



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.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015  
☎ : 079-26305065 टेलिफैक्स : 079 - 26305136  
Email- commrappl1-cexamd@nic.in



DIN20201264SW0000009E11

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(GST)03 & 04/EA2/North/Appeals/2020-21
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-037 & 038/20-21**  
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 **RFD-06/275 & 276/2019-20** दिनांक: **24.09.2019** both passed by Assistant/Deputy Commissioner, Central GST, Division-I, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** The Deputy Commissioner, CGST & Central Excise, Division-I, Ahmedabad North, Ahmedabad

**Respondent-** M/s. MAK pump Industries, Plot No. 65, Phase-1, GIDC Naroda, 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) <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.



-2-

**ORDER IN APPEAL**

The Deputy Commissioner, CGST & Central Excise, Division-I, Ahmedabad North, Ahmedabad (hereinafter referred to as the 'appellant') has filed the following two appeals as per two Review orders No. 01 & 02/2020-21 both dated 19.05.2020 issued under F.N. IV/18-209/Ref/19-20-RA passed by Commissioner, CGST & C.Ex. Ahmedabad North against following mentioned two RFD-06 Order-in-Original No. (hereinafter referred to as 'impugned orders') both passed by the Deputy Commissioner, Division-I, CGST & Central Excise Ahmedabad North, (hereinafter referred to as 'the adjudicating authority') in the matter of refund claims filed by M/s. MAK pump Industries, Plot No. 65, Phase-1, GIDC Naroda, Ahmedabad (hereinafter referred to as 'respondent'). The details are as under:

Sr. No.	Name of the Respondent	OIO No. & date issued under Form GST RFD 06 Passed by Deputy Commissioner, Division-I, CGST & Central Excise Ahmedabad North	Review Order No. passed by the Commissioner, CGST & C.Ex., Ahmedabad North Comm'rate	Amount Under Dispute (SGST in Rs.)
1	2	3	4	6
1	M/s. MAK pump Industries.	275/2019-20 (Final) dated 24.09.2019	01/2020-21- dated 19.05.2020	62,472/-
2		276/2019-20 (Final) dated 24.09.2019	02/2020-21- dated 19.05.2020	10,021/-

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

2. The facts of the cases, in brief, are that the respondent, had filed two refund claims for the month of February-2018 & March-2018, on account of "refund on account of ITC accumulated due to inverted tax structure" and Rs. 751,583/- (SGST: Rs. 7,51,583) and Rs. 8,99,117/- (SGST: Rs. 8,99,117) has been sanctioned respectively by adjudicating authority vide impugned orders in view of the formula given in the Rule 89(5)(a) of the CGST Rules, 2017.

3. On the refund claim being sent for post audit, it was observed by the Audit that the respondent has submitted Annexure-A for calculation of eligible ITC and after co-relating of Statement 1A with Annexure-A, it has been found that some invoices of input services have been included into Statement-1A i.e. the Net ITC considered in calculation of refund amount includes the credit of input services which is inadmissible in case of Refund on account of inverted duty structure, as per Rule 89(5) of CGST Rules, 2017.



**-3-**

Accordingly the eligible refund amount re-calculated by the Audit office as per Rules 89(5)(a) of CGST Rules, 2017 for the month of February-2018 and March-2018 shown as under:

**For the month of February-2018:**

\* Net Input Tax Credit is re-calculated by Audit Cell is as under:-

NET ITC as per Annexure A	ITC taken on input services	Eligible Net ITC
(1)	(2)	(1-2)
1775919	9978	1765941

\* On the basis of re-calculated Net ITC, the value of eligible refund amount is re-calculated by Audit Cell, CGST & Central Excise, Ahmedabad as under:

Turnover of zero rated supply of goods(1)	Tax Payable on such inverted supply of goods(2)	Adjusted total turnover (3)	Net Input Tax Credit (4)	Maximum Refund Amount (1*4/3-2)	Refund Sanctioned by Divison Office	Ineligible Refunded amount (6-7)
7897301	947678	8255884	1765941	741562	751583	10021

As per above, excess refund of Rs. 10,021/- has been paid to the claimant.

**For the month of March-2018:**

\* Net Input Tax Credit is re-calculated by Audit Cell is as under:-

NET ITC as per Annexure 1A	ITC taken on input services	Eligible Net ITC
(1)	(2)	(1-2)
1618884	65348	1553536

\* On the basis of re-calculated Net ITC, the value of eligible refund amount is re-calculated by Audit Cell, CGST & Central Excise, Ahmedabad as under:

Turnover of zero rated supply of goods(1)	Tax Payable on such inverted supply of goods(2)	Adjusted total turnover (3)	Net Input Tax Credit (4)	Maximum Refund Amount (1*4/3-2)	Refund Sanctioned by Divison Office	Ineligible Refunded amount (6-7)
5396605	648541	5644963	1553536	836645	899117	62472

As per above, excess refund of Rs. 62,472/- has been paid to the claimant.

In view of above, audit observed that the adjudicating authority had sanctioned the refund claims, in excess in view of Rule 89(5) of the CGST Rules, 2017. 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



-4-

appellant to file appeals against the impugned orders raising the following grounds:

- That the adjudication authority has erred in calculation of Net Input Tax Credit (ITC) as per Rule 89 (5) of the CGST act, 2017 for refund;
- That the Net ITC submitted by the clamant includes Input Tax Credit (ITC) availed on input service which is not admissible.;
- That the adjudicating authority has sanctioned excess refund of amounting Rs. 10,021/- and Rs. 62,472/- to the claimant. The said claimant is not eligible for refund of amounting Rs. 10,021/- and Rs. 62,472/- as per Rule 89 (5) of the CGST act, 2017.
- that the excess refund sanctioned needs to be recovered along with interest.

4. A personal hearing in the matter was held on 25.11.2020. Shri Sandeep Kumar Saini (Sr. Account Manager) appeared before me on behalf of the respondent and requested that they have paid excess refund amount along with interest and case may be disposed of accordingly. Further they have also submitted paid challan CIPIN no. 200624000076613 and challan CIPIN no. 200624000076630 both dated 07.06.2020 total amount Rs. 62870, (SGST Rs. 62472/- interest Rs. 398/-) and total amount Rs. 10419, (SGST Rs. 10021/- interest Rs. 398/-) and requesting to accept and case may be disposed of accordingly.

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 09.10.2019 and the above appeals have been filed on 04.06.2020. 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. Further in this regard, As per Board's NT no. 55/2020 dated 26.06.2020 and subsequent order No. 01/2020 dated 25.06.2020 and further by Notification No. 55/2020 Central Tax dated 27.06.2020 the time limit for the any completion or compliance of any action, by any authority or by any person has been specified in or prescribed or notified under the said act which falls during the period from 29th day of June, 2020 to 30th of August 2020 and where completion or compliance of such action, shall be extended upto the 31.08.2020. I find that the above appeal have been filled within time limit.



-5-

6. I have gone through the facts of the cases, the impugned orders & the grounds raised in the review orders and submission made by respondent at the time of personal hearing. I find that the whole dispute for which appeal has been preferred, the adjudicating authority had sanctioned the refund of amounting Rs. 10,021/- and Rs. 62,472/- to the claimant claims, in excess in view of Rule 89(5) of the CGST Rules, 2017. Further, I also find that the respondent vide his letter dated 22.07.2020, submitted paid challan CIPIN no. 200624000076613 and challan CIPIN no. 200624000076630 both dated 07.06.2020 total amount Rs. 62870, (SGST Rs. 62472/- interest Rs. 398/-) and total amount Rs. 10419, (SGST Rs. 10021/- interest Rs. 398/-) and further requesting to accept and case may be disposed of accordingly.

7. In view of the above discussion, I find that the respondent accepted the excess payment made by the adjudication authority in the impugned orders and have paid entire excess amount alongwith applicable interest. Thus, both the appeal filed by the department for the recovery of the erroneously sanctioned refund along with interest is allowed..

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

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

(मुकेश राठी)

संयुक्त आयुक्त(अपील्स)

Date : 27.11.2020

Attested

(Atulkumar B. Amin)  
Superintendent(Appeals),  
Central Tax, Ahmedabad

By R.P.A.D.

To

**Appellant-** The Deputy Commissioner, CGST & Central Excise, Division-I,  
Ahmedabad North, Ahmedabad

**Respondent** M/s. MAK pump Industries, Plot No. 65, Phase-1, GIDC Naroda,  
Ahmedabad

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.

-6-

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/RRA), Ahmedabad-North.
6. Guard File.
7. P.A. File

