



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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DIN20210164SW000000D40B

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(GST)16/EA-2/North/Appeals/20-21/320
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-JC-045/20-21  
दिनांक Date : 21.01.2021 जारी करने की तारीख Date of Issue : 29.01.2021  
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/259/RFD-1A/Inverted Ref/19-20 dated दिनांक:  
05.09.2019 passed by Assistant/Deputy Commissioner, Central GST, Division-II,  
Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** Assistant/Deputy Commissioner, Central GST, Division-II, Ahmedabad-North.

**Respondent-** M/s Samya International, C/343, 3<sup>rd</sup> Floor, B.G. Tower, O/s Delhi Darwaja,  
Madhupura, Ahmedabad-380004.

(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.



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## 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. 015/2020-21 dated 25.06.2020 issued under F.N. IV/18-38/Refund/20-21-RA passed by Commissioner, CGST & C.Ex. Ahmedabad North against RFD-06 Order-in-Original No. MP/259/RFD-1A/Inverted Ref/19-20 dated 05.09.2019 (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 M/s Samya International, C/343, 3<sup>rd</sup> Floor, B.G. Tower, O/s Delhi Darwaja, Madhupura, Ahmedabad-380004 (hereinafter referred to as 'respondent').

2. The facts of the case, in brief, are that the respondent, had filed a refund claim of Rs.1,53,813/- for SGST for the month of January-2019 on account of input tax credit (ITC) accumulated due to inverted tax structure. The adjudicating authority has sanctioned the same i.e. Rs.1,53,813/-

3. On the refund claim being sent for post audit, it was observed by the Assistant Commissioner, Audit Cell, CGST & C. Ex., Ahmedabad-North vide letter F.No. VI/1 (b)-194/PostAudit/ Div-II/2020-21 dated 15.06.2020, that the refund claim has been filed on 13.05.2019, i.e. after the issuance of Circular No. 59/33/2018- GST dated 4.09.2018 and wherein, the instruction laid down in the said circular, is applicable to the instant refund claim. It is also noticed by the audit cell that the claimant has filed refund claim of Rs. 1,53,813/- and there was no balance in IGST head whereas balance is available at CGST head viz Rs. 23,078/- at the end of tax period for which refund is claimed. Therefore, in compliance of the instructions in the aforementioned circular, the entire amount of refund was to be debited equally from CGST and SGST head. However, the claimant has debited the entire amount of Rs. 1,53,813/- from SGST head. Therefore, in the instant case, the excess refund of Rs.23,078/- from SGST head has been sanctioned by the adjudication authority which is inadmissible as per above circular and required to be recovered. Thereafter on the impugned order, having been examined for its legality and propriety, the Commissioner, CGST & C.Ex., Ahmedabad North, vide Review Order No. No. 015/2020-21 dated 25.06.2020 authorized the appellant to file an appeal against the impugned order raising the following grounds:

- that the refund claim has been filed on 13.05.2019, i.e. after the issuance of Circular No. 59/33/2018-GST dated 4.09.2018 and the instruction laid down in this circular is applicable to this refund claim;
- that the claimant has filed refund claim of Rs: 1,53,813/- and there was no balance in IGST head whereas balance is available at CGST head viz Rs. 23,078/- at the end of tax period for which refund is claimed. Therefore, in compliance of the instructions in the aforementioned circular, the entire amount of refund i.e. Rs.1,53,813/- was to be debited equally from CGST and



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SGST head.. However, the claimant has debited the entire claim amount of Rs. 1,53,813/- from SGST head. Therefore, in view of para 3.2 of aforesaid circular the eligible for refund amount is Rs. 130735/- for refund amount from SGST head. Hence excess refund of Rs. 23,078/- from SGST head has been sanctioned, which is ineligible as per above circular and required to be recovered.

4. As regard the personal hearing in the matter was fixed on 06.11.2020, 25.11.2020, 11.12.2020, 23.12.2020 and 12.01.2021 and intimated under letters dated 30.06.2020, 21.10.2020, 12.11.2020 and 02.12.2020 respectively. Considering that appellant/respondent has failed to appear on any dates, I presume that appellant/respondent is not desirous of personal hearing and therefore I proceed to decide the case based on records available.

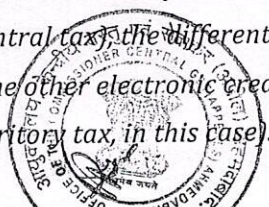
5. I have carefully gone through the facts of the appeals and the department's grounds of appeal in the Review Order. I find that the date of receipt of the impugned order as mentioned in the review orders is 21.01.2020 and the above appeals have been filed on 30.06.2020. As per Section 107 of the CGST 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. I find that the above appeal have been filled within time limit.

6. In the present case, I find that the appellant has filed the appeals on the ground that, the appellant has filed refund claim of Rs. 1,53,813/- and there was no balance in IGST head whereas balance is available at CGST head viz. Rs. 23,078/- at the end of tax period for which refund is claimed. Therefore, in compliance of the instructions as per Para 3.2 of Circular No 59/33/2018- GST dated 04.09.2018 the entire amount of refund was to be debited equally from CGST and SGST head. However, the claimant has debited the entire claim amount of Rs. 1,53,813/- from SGST head. Hence excess refund amount of Rs. 23,078/- from SGST head was sanctioned by the sanctioning authority, which is ineligible as per Para 3.2 of Circular No 59/33/2018- GST dated 04.09.2018 and required to be recovered.

7. Before going to decide the case, It shall be apt to reproduce the Para 3.2 of Circular No 59/33/2018-GST dated 04.09.2018 which reads thus :-

*"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)."*



8. It is evident from the above Circular No.59/33/2018-GST dated 04.09.2018, while filling refund claims, the appellant 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 para 3.2 of CBIC Circular No. 59/33/2018-GST dated 04.09.2018. Thus, it is observed that; they debited the amount to the extent balance available in SGST. This unspecified/improper method of debit by the respondent in electronic credit ledger resulted inadmissible amount of Rs. 23078/- SGST head as inadmissible in compliance with para 3.2 of CBIC circular No. 59/33/2018-GST dated 04.09.2018. The said amount is required to be recovered with applicable interest.

9. 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.

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

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

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

(मुकेश राठौर)

संयुक्त आयुक्त(अपील्स)



Date : 21.01.2021

Attested

(Atul Amin)

Superintendent(Appeals),  
Central Tax, Ahmedabad

By R.P.A.D.

To,

M/s Samya International,  
C/343, 3<sup>rd</sup> Floor, B.G. Tower,  
O/s Delhi Darwaja, Madhupura,  
Ahmedabad-380004

Copy to:

1. The 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 Assistant Commissioner, CGST Division-II, Ahmedabad-North.
6. Guard File.
7. P.A. File



