



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

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फाइल संख्या : File No : V2(GST)22 to 26/EA-2/North/Appeals/2020-21/1554K 70 155B0

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-023 to 027/20-21
दिनांक Date : 26-08-2020 जारी करने की तारीख Date of Issue : 31/08/2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint. Commissioner (Appeals)

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Arising out of Order-in-Original No **MP/354 to 358/RFD-1A/Inverted Ref/19-20** दिनांक: **06.02.2020** issued by Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad-North

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

M/s Foraver Nerrow Fabrics, (GSTIN : 24BZRP7487B1ZU).

350/B/10, Bhagyoday Estate,

G.D. High School Road,

Hirawadi, Ahmedabad

(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

The Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad North, Ahmedabad (hereinafter referred to as the 'appellant') has filed following appeals against the following RFD-06 Refund Orders (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad North, Ahmedabad (hereinafter referred to as 'the adjudicating authority') in the matter of refund claims filed by M/s. Foraver Nerrow Fabrics, Ahmedabad, (GSTIN: 24BZRP7487B1ZU), 350/B/10, Bhagyoday Estate, G.D. High School Road, Hirawadi, Ahmedabad, (hereinafter referred to as 'respondent'):

Sr. No.	Impugned OIO No.	Dated	Amount of Refund under dispute (in INR)	Period of dispute:
1	MP/354/RFD-1A/Inverted Ref/19-20	06.02.2020	1,05,568/- (CGST-Rs. 52,784/- and SGST- Rs. 52,785/-)	September-2018
2	MP/355/RFD-1A/Inverted Ref/19-20	06.02.2020	43,679/- (CGST-Rs. 21,840/- and SGST- Rs. 21,839/-)	October-2018
3	MP/356/RFD-1A/Inverted Ref/19-20	06.02.2020	82,306/- (CGST-Rs. 41,153 and SGST- Rs. 41,153/-)	August-2018
4	MP/357/RFD-1A/Inverted Ref/19-20	06.02.2020	3,328/- (CGST-Rs. 1,664/- and SGST- Rs. 1,664/-)	November-2018
5	MP/358/RFD-1A/Inverted Ref/19-20	06.02.2020	96,358/- (CGST-Rs. 48,179/- and SGST- Rs. 48,179/-)	December-2018

Since the issue involved in all file appeals are common, I take up for disposal by a common order.

2. The facts of the case, in brief, are that the respondent, had filed all the above mentioned five refund claim vide ARN No. and period mentioned as under on account of input tax credit (ITC) accumulated due to Inverted Tax Structure and the same has been sanctioned by adjudicating authority vide above mentioned impugned orders under Section 54 of the CGST Act, 2017 read with Rule 89 of CGST Rules, 2017:

Sr. No.	Refund Application Reference No. ARN & Dated:	Amount of Refund Claimed: (in INR)	Sanctioned vide OIO No. & Dated :	Period involved:
1	AB240918812346X dated 05.02.2020	Rs. 1,48,565/- (CGST-Rs. 52,784/-, SGST- Rs. 52,785/- and IGST Rs. 42996/-)	MP/354/RFD-1A/Inverted Ref/19-20, dated 06.02.2020	September-2018
2	AB241018139136H dated 05.02.2020	Rs. 64,874/- (CGST-Rs. 21,840/-, SGST- Rs. 21,839/- and IGST Rs. 21195/-)	MP/355/RFD-1A/Inverted Ref/19-20 dated 06.02.2020	October-2018
3	AB240818074209V dated 05.02.2020	Rs. 89,982/- (CGST-Rs. 41,153/-, SGST- Rs. 41,153/- and IGST Rs. 7676/-)	MP/356/RFD-1A/Inverted Ref/19-20, dated 06.02.2020	August-2018
4	AB2411118054413H dated 05.02.2020	Rs. 30,597/- (CGST-Rs. 1,664/-, SGST- Rs. 1,664/- and IGST Rs. 27269/-)	MP/357/RFD-1A/Inverted Ref/19-20, dated 06.02.2020	November-2018
5	AB241218790394W dated 15.05.2019	Rs. 2,24,391/- (CGST-Rs. 48,179/-, IGST Rs. 128033/- and SGST- Rs. 48,179/-)	MP/358/RFD-1A/Inverted Ref/19-20, dated 06.02.2020	December-2018



3. On the refund claims being sent for post audit, it was observed by the Assistant Commissioner, Audit Cell, CGST & C. Ex., Ahmadabad-North vide letter F.No. \VI/1 (b)-194/PostAudit/Div-II/2020-21 dated 23.06.2020 observed that all the refund claims has been filed from 15.05.2019 to 05.02.2020, i.e, after the issuance of Circular No. 59/33/2018- GST dated 4.09.2018 and Wherein, the instruction laid down in the said circular, is applicable to the instant refund claim. Hence, audit observed that In the all above mentioned refund cases, the excess refund from CGST and SGST heads as mentioned above have been sanctioned by the Assistant Commissioner, CGST& C.Ex., Ahmadabad-North which are inadmissible as per above circular and required to be recovered. Thereafter on the impugned orders, having been examined for its legality and propriety, the Commissioner, CGST & C.Ex., Ahmedabad North, vide Review Orders Nos. 20 to 24/2020-21 all dated 01.07.2020 authorized the appellant to file an appeal against the all above mentioned impugned orders raising the following grounds:

- observed that the refund claims have been filed on 15.05.2019 and 05.02.2020 , i.e, after the issuance of Circular No. 59/33/2018-GST dated 4.09.2018 and the instruction laid down in this circular is applicable to this refund claim;
- that the claimant has filed refund claim of Rs. mentioned above from IGST heads and there was sufficient balance in IGST heads at the end of tax period as well as at the time of filing refund claims for which refund is claimed. Therefore, in compliance of the instructions in the aforementioned circular, the entire amount of refund were to be debited from IGST head. However, the claimant has debited the amount from IGST head, CGST head and SGST head.
- that the excess refund sanctioned as mentioned in above table for CGST and SGST needs to be recovered along with interest.

4. A personal hearing in the matter was held on 28.07.2020. Shri Nikhil Kumar V. Shah (CA), appeared before me on behalf of the appellant and reiterated the grounds of appeal.

5. I have carefully gone through the facts of the appeals, the department's grounds of appeal in the Review Orders and submission made by respondent at the time of personal hearing. I find that the date of receipt of the impugned order as mentioned in the review orders is 19.05.2020 and the above appeals have been filed on 14.07.2020. As per Section 107 of the CGST Act 2017, the review of the order and the consequent filing of appeal by the subordinate has to be done within a period of six months from the date of communication of the order. I find that the above appeal have been filled within time limit.

6. In the present case, I find that the appellant has filed the appeals on the ground that, as per Para 3.2 of Circular No 59/33/2018- GST dated 04.09.2018 the respondent had to debits the entire amount of refund mentioned as above from IGST



(as claimant have sufficient balance in IGST heads at the end of tax period as well as at the time of filing refund claims), whereas the respondent has debited the claim amount from IGST, CGST and SGST heads and hence excess refund amounts were sanctioned by the sanctioning authority as mentioned above.

7. Before going to decide the case, It shall be apt to reproduce the Para 3.2 of Circular No 59/33/2018-GST dated 04.09.2018 which reads thus :-

"3.2 After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:

- a) *Integrated tax, to the extent of balance available;*
- b) *Central tax and State tax/ Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/ Union Territory tax, in this case)."*

8. It is evident from the above that, while validations in calculating refund amount in system, the equivalent amount is to be debited, from the electronic credit ledger of the claimant: a) Integrated tax, to the extent of balance available, and b) Central Tax and state tax, equally to the extent of balance available and the event of shortfall in the balance available in a particular electronic credit ledger (say, central tax), the differential amount is to be debited from the other electronic credit ledger (i.e. State tax/Union territory tax, in this case). I also find that, court cases cited regarding binding value of circular to Department/Assesses which all are before the GST era submitted by the respondent at the time of personal hearing is not sustainable in present case.

9. In view of the foregoing, the departmental appeals are allowed and all the impugned OIOs are set aside. The prayer of the department for the recovery of the erroneously sanctioned refunds along with interest are also allowed.

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

10. The appeals filed by the appellants stand disposed of in above terms.

मुकेश राठौर
26/08/2020

(मुकेश राठौर)

संयुक्त आयुक्त (अपील्स)

Date : .08.2020

Attested

(Handwritten signature)

(D.A. Parmar)
Superintendent(Appeals),
Central Tax, Ahmedabad



To,

M/s. Foraver Nerrow Fabrics,
350/B/10, Bhagyoday Estate,
G.D. High School Road, Hirawadi, Ahmedabad,.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Pr. Commissioner, Central GST, Ahmedabad North.
3. The Commissioner, CGST, Appeal, Ahmedabad.
4. The Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad North.
5. The Deputy/Assistant Commissioner, State Tax, Ghatk Unit.
6. The Assistant Commissioner(RRA), Central GST, Ahmedabad North.
7. Guard file
8. P.A. file.



