



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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DIN20201264SW000000F012

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/5/2020-Appeal
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-JC-40/20-21
दिनांक Date : 23.12.2020 जारी करने की तारीख Date of Issue : 31.12.2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No ZX2404200445460 दिनांक: 25.04.2020 passed by Assistant/Deputy Commissioner, Central GST, Division-II, Naroda Road, Ahmedabad-North

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

Appellant- BHUVNESH GUPTA HUF Prop. C.K.B. Process, 229/G,C/O AMIZARA HAND PROCESS,N/R SIKANDAR MARKET, CHANDOLADANLIMDA, AHMEDABAD

Respondent- Assistant/Deputy Commissioner, Central GST, Division-II, Naroda Road, Ahmedabad-North .

(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

M/s. Bhuvnesh Gupta-HUF(Trade Name-CKB Process), 229/G C/o. Amizara Hand process, Near-Sikandar Market, Chandola, Dani limda, Ahmedabad-380001 (henceforth, "appellant") has filed the present appeal against the Order GST-RFD-06 (Order-In-Original) No.ZX2404200445460 dated 25.04.2020 (henceforth, "impugned order") issued by the Assistant Commissioner, Central GST, Division-II, Naroda Road, Ahmedabad-15 (henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that the appellant registered under Gujarat Goods and Service Tax Act, 2017 vide GSTIN-24AAIHB6790E1ZC deals in service of textile fabrics under SAC code 9988 filed refund claim for Rs.6,98,404/- (i.e. Rs.3,49,204/- CGST & Rs.3,49,204/- SGST) vide ARN date 17.04.2020 of ITC accumulated due to Inverted tax Structure under Section 54(3) of the CGST Act, 2017 for the period from June.2018 to March,2019. On scrutiny of the claim, a notice dated 17.04.2020 in Form-GST-RFD-08 for rejection of refund was issued to the claimant by the adjudicating authority with the remark "GSTR2A(PORTAL) NOT UPLOADED. NO TAX SUPPLY FROM 8/18- 12/18, BUT REF. IS CLAIMED ON ITC OF SAME PER(INCL.IN NET ITC IN REF.CAL)". Said refund claim was then after rejected under the impugned order with the remark "AS PER SEC.54(3)(ii), IT IS VERY CRYSTAL CLEAR REF.UNDER INVERTED IS TO ALLOWED TOWARDS UN-UTILISED ITC DURING THE TAX PERIOD AGAINST TAXABLE SUPPLY OF SAID PER. AS SUCH RFD-06 IS BEING ISSUED FOR REJECTION OF REFUND"

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting *inter alia*, that they started unit on 14.06.2018 and it takes time in establishing plant & machinery, purchase all raw material, fuel, arrange labor etc, and hence from June,2018 to December,2018, there was no outward supply as they were in process of establishment of unit: that it is common phenomina that invoice of output supply can't be raised from first day; that Section 54(3) clearly mention that there should be excess eligible inputs against output in the period and in the period from June 2018 to March 2019, there is excess eligible input; that there was no dispute of eligible ITC; that during June,2018 to March,2019 total output was 319572 and eligible input was Rs.1017981/-, hence refund claim was as per law; that the interpretation that from June,2018 to December,2018, there was no output supply is completely wrong as the section mentions that there should be unutilized input tax



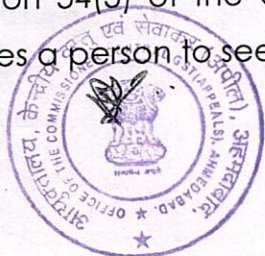
credit at the end of any tax period; that they submitted all return GSTR-3B and GSTR-1 and all bills are shown in GSTR-2A; that at the end of tax period our eligible unutilized ITC against taxable supply was Rs.6,98,409/- which should be refunded as per law.

3.1 The appellant filed written submission dated 06.01.2020 stating that they are processing textile fabrics on job work basis for which they receive grey fabrics from various parties and send it back after doing dying work; that their output supply is textile service work which is taxable @5% GST and they purchase color chemical as input which is under 18% rate of GST and hence they are eligible for refund of unutilized ITC under section 54(3) of the CGST, Act, 2017; that proper officer rejected the claim due to some of the period from the refund period i.e. June to December, such interpretation is wrong as the section 54(3) of the CGST Act clearly says that "A registered person may claim refund of unutilized input tax credit at the end of any tax period.

4. Personal hearing in virtual mode was held on 06.11.2020 wherein Shailesh Gupta, tax consultant reiterated the grounds of appeal memorandum and filed additional submission dated 06.11.2020 mainly reiterating the grounds of appeal memorandum.

5. I have gone through the facts of the case, the impugned order, the grounds raised under appeal memorandum and the oral averments made during the course of personal hearing. I find that after scrutiny, the refund claim was rejected by the adjudicating authority mentioning the reasons in remark column that "AS PER SEC.54(3)(ii), IT IS VERY CRYSTAL CLEAR REF. UNDER INVERTED IS TO ALLOWED TOWARDS UNUTILISED ITC DURING THE TAX PERIOD AGAINST TAXABLE SUPPLY OF SAID PER. AS SUC RFD-06 IS BEING ISSUED FOR REJECTION OF REFUND".

6. Since, the matter deals with refund of unutilized input tax credit accumulated on account of tax on input being higher than rate of tax on output supplies, it would be appropriate to reproduce the relevant part of Section 54(3) of the Central Goods and Service Tax Act, 2017 which enables a person to seek refund of tax in such a situation, viz.



(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

7. In view of the provisions above, refund of unutilized input tax credit is admissible only in two situations i.e. cases where the accumulation is on account of zero rated supply made without payment of tax and cases where rate of tax on inputs is higher than the rate of tax on output supplies. Further, the specific proviso "Provided that no refund on unutilized input tax credit shall be allowed in cases other than ---", makes it clear that no refund of unutilized input tax credit can be granted in any situations other than above two. The present appeal pertains to the claim of refund preferred by the claimant in term of second situation above i.e. case where rate of tax on inputs is higher than the rate of tax on output supplies.

8. Further, the jurisdictional Assistant Commissioner provided a clarification dated 23.12.2020 on the issue as under:

" M/s. Bhuvanesh Gupta, had filed refund claim for the period- June,2018 to March,2019 on account of Un-utilized ITC in respect of Inverted rated goods. While scrutinizing the refund claim, there was no clearance during the period -June 2018 to December,2018 and there was outward taxable clearance only during the period -January,2019 to March 2019. However, while claiming refund they had taken ITC availed during the period-June 2018 to March,2019. As per Section 54(3) (ii) of CGST Act, 2017, as amended, read with Rule 89 of CGST Rules,2017 the refund is admissible in respect of clearances made towards Inverter rated clearances during the tax period and un-utilised ITC during the said tax period. Based on the



above, the ITC admissible for refund calculation is for the period- January,2019 to March,2019 and the admissible refund is for the tax period of January,2019 to March,202. On calculation as per ITC of January,2019 to March,2019, the refund amount is negative. As such the refund is inadmissible and was rejected.

$$=6391440*314749/6391440 - 319572 = -4823 "$$

I observe that the calculations above is proper in term Section 54(3) of the Central Goods and Service Tax Act, 2017 and the formula provided under Rule 89(5) of the Central Goods and Service Tax Rules,2017. Considering the above facts and figures, the maximum refund amount is found negative. I therefore, do not find force in the arguments made by the appellant.

9. In view of the discussions above, I do not find infirmity in the impugned order to which I upheld and reject the appeal filed by the appellant.

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

The appeal filed by the appellant stands disposed of in above terms.

(Mukesh Rathore)

Joint Commissioner, CGST, Appeals.

Date:

Attested

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



By R.P.A.D.

To,

M/s. Bhuvnesh Gupta-HUF(Trade Name-CKB Process),
229/G C/o. Amizara Hand process, Near-Sikandar Market,
Chandola,Dani limda,Ahmedabad-380001

Copy to:

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

