



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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टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)15 to 17/EA-2/North/Appeals/19-20 /15827

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-028 to 030/20-21
दिनांक Date : 30-09-2020 जारी करने की तारीख Date of Issue : _____

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No MP/295,293,292/RFD-1A/Inverted Ref/18-19 दिनांक: 31.10.2018 issued by Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad-North

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

M/s Rotomech Pumps, (GSTIN : 24AAMFR5160J1ZZ).

Sub-Plot No. A-7, Maruti Industries Estate,

Opp. Naroda Fire Station, Memco,

Naroda Road, Ahmedabad-380025

(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 below mentioned all departmental appeals have been filed by the Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad North, Ahmedabad (hereinafter referred to as the 'appellant') under Section 107 of the Central Goods and Services Tax Act, 2017, against the following Orders-in-Originals (*hereinafter referred to as 'impugned orders'*) passed by the Assistant Commissioner, Central GST, Division-II, Ahmedabad North (*hereinafter referred to as 'adjudicating authority'*) in the matter of refund, the details of which are as follows:

Sr. No.	Name of the respondent	OIO No. & date issued under Form GST RFD 06	Review Order No. passed by the Commissioner, CGST & C.Ex., Ahmedabad North Comm'rate [in terms of Section 107(2) of the CGST Act, 2017]	Appeal No.	Amount Under Dispute (IGST in Rs.)
1	2	3	4	5	6
1	M/s Rotomech Pumps, Sub- Plot No. A-7, Maruti Industries Estate, Opp. Naroda Fire Station, Memco, Naroda Road, Ahmedabad - 380025 24AAMFR5160J 1ZZ (GSTIN)	MP/295/RFD-1A/Inverted Ref/18-19 dated 31.10.2018	25/2019-20 dated 06.11.2019	V2(GST)15/EA2/North /Appeals/ 19-20	333395
2	Industries Estate, Opp. Naroda Fire Station, Memco, Naroda Road, Ahmedabad - 380025 24AAMFR5160J 1ZZ (GSTIN)	MP/293/RFD-1A/Inverted Ref/18-19 dated 31.10.2018	26/2019-20 dated 06.11.2019	V2(GST)16/EA2/North /Appeals/ 19-20	366084
3	Industries Estate, Opp. Naroda Fire Station, Memco, Naroda Road, Ahmedabad - 380025 24AAMFR5160J 1ZZ (GSTIN)	MP/292/RFD-1A/Inverted Ref/18-19 dated 31.10.2018	24/2019-20 dated 06.11.2019	V2(GST)17/EA2/North /Appeals/ 19-20	81902

2. The facts of the cases, in brief, are that the respondent, had filed five refund claims for the month of Nov-17, Dec-17 & Oct-17 on account of input tax credit (ITC) accumulated under Inverted Duty Structure and Rs. 6,33,275/- , Rs. 7,08,208/- and Rs. 1,92,811/- has been sanctioned respectively by adjudicating authority vide impugned orders in view of the formula given in the Rule 89(5) of the CGST Rules, 2017.

3. On the refund claim being sent for post audit, it was observed that the Respondent has filed refund claims on account ITC accumulate due to inverted tax



structure. Further, it has been observed that the claimant has submitted the Statement 1A under Rule 89(2) (h) of CGST Rules, 2017, whereby the claimant has declared eligible ITC for the relevant claim period which is less than the ITC value as per GSTR-3B. However, JAC has taken ITC as per GSTR-3B while calculating the eligible refund. Accordingly, the total eligible ITC and refund amount is recalculated as under:

Claim for the Month of	ITC availed as per 3B (1)	ITC availed as per Statement (2)	Tax paid on RCM (3)	Disallowed (12%/Input Services) (4)	Net ITC available (2-4)
Nov-17	1929355	1891555	0	9118	1882437
Dec-17	1852017	1812929	0	11490	180143

Turnover of inverted rated supply of goods (1)	Tax payable on such inverted rated supply of goods (2)	Adjusted total turnover (3)	Net Input Tax Credit (4)	Maximum refund amount to be claimed (5) [(1x4/3)-2]
8911066	1069332	10050092	1882437	599759
7702280	924310	8625856	1801439	684248

Further, as per the condition of Para 3.2 of Circular No. 59/33/2018-GST dated 04.09.2018, the admissible refund claim amount is workout as under:

Nov-17

Description	IGST	CGST	SGST
Balance available at the time of filing of refund	0	424164	6071501
Amount should be debited as per Circular 59/33/18	0	299879.5	299879.5
Amount actually debited by the claimant	0	0	641360
Eligible refund amount	0	0	299880
Refund sanctioned			633275
Excess refunded			333395

Dec-17

Description	IGST	CGST	SGST
Balance available at the time of filing of refund	0	424164	6071501
Amount should be debited as per Circular 59/33/18	0	342124	342124
Amount actually debited by the claimant	0	0	718467
Eligible refund amount	0	0	342124
Refund sanctioned			708208
Excess refunded			366084



Oct-17

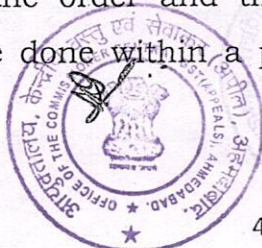
Description	IGST	CGST	SGST
Balance available at the time of filing of refund	0	424164	6293318
Amount should be debited as per Circular 59/33/18	0	110908.5	110908.5
Amount actually debited by the claimant	0	0	221817
Eligible refund amount	0	0	110909
Refund sanctioned			192811
Excess refunded			81902

The respondent has not followed the chronology of debiting the ITC in Electronic Credit Ledger as per the provision contained in para 3.2 of CBIC Circular No. 59/33/2018-GST dated 04.09.2018. Hence, audit observed that the adjudicating authority had sanctioned the refund claims, in excess. Thereafter on the impugned orders, having been examined for their legality and propriety, the Commissioner, CGST & C.Ex., Ahmedabad North Commissionerate, vide above mentioned Review Orders authorized the appellant to file appeals against the impugned orders raising the following grounds:

- That the instruction laid down in Circular No. 59/33/2018-GST dated 04.09.2018 and are applicable to these refund claims.;
- That the Adjudicating Authority has erred in calculation of Net Input Tax Credit.;
- That the respondent has not debited the entire claim amount equally from CGST and SGST head. Therefore, in view of para 3.2 of aforesaid circular, The adjudicating authority has sanctioned excess refund.
- that the excess refund sanctioned needs to be recovered along with interest.

4. Personal hearing in respect of all three appeals was held on 28.08.2020, wherein Shri Pritesh Pravinbhai Mistri, Consultant, appeared before me on behalf of respondent.

5. I have carefully gone through the facts of the appeals, the department's grounds of appeal in the Review Orders. I find that the date of receipt of the impugned order as mentioned in the review orders is 08.05.2019 and the above appeals have been filed on 07.11.2019. 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. I have gone through the facts of the cases, the impugned orders & the grounds raised in the review orders mentioned *supra* and the oral averments raised during the course of personal hearing. I find that the whole dispute of amount of refund, for which appeal has been preferred, arose on account of Rule 89(5) of CGST Rules, 2017 and CBIC Circular No.59/33/2018-GST dated 04.09.2018, relevant part of which is reproduced below:

Rule 89(5) of the CGST Rules, 2017

89(5) *In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula :-*

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such invertedrated supply of goods and services.

Explanation : - *For the purposes of this sub-rule, the expressions -*

(a) **Net ITC shall mean input tax credit availed on inputs during the relevant period** other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) [“Adjusted Total turnover” and “relevant period” shall have the same meaning as assigned to them in sub-rule (4).]

Para 3.2 of Circular No.59/33/2018-GST dated 04.09.2018

“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).”

7. It is evident from Rule 89(5) of the CGST Rules, 2017 that the Net ITC means input tax credit availed on inputs during the relevant period but it excludes ITC availed on Services and Capital Goods. Further, I find that ITC availed on Services and Capital Goods has to be deducted from the Net ITC



before calculating the maximum refund claim according to Rule 89(5) of the CGST Rules, 2017.

Further, As provided under above Circular No.59/33/2018-GST dated 04.09.2018, while filling refund claims, the respondent was required to debit the claim amount from Electronic credit ledger, Central tax and State tax/Union Territory tax, equally to the extent of balance available. There was sufficient balance in CGST head at the time of filing of the refund claims for relevant period, however, the respondent has not debited the entire claim amount equally from CGST and SGST head. I find that the respondent has not followed the chronology of debiting the ITC in Electronic Credit Ledger as per the provision contained in para3.2 of CBIC Circular No. 59/33/2018-GST dated 04.09.2018. Thus, it is observed that in none of the cases above, they debited the amount to the extent balance available in CGST. This unspecified/improper method of debit by the respondent resulted in excess refund of CGST and SGST to the tune of Rs. 333395/-, Rs.366084/- and Rs. 81902/- for the month of Nov-17, Dec-17 and Oct-17 respectively. The said amount is required to be recovered with applicable interest.

8. In view of the foregoing, I find that adjudicating authority has erroneously sanctioned the excess refund to the respondent and therefore the excess refund amount should be recovered with appropriate interest. Hence, the appeal filed by the appellant is allowed.

9. The departmental appeal is allowed. The prayer of the department for the recovery of the erroneously sanctioned refund along with interest is also allowed.

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

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

मुकेश राठौर
25/09/2020

(मुकेश राठौर)

संयुक्त आयुक्त(अपील्स)

Date : .09.2020

Attested

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



By R.P.A.D.

To,

M/s. Rotomech Pumps,
(GSTIN: 24AAMFR5160J1ZZ)
Sub- Plot No. A-7, Maruti Industries Estate,
Opp. Naroda Fire Station, Memco,
Naroda Road, Ahmedabad - 380025

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad.
4. The Commissioner of Central Tax, Ahmedabad-North.
5. The Additional /Joint Commissioner, Central Tax (System), Ahmedabad-North.
6. The Assistant Commissioner, CGST Division-II, Ahmedabad-North.
- ✓ 7. Guard File.
8. P.A. File



