



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

07926305065-

टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(GST)99/North/Appeals/2019-20/16047 TO 16050
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-JC-032/20-21  
दिनांक Date : 29.09.2020 जारी करने की तारीख Date of Issue : 2/10/2020
- श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित  
Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)
- ग Arising out of Order-in-Original No 273/2019-20(Final) दिनांक: 12.09.2020 issued by Assistant/Deputy Commissioner, Central GST, Division-I, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s PEE GEE Fabrics Pvt. Ltd.  
186/A, GIDC Naroda, District-Ahmedabad-382330

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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

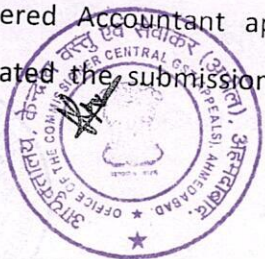
This order arises out of an appeal filed by M/s. PEE GEE Fabrics Private Limited, having registered office at 186/A, GIDC Naroda, Ahmedabad-382330 (herein referred to as the 'appellant') against Refund Rejection Order No. 273/2019-20(Final) dated 12.09.2019 [hereinafter referred to as 'the impugned order'] passed by the Assistant Commissioner of Central Tax, Division-I, Ahmedabad North (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant is holding GST Registration No. 24AAACP8774B1Z1. The appellant had filed refund claim amounting to Rs.8,06,852/- vide FORM GST RFD-01A bearing ARN AB2408190179455 dated 08.08.2019 for the month of August, 2018 in "any Other" category. This is the second refund claim filed by the appellant for the month of August-2018. Previously, the appellant has filed "Refund on account of ITC accumulated due to Inverted Tax Structure" of Rs. 14,71,946/- for the month of August-2018, which was sanctioned vide Sanction Order Number 245/2019-20(Final) dated 25.07.2019. A Show Cause Notice No. 232/2019-20 dated 03.09.2019 was issued to the appellant. The refund claim was rejected Refund Rejection Order No. 273/2019-20(Final) dated 12.09.2019 by the adjudicating authority.

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

- (i) As per Circular No. 94/13/2019-GST dated 28.03.2019, as a one time measure to resolve issue, refund of accumulated ITC on account of Inverted Tax Structure, for the period in which there was reversal of ITC required to be lapsed in terms of the notification No. 20/2018-Central Tax(Rate) dated 26.07.2018 read with Circular No. 56/30/2018-GST dated 24.08.2018, was to be claimed under the category "any other" instead of under the category "refund of unutilised ITC on account of accumulated due to inverted tax structure".
- (ii) Further, as per Notification 20/2018 and corresponding circular and as per methodology enshrined in Rule 89 of CGST Rules, 2017, the appellant was eligible for the Maximum Refund Amount;
- (iii) Had the appellant not reversed the credit on capital goods the appellant could have claimed entire amount of Rs. 22,78,798/-.

4. Personal Hearing in the case was held on 03.07.2020. Shri Arjun Akruwala, Chartered Accountant appeared on behalf of the appellant for the hearing and reiterated the submissions made in the Appeal Memorandum. He also submitted a



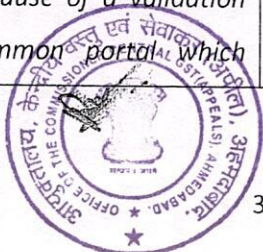
written submission along with copies of case law in support of his contention. The appellant submitted additional documents dated 21.09.2020 in support of their case.

5. I have carefully gone through the facts of the case available on record, grounds of appeal and oral submissions made by the appellant at the time of hearing. I find that the issue to be decided in the present appeal is as to whether in the facts and circumstances of the case the appellant is legally liable for second refund for the month of August-2018.

6. Circular No. 94/13/2019-GST dated 28.03.2019 states as below:

*Various representations have been received seeking clarifications on certain issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as detailed hereunder:*

Sr. No.	Issue	Clarification
1.	Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No. 20/2018- Central Tax (Rate) dated 26.07.2018 read with circular No. 56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the "said notification"). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which	<p>a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made.</p> <p>b) The application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods</p>



<p>prevents the value of input tax credit in Statement 1A of FORM GST RFD-01A from being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?</p>	<p>and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"), in the manner detailed in para 3 of Circular No. 59/33/2018-GST dated 04.09.2018. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment advice in FORM GST RFD-05.</p> <p>c) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01A under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure".</p>
---	---

As per the details given above, it is clarified that neither two refund claims can be filed in a particular period/month nor it can be splitted into two refund claims. Further, as the above circular the refund application shall be accompanied by all statements, declarations, undertakings and other documents which are statutorily required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure" and it should be calculated as per Rule 89(5) of CGST Rules, 2017, in the manner detailed in para 3 of Circular No. 59/33/2018-GST dated 04.09.2018.

7. Further, I find that as per Notification 20/2018-Central Tax(Rate) for the month of July, 2018 accumulated ITC lying unutilized shall lapse. The relevant extract is reproduced below;

- (i) nothing contained in this notification shall apply to the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of goods mentioned at serial numbers 1, 2, 3, 4, 5, 6, 6A, 6B, 6C and 7 of the Table below; and (ii) in respect of said goods, the



*accumulated input tax credit lying unutilised in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse."*

As per the above mentioned Notification, reversal of accumulated ITC lying unutilized in balance, after payment of tax for and upto the month of July, 2018 was binding on the appellant. Hence, the appellant's contention that had they not reversed the credit on capital goods, they would have claimed entire amount of Rs. 22,78,798/-, is not legally sustainable.

8. As per Rule 89(5) of the CGST Rules, 2017 , maximum refund amount on account of inverted duty tax structure is as under:

*Maximum refund amount={ (Turnover of inverted rated supply of goods and services) \* Net ITC / Adjusted Total Turnover } - Tax payable on such inverted rated supply of goods and services*

The adjudicating authority has observed that:

*"The earlier refund claim, claimed by the claimant was as per Rule 89(5) of CGST Rules, 2017 and calculation was done accordingly. Now the claim was filed without any calculation and not as per Rule 89(5) of CGST Rules, 2017. Therefore, the claimant had not followed the rules and procedure of CGST Rules, 2017."*

Since, the appellant did not follow rules and procedure given in CGST Rules, 2017 hence they are not liable for refund claim.

9. The adjudicating authority has further observed that:

*"The claimant themselves had reversed it in the month of August -2018 amounting to Rs. 10,12,189/- in GSTR-3B. As the claimant had not reversed the ITC of Capex goods earlier, it is binding on the claimant to reverse the ITC of capital goods. After the reversal, the claimant is claiming refund for reversed ITC on capital goods/services for reversed ITC is unwarranted. Therefore, the reversal ITC of capital goods in GSTR-3B Rs. 10,12,189/- which is binding on the claimant cannot be claimed as refund. The refund is inadmissible and reversed amount cannot be claimed as per Circular No. 94/13/2019-GST dated 28.03.2019"*

The reversal in the month of August-2018 was necessary as the appellant did not do it earlier. Further, after making the reversal, the appellant claimed refund of reversed ITC in capital goods which is not legitimate. Hence, refund claim for the month of



August, 2018 in "Any Other Category" cannot be claimed as per the Circular 94/13/2019 dated 28.03.2019.

10. In view of the above, I find that there is no merit in the contention of the appellant that the adjudicating authority erred in rejecting the refund claim. Hence, I uphold the impugned order-in-original passed by the adjudicating authority and the appeal filed by the appellant is accordingly rejected.

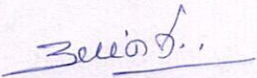
11. The appeal filed by the appellant stand disposed off in above terms.

  
(Mukesh Rathore)

Joint Commissioner ( Appeals)

Date: .09.2020.

Attested

  
( M.P.Sisodiya )  
Superintendent (Appeals)  
Central GST, Ahmedabad



By Regd. Post A. D

To

M/s. PEE GEE Fabrics Private Limited  
186/A, GIDC Naroda,  
Ahmedabad-382330.

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, CGST, Ahmedabad North.
3. Assistant/Deputy Commissioner, Central GST, Division-I, Ahmedabad North
4. Guard File.
5. P.A. File.