



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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टेलीफैक्स 07926305136



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रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/2042/2023 -APPEAL / 15620 - 26

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC-23/2023-24  
दि-गॉक Date : 25-08-2023 जारी करने की तारीख Date of Issue : 12-09-2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Adesh Kumar Jain, Joint Commissioner (Appeals)

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Arising out of Order-in-Original No. 01/VJ/SUPDT-AR-II/GST/2022-23 DT. 30.03.2023  
issued by The Superintendent, CGST & C.Ex., AR-II, Divison-Kadi, Gandhinagar  
Commissionerate

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अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s. Sharadbhai Amratlal Patel,  
B-2, Someshwar Park, Kadi  
Mehsana, 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) <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(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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .

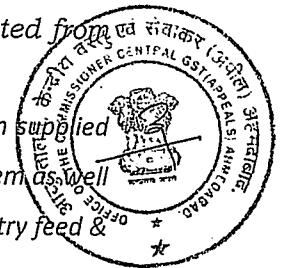


**ORDER-IN-APPEAL****BRIEF FACTS OF THE CASE :**

M/s Sharadbhai Amratlal Patel, B-2, Someshwar Park, Kadi, Mehsana-382715 (hereinafter referred to as the 'Appellant') has filed the present appeal against the Order in Original No. 01/VJ/Supdt-AR-II/GST/2022-23 dated 30.03.2023 (hereinafter referred to as the 'impugned order') passed by the Superintendent, CGST & C. Ex., AR-II, Division-Kadi, Gandhinagar Commissionerate (hereinafter referred to as the 'adjudicating authority').

2(i). Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration No. 24AHTPP6349K1ZK and has filed the present appeal on 29.05.2023. The 'Appellant' had have been issued a Show Cause Notice No. IV/1(b)-37/C-X/AP-68/2020-2021 dated 03.03.2022. Further, the adjudicating authority has adjudicated the impugned order by confirming the demand of Rs. 5,64,190/- and ordered to recover the same under Section 74(10) of the CGST Act, 2017 alongwith interest under Section 50(1) of the CGST Act, 2017. Also imposed a penalty of Rs. 5,64,190/- on the appellant under Section 74(9) of the CGST Act, 2017 on the following grounds:

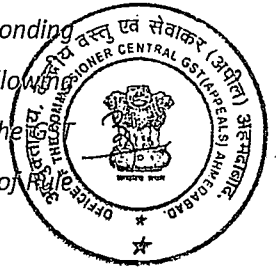
- *The outward supplies of Cotton Seed Oil Cakes during the period 01.07.2017 to 21.09.2017 attracted GST@ 5% if supplied for purpose other than aquatic feed including shrimp feed and prawn. feed, poultry feed & cattle feed and effective from 22.09.2017 supply of Cotton Seed Oil Cake was exempted from GST without any condition for supply.*
- *Whereas for the period 01.07.2017 to 21.09.2017, Cotton Seed Oil Cake" had been supplied by the said taxpayer to many GSTIN holders for the purpose of further supply by them and not for the purpose of aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed it attracted GST @ 5% and more so the taxpayer could not provide any reasons or facts which could establish that the outward supply of goods to traders/registered dealers, all GSTIN holders, had used goods for cattle feed only. I find that the end user condition has not been satisfied by the taxpayer. The taxpayer has made supplies to traders. No evidence has been provided by the taxpayer to show that the traders had further supplied the goods as cattle feed. Merely saying that the end product was used for cattle food would not suffice. There has to be documentary evidences to corroborate and support their statement. This being so, it is not established that the goods were used for the intended purpose as defined in the notifications aforesaid.*
- *Further, regarding the exemption of GST on "Cotton Seed Oil Cake" for the period from 01.07.2017 to 21.09.2017 under notification no. 02/2017-CT (Rate) dated 28.06.2017 and amended Notification Nos. 27/2017-CT(Rate) and 28/2017-CT(Rte) both dated 22.09.2017; I rely on the Order-in-Appeal No. AIHM-CGST-003-APP-ADC-84/2022-23 dated 11.01.2023 in the case of M/s. Annapurna Rice & Oil Mill, Kadi, Mehsana, passed by the Commissioner*



(Appeal), Central GST, Ahmedabad on similar issue, wherein the Hon'ble Commissioner Appeal had relied upon the Apex Court judgement in the matter of M/s. Ganesh Das Bhojraj which states that the effective date of a Notification is the date of its publication 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. In the instant case, the exemption benefit on "Cotton Seed Oil Cake" was not applicable to the taxpayer during the period from 01.07.2017 to 21.09.2017 and would take effect only from 22.09.2017 i.e. the date on which the Notification has been published in the Official Gazette.

**2(ii).** Being aggrieved with the impugned order, the appellant has filed the present appeal on 29.05.2023. The appellant contending on the grounds that

- The impugned Order in Original which imposes levy of CGST of Rs.2,82,095/- and GSGST of Rs.2,82,095/- in its entirety as being fallacious and incorrect and are based entirely on assumptions and presumptions and without appraising the facts and circumstances in the legal perspectives and adjudication being on the grounds which are arbitrary and legally not tenable and which are also contrary to the settled law position by various Hon'ble Courts and Intention of legislature.
- Ld Officer has erred in law while conducting the adjudication proceedings which is not according to express provisions of Section 74 of CGST Act/GSGST Act and corresponding Section of IGST Act, 2017 and Rules framed thereunder. Ld Officer has erred in not following procedure prescribed under GST Rules more particularly has not issued intimation in the Form DRC-01A, DRC-01, DRC-07 electronically as expressly mandated under provisions of Rule 142 of GST Rules which makes the entire proceeding illegal and void.
- Appellant object the Order in Original which imposes interest liability u/s 50(1) of the Central Goods and Services Act, 2017 as it is illegal and beyond the jurisdiction because Officer has no power to recover interest on GSGST of Rs.2,82,095/- under the provisions of Section 50(1) of Central Goods and Services Act,2017.
- The Order in Original which imposes Penalty of Rs. 5,64,190/- under the provisions of Section 74(9) of the Central goods and Service Act as illegal and beyond the jurisdiction because the Ld Officer has no power to impose penalty u/s 74(9) of the CGST Act on liability of tax determined under other Acts.
- Ld. Officer has no jurisdiction to adjudicate on the Show Cause Notice issued by Officer who is of rank higher than the rank of the Adjudicating Officer. Authority issuing SCN is Assistant Commissioner whereas the Adjudicating Authority is of rank of Superintendent who is presumably under undue pressure or influence.



- *Ld Officer has erred in law and violated principle of Natural Justice by not issuing GST Form DRC-01A (Intimation) before issuing Show Cause Notice and thus deprived an opportunity to settle the matter with lesser amount of penalty.*
- *Ld Officer has erred in law and also violated principles of natural justice while conducting adjudication proceedings. He has not considered the grounds raised by taxpayers and legal submissions made. We further object that Ld Officer has not passed speaking order with reasons and also not given which provisions of law, notification, circular empowers him to interpret the law in the manner he interpreted.*

**2(iii).** The appellant further submitted additional written submission contending on the grounds that:

- The appellant is not liable to discharge GST on outward supplies of goods in question "Cotton Seed Oil Cake" during the period from 01.07.2017 to 21.09.2017 as they are exempt goods under the Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017 and also the amended Notification Nos. 27/2017-CT(Rate) and 28/2017 - CT(Rate) both dated 22.09.2017.
- Merely because the product "Cotton Seed Oil Cake" is not expressly mentioned in the list of the exempted products in said notifications, it would be arbitrary and absurd to infer that "Cotton Seed Oil Cake" would be subject to charge of GST during the time period from 01.07.2017 to 21.09.2017.
- As the amendment made in Mother Notification is of clarificatory nature as it is not divesting new rights but curing the ambiguity and anomaly in the interpretation of exemption notification so as far as interpretation and applicability of said amendment shall have retrospective effect.

**PERSONAL HEARING :**

Personal Hearing in the matter was held on 18.08.2023, wherein Mr. Piyush Patel, C.A. appeared in person on behalf of the 'Appellant' as Authorized Representative. During the personal hearing he has reiterated that The current issue relates to the substitution of words "2306 Cotton Seed Oil Cake" at Sr. No. 102A of Notification 02/2017 (Ref. Para 9 of appeal memo). There was no intention of the government to levy tax from 01.07.2017 to 21.09.2017, as the substitution Notification was issued on 22.09.2017 and the "Cotton Seed Oil Cake" was exempted. He further submitted that the substitution notifications are effective from the date of original notification and not prospectively i.e. from the date of substitution Notification. Cotton seed oil cake is predominantly use as cattle seed only. He further reiterated the written submission and requested to allow appeal. Further SCN is issued under Section 74 but same is not applicable. In view of above requested to allow appeal.



**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 28<sup>th</sup> 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 1<sup>st</sup> day of July, 2017."

**Notification NO. 02/2017-Central Tax (Rate), dated 28<sup>th</sup> 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	<b>Aquatic feed including shrimp feed and prawn fee, poultry feed &amp; cattle feed, including grass, hay &amp; straw, supplement &amp; husk of pulses, concentrates &amp; additives, wheat bran &amp; de-oiled cake</b>

2. This notification shall come into force **with effect from the 1<sup>st</sup> day of July, 2017.**"

**Notification No. 27/2017-Central Tax (Rate), dated 22<sup>nd</sup> September2017 :**

"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 **followingamendments** in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 1/2017-Central Tax (Rate), dated 28<sup>th</sup> June 2017, published Gazette of India, Extraordinary Part II, Section 3, Sub-section (i). vide Number 673(E), dated the 28<sup>th</sup> June, 2017, namely:-

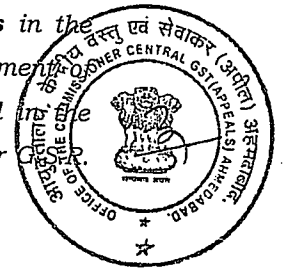
In the said notification,-

(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 22<sup>nd</sup> September2017 :**

"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 **followingamendments** in the notification of the Government of India in the Ministry of Finance (Department of



Revenue), No. 2/2017-Central Tax (Rate), dated 28<sup>th</sup> 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 28<sup>th</sup> 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"
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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 Hon'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<sup>ble</sup> 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 22<sup>nd</sup> 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 various judgments as mentioned in Para 2(iv) above are not squarely applicable in this case.

4.5 In view of the above and considering the judgement of the H<sup>ble</sup> Apex Court in this case, I find that the impugned order is 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 28.03.2023 as per Para 18 of impugned order and the appellant



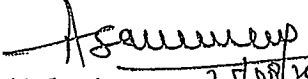


was being heard in person before passing the impugned order. This is evident that the adjudicating authority has concluded the matter after considering their reply & documents by giving an opportunity of being heard to the appellant. Therefore, I find that the adjudicating authority has not violated 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, I find no infirmity in the order passed by the Adjudicating Authority and therefore I uphold the impugned Order in Original and reject the present appeal, filed by the appellant.

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


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

  
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 25.08.2023

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

By R.P.A.D.

To,  
M/s Sharadbhai Amratlal Patel,  
B-2, Someshwar Park, Kadi,  
Mehsana-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-II, Div-Kadi, Gandhinagar Commissionerate.
7. Guard File.
8. P.A. File

