



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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DIN20201264SW0000515223

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(GST)13/EA2/North/Appeals/2019-20
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-036/20-21**
दिनांक Date : **27.11.2020** जारी करने की तारीख Date of Issue : **14.12.2020**
श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)
- ग Arising out of Order-in-Original No **MP/141/RFD-1A/Inverted Rf/18-19** दिनांक:
26.07.2018 passed by Assistant/Deputy Commissioner, Central GST, Division-II,
Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Appellant- The Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad
North, Ahmedabad
Respondent- Pravinbhai Manubhai Savalia, M/s. Savaliya Electrical, 24, Rajmani Ind. Estate,
B/h Kamdar Kalyan Kendra, Bapunagar, Ahmedabad-380024.

(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.



ORDER IN APPEAL

The Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad North, Ahmedabad (hereinafter referred to as the 'appellant') has filed the present appeal as per Review order No. 012/2019-20 dated 18.09.2019 issued under F.N. IV/18-64/Ref/19-20-RA passed by the Commissioner, CGST & C.Ex., Ahmedabad North against RFD-06 Order-in-Original No. MP/141/RFD-1A/Inverted Ref/18-19 dated 26.07.2018 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Division-II, CGST & Central Excise Ahmedabad North, (hereinafter referred to as 'the adjudicating authority') in the matter of refund claims filed by Shri Pravinbhai Manubhai Savalia, M/s. Savaliya Electrical, 24, Rajmani Ind. Estate, B/h Kamdar Kalyan Kendra, Bapunagar, Ahmedabad- 380024 (hereinafter referred to as 'respondent').

2. The facts of the case, in brief, are that the respondent had filed a refund claim of Rs.4,25,636/- for CGST and Rs.8,44,480/- for SGST, totally amounting to Rs.12,70,116/-, for the month of December, 2017 on account of input tax credit (ITC) accumulated due to inverted tax structure. The adjudicating authority has sanctioned a refund of Rs.11,92,741/- and rejected the refund for an amount of Rs.77,375/-.

3. During the course of post audit of the said refund claim, it was observed that the net ITC as per purchase register submitted by the respondent was Rs.18,55,983/- and after deducting the ITC amounting to Rs.87,972/- availed on services from the said figure, the eligible 'Net ITC' for the purpose of calculating the refund under reference was Rs.17,68,011/-. However, the adjudicating authority has taken the figure of 1858451 in place of 1768011 for Net eligible Input Tax Credit (ITC) while determining the admissible refund as per the formula prescribed in the Rule 89 (5) of the CGST Rules, 2017 which has resulted in sanctioning of excess refund of Rs.89,153/- as the maximum refund amount admissible was Rs.11,03,588/- whereas the adjudicating authority has sanctioned an amount of Rs.11,92,741/-. The department has filed by the present appeal against sanctioning of the excess refund of Rs.89,153/- discussed above.

4. Personal hearing in the matter was fixed on 06.11.2019, 13.02.2020, 16.03.2020, 03.07.2020, 28.08.2020, 23.10.2020 and 05.11.2020. But no one from appellant's side or the respondent's side attended the hearing. I, therefore, proceed to decide the case based on facts available on records.

5. I have carefully gone through the facts of the case and grounds raised in the appeal memorandum. At the outset, I find that the date of receipt of the impugned order as mentioned in the review orders is 26.03.2019 and the above appeal has been filed on 19.09.2019. 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 filed within time limit.

6. The limited issue to be decided in the case is as to whether there is an excess payment of refund of Rs.89,153/- to the respondent vide the impugned order as contended by the department or not. It is the case of the department that the adjudicating authority while calculating the maximum refund admissible in the case as per formula prescribed under Rule 89(5) of the CGST Rules, 2017 has committed an error in taking the value of 'Net ITC' which has consequently resulted in sanctioning of excess refund. It is contended that the net ITC available as per purchase register submitted by the



respondent was Rs.18,55,983/-, and after deducting the ITC amounting to Rs.87,972/- availed on services from the said figure, the eligible 'Net ITC' availed on inputs to be considered for the purpose of calculating the refund under reference in terms of Rule 89(5) of the CGST Rules, 2017 was Rs.17,68,011/-. As against the said value of 'Net ITC', the adjudicating authority has considered the value of 'Net ITC' as Rs.18,58,451/-. After going through the facts available on records, I find force in the contention of the department. Considering the net ITC available as per Purchase Register submitted by the respondent, the actual 'Net ITC' availed on inputs after deducting the ITC availed on services, comes to Rs.17,68,011/- as rightly pointed out by the appellant department. Applying this value of 'Net ITC' availed on inputs in the formula prescribed under Rule 89(5) of the CGST Rules, 2017, the maximum admissible refund in the case worked out to Rs.11,03,588/- as against the amount of Rs.11,92,741/- sanctioned as refund by the adjudicating authority. Thus, it is clear that the difference in these two amounts viz. Rs.89,153/- was sanctioned in excess to the maximum admissible refund legally eligible. Further, there is nothing on record to counter the above facts as the adjudicating authority has not mentioned the source document from where or how he has taken or arrived at the value of 'Net ITC' in his order. The respondent was given opportunity to place on record any objection against the department's appeal to which they have not responded.

7. In view of the foregoing, the departmental appeal is allowed and the impugned order to the extent it sanctioned excess refund to the tune of Rs.89,153/- is set aside. The prayer of the department for the recovery of the erroneously sanctioned excess refund along with interest is also allowed.

8. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

मुकेश राठौर
27/11/2020

(मुकेश राठौर)

संयुक्त आयुक्त (अपील्स)

Date : 27.11.2020

Attested



(Anilkumar P.)

Superintendent (Appeals),
Central Tax, Ahmedabad



To

The Assistant Commissioner,
CGST Division-II,
Ahmedabad North.

Appellant

Shri Pravinbhai Manubhai Savalia,
M/s. Savaliya Electrical,
24, Rajmani Ind. Estate,
B/h Kamdar Kalyan Kendra, Bapunagar,
Ahmedabad- 380024.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, Central GST, Ahmedabad North.
3. The Commissioner, CGST, Appeal, Ahmedabad.

4. The Deputy/Assistant Commissioner, State Tax, Ghatk14, 5th Floor, Shiol Building, Khanpur, Ahmedabad-380001.
5. The Assistant Commissioner(RRA), Central GST, Ahmedabad North.
6. The Dy./Asstt. Commissioner (HQ-Systems), CGST, Ahmedabad North.
(for uploading the OIA)
7. Guard file
8. P.A. file.

