



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(GST)4/North/Appeals/20-21/15499 FO15499
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-021/20-21
दिनांक Date : 14-08-2020 जारी करने की तारीख Date of Issue : 24/08/2020
- श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)
- ग Arising out of Order-in-Original No ZY2406200044906 दिनांक: 04.06.2020 issued by
Deputy Commissioner, Central GST, Division-IV, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Ashutosh Metal Pvt. Ltd.
255, Mahagujarat Industrial Estate, Village Moraiya,
Taluka Sanand, Changodar, District-Ahmedabad-382213

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in



ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s Ashutosh Metal Pvt. Ltd., 255, Mahagujarat Industrial Estate, Village Moraiya, Taluka Sanand, Changodhar, District Ahmedabad-382213 (herein referred to as the 'appellant') against Order No. ZY2406200044906 dated 04.06.2020 [hereinafter referred to as 'the impugned order'] passed by the Deputy Commissioner, Central GST, Division-IV, Ahmedabad North (hereinafter referred to as 'the adjudicating authority') rejecting the refund claim filed by the appellant.

2. Facts of the case, in brief, are that during the course of audit of the records of the appellant by the departmental officers, it was observed that the appellant had not paid Service Tax on Ocean Freight paid during April-June, 2017-18 in respect of raw materials imported by them, which was payable by them under Reverse Charge Mechanism (RCM). On being pointed out, the appellant agreed with the objection and voluntarily paid Service Tax amounting to Rs.3,78,369/- along with interest of Rs.87,539/- and Penalty of Rs.56,755/- vide CPIN No.18122400500354 dated 28.12.2018. Thereafter, the appellant filed an application for refund of the above service tax paid on the ground that the Hon'ble High Court of Gujarat vide their decision dated 06.09.2019 in the case of Sal Steel Ltd. Vs. Union of India, has struck down the levy of Service Tax on Ocean Freight/Sea Freight on RCM and hence the amount of service tax collected from them as per audit objection is refundable. The application for refund was filed by the appellant under the provision of CGST Act, 2017 on 19.05.2020 and the same was acknowledged by the Authority vide Acknowledgement No.ZS2405200242138 dated 27.05.2020 and a Show Cause Notice dated 27.05.2020 was issued by the adjudicating authority in the matter. The said Show Cause Notice was decided by the adjudicating authority vide the impugned order wherein he has rejected the refund claimed by the appellant on the grounds that since claim pertains to Service Tax for the period prior to implementation of GST, it does not attract the provisions of CGST Act and that the amount was paid voluntarily on audit objection and the issue was settled and therefore, the refund claim has no merits.

3. Being aggrieved, the appellant has filed the present appeal contending that Hon'ble Gujarat High Court has quashed the levy of Service Tax and GST on ocean freight under reverse charge on importers vide their judgments in the case of Sal Steel Ltd. Vs. Union of India, dated 06.09.2019 in Service Tax law and Mohit Minerals Pvt. Ltd. Vs. Union of India, dated 29.01.2020 in GST matter; that they had done payment voluntarily because they did not want to fall in to unnecessary litigations as even at that point of time RCM on Ocean Freight was disputed issue; that if afterward any order of higher authority is issued in the favour of taxable person, then the benefit must be given to taxable person by way of refund; that thus this refund becomes fundamental right as per the constitution of India and cannot be



denied on any ground; that the fundamental rights enshrined in the Constitution are inherent and cannot be extinguished by any constitutional or statutory provisions and that as per Section 142 (8)(b) of CGST Act, the amount paid is refundable to them.

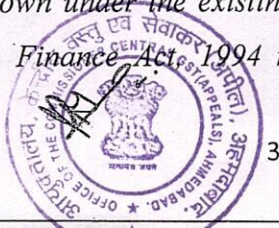
4. Personal Hearing in the matter was held on 16.07.2020. Shri Chitrag Shah, Chartered Accountant appeared on behalf of the appellant and re-iterated the submissions made in the appeal.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal and oral submissions made at the time of Personal Hearing. After going through the facts of the case, it is seen that the issue raised in the appeal pertains to refund of Service Tax, which is a matter falling under the purview of the erstwhile Finance Act, 1994. It has been clearly laid down under Section 142 (3) of the CGST Act, that:

“(3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.”

From the above provision of CGST Act, it is clear that refund under dispute in the appeal being a matter pertaining to refund of service tax paid under the existing law viz. Finance Act, 1994, has to be decided in accordance with the provisions of existing law and the provisions of refund of CGST are not applicable in such case. That being so, the refund claimed by the appellant under the refund provisions of CGST Act is not legally correct as refund of service tax paid under the existing law cannot be granted under such provisions. The appellant should have preferred the refund claim under the provisions of existing law and not under the CGST Act. The Central Board of Indirect Taxes and Customs (CBIC), New Delhi has clarified this aspect vide their Circular No. 37/11/2018-GST dt. 15.03.2018, the relevant para of which reads as under:

10. Refund of taxes paid under existing laws: Sub-sections (3), (4) and (5) of section 142 of the CGST Act provide that refunds of tax/duty paid under the existing law shall be disposed of in accordance with the provisions of the existing law. It is observed that certain taxpayers have applied for such refund claims in FORM GST RFD-01A also. In this regard, the field formations are advised to reject such applications and pass a rejection order in FORM GST PMT-03 and communicate the same on the common portal in FORM GST RFD-01B. The procedures laid down under the existing laws viz., Central Excise Act, 1944 and Chapter V of the Finance Act, 1994 read with above referred sub-sections of



section 142 of the CGST Act shall be followed while processing such refund claims.

6. In view thereof, it is observed that the refund claim in the present case was to be preferred by the appellant under the provisions of existing law and not under the provisions of CGST. Therefore, the refund claim filed by the appellant is rightly liable for rejection for being not preferred under the correct law and in view of the Board's above mentioned Circular. I do not go into the merits and demerits of the grounds for refund in the present as such a discussion is relevant only when the claim for refund is found correct as per the provisions of law under which it is filed and in the instant case the claim for refund is found liable for rejection at the initial stage itself for being not under the correct law as discussed above.

7. Accordingly, I do not find any reason to interfere with the decision taken by the adjudicating authority and therefore, I upheld the impugned order and reject the appeal filed by the appellant being devoid of merits.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.

(Mukesh Rathore)
Joint Commissioner (Appeals)

Date: 14.08.2020.

Attested



(Anilkumar P.)
Superintendent (Appeals)
CGST, Ahmedabad.

By Regd. Post A. D/Speed Post

To

M/s Ashutosh Metal Pvt. Ltd.,
255, Mahagujarat Industrial Estate,
Village Moraiya, Taluka Sanand,
Changodhar, District Ahmedabad-382213.
Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Commissioner, CGST Appeals, Ahmedabad.
4. The Deputy Commissioner, Central GST, Division-IV (Changodhar), Ahmedabad North.
5. The Dy./Asstt. Commissioner, CGST, HQ (Systems), Ahmedabad North.
(for uploading OIA)

6. Guard File.
7. P.A. File.

