.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File.
8. P.A. File.



