



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)14/North/Appeals/20-21/322  
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-JC-046/20-21  
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 GST-RFD-06 No. ZW2405200053950 dated दिनांक: 08.05.2020 passed by Assistant/Deputy Commissioner, Central GST, Division-V,- Dholka, Ahmedabad-North

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

**Appellant-** M/s Big Box Containers Pvt. Ltd., Survay No. 881/1, Near Hotel Kankavati, Village-Rajoda, Sarkhej-Baval Raod, Ahmedabad-382220.

**Respondent-** Assistant/Deputy Commissioner, Central GST, Division-V,- Dholka, Ahmedabad-North

|       |   |
|-------|---|
| (A)   | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।<br>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 -<br>(i) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and<br>(ii) A sum equal to <u>twenty five per cent</u> 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.  |



o/c

**ORDER IN APPEAL**

M/s. Big Box Containers Pvt Ltd., Survay No.881/1, Near Hotel Kankavati, Village-Rajoda, Sarkhej-BavlaRoad, Ahmedabad-382220, GSTN:24AADCB7995B1ZO (hereinafter referred to as 'appellant') engaged in manufacturer/supply of corrugated boxes filed the present appeal against the Order-in-Original(GST-RFD-06 No.ZW2405200053950 dated 08.05.2020 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Div-V, Dholka, Ahmedabad-North (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that fire took place in the factory premises of the appellant on 28.04.2019 information of which was given to the SGST and CGST jurisdictional authorities. The appellant reversed Input Tax Credit Rs. 44,92,290/- which were availed on the goods destroyed in fire, from e-credit ledger and shown in GSTR-3B for the month of April,2019. Subsequently, they claimed refund vide GST-RFD-01 ARN No.AA240120068636H dated 27.01.2020 which was rejected under the impugned order with the remark "Due to fire all the 'GOODS' ARE DESTROYED. SEC 17(5)h of CGST,Act,2017 input tax credit shall not be available in respect of GOODS LOST, DESTROYED (BY WHATEVER REASON), AND IN THIS CASE DUE TO FIRE. coma ( . ) used in sub section is exclusive."

3. Being aggrieved with the impugned order, the appellant preferred this appeal contesting *inter alia* that:-

- a) The appellant was not given opportunity of personal hearing, the impugned order is issued in gross violation of principle of natural justice and that the same is issued without correct application of the facts law and procedures.
- b) Inputs/capital goods received by them were used in the manufacturing of finished goods, the activities of which are undisputedly said to be in the course of furtherance of business and hence ITC is legitimately availed by them.
- c) That Section 17(5) (h) of the CGST Act,2017 has been applied incorrectly by in the impugned order for the reasons that since the input, input services and capital goods were used in manufacture and finished goods destroyed due to fire, it no



longer remained input as such and therefore appellant contended that the reversal will not be required; that there is no provision for demanding ITC on input, input services and capital goods which have already been used for manufacture of finished goods. There is only provisions under clause (h) of Sec.17 of the CGST Act,2017 which speaks non avilment of ITC on the goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. However it does not cover the goods destroyed by the incidence of fire which took place during manufacture activities. Also there is no such provision under Rule 42 of the CGST rules,2017; that there is no specific provision for demanding back the ITC on already consumed input or capital goods or input services.

d) There is no express provision in the GST law for reversal of ITC on goods lost/destroyed on account of fire or on account of the circumstances which are not in control of the appellant as like the provisions in Central Excise Rules,2002 for remission of duty on goods destroyed due to fire, subject to reversal of cenvat credit use therein. They further contested that excise duty was levied on the 'manufacture' and duty liability already arisen as soon as goods were manufactured. Based on this analogy, they contested that since the destruction took place during manufacture i.e. during the furtherance of business, there is no such express provision available in GST law governing such situation. They cited Ruling passed by Authority for Advance Ruling, Maharashtra in order No.GST-ARA-79/2018-19/B-168 dated 24.12.2018.

e) Since the liability of tax arise on "supply" in GST law rather than "manufacture" in erstwhile law, the occurrence of theft, loss due to fire etc do not fall in the definition of "supply" and hence reversal of tax on ITC cannot be demanded on the input content in finished goods lost or destroyed; that conations for availing ITC as provided in Section 16 of the CGST Act, 2017 and CGSR Rules,2017 has been complied with by the appellant and hence entitled to avail ITC which



cannot be demanded as activities of manufacturing is in nature of furtherance of business.

- f) They have not claimed GST portion in the insurance claim amount and hence double benefit are not availed. They relied on case law 2012 ELT (232) (Tri.Delhi) in case of Arvind International Limited v/s Commissioner of Central Excise Jaipur.

4. Personal hearing in virtual mode was held on 22.12.2020 wherein Shri Vijay N. Thakkar, Authorized Representative & Shri Jenil Vora, Director of the firm reiterated the grounds of appeal memorandum.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, written submissions made by them as well as oral submissions made at the time of virtual personal hearing. I find that the issue to be decided in the matter is as to whether in the facts and circumstances of the case, the appellant's claims for refund is legally permissible or otherwise? Since the claim of the appellant is rejected by the adjudicating authority base on the observation that in term of Section 17(5)h of CGST,Act,2017, input tax credit shall not be available in respect of goods lost, destroyed by whatever reason, I reproduce sais Section 17(5)h of CGST,Act,2017 for ease of reference:

5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, **input tax credit shall not be available in respect of the following, namely :—**

[(a) .....

(b) .....

(c) ..... ;

(d) ....

(e) .....

(f) .....

(g) .....

(h) **goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and**



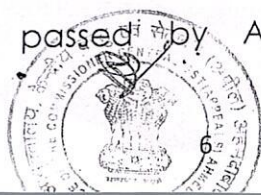
6. Plain reading of the above provision reveals that Input tax credit shall not be available in respect of goods lost, destroyed, written off or disposed of by way of gift or free sample. It is observed by the adjudicating authority that the raw material, finished goods etc. on which input tax credit were availed by the appellant were destroyed due to fire and hence ITC so availed shall not be admissible to them in term of the above provisions. It is further observed by him that input tax credit shall not be admissible on the goods lost/destroyed by whatever reason. I observe that the above provision debar's admissibility of ITC on goods which are destroyed. Therefore, in term of the above provision, there cannot be any doubt in confirming the views that ITC is not admissible on goods destroyed. Now, what remained undecided is that whether ITC is admissible or not on goods destroyed due to fire. It is observed that the word 'destroyed' doesn't specify the causes of destruction of goods and hence I observe that said phrase included in its ambit, the destruction which resulted on account of fire too. If we go by same rationality, there is no requirement of going into the reason/s as to how the destruction took place. I'm therefore, in agreement with the view that as soon as destruction of goods took place, the admissibility of the ITC involved in such goods becomes rightfully deniable without going into causes as to how such destruction took place. The record of the appeal reveals that 'destruction' of goods has taken place based on which the issue of refund arose. Also, the fact of destruction of goods is not disputed either by the appellant or the respondent. Thus, in term of the provisions of Section 17(5)h. of CGST,Act,2017, Input Tax Credit in respect of goods destroyed does not qualify as admissible.

7. It is argued by the appellant that Section 17(5) (h) of the CGST Act, 2017 has been applied incorrectly in the impugned order for the reasons that since the input, input services and capital goods were used in manufacture and finished goods destroyed due to fire, it no longer remained input as such and therefore appellant contended that the reversal will not be required. In this context, it is observed that Input Tax Credit involved in the goods destroyed in fire is not admissible to the appellant for the prime reason that the goods stands



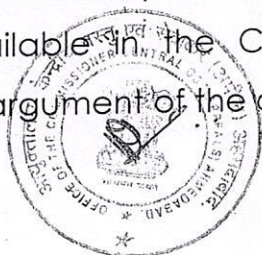
destroyed. Since, the goods were destroyed, it would be irrelevant to see that it were used in manufacture of finished goods. There is no doubt that ITC involved in the goods destroyed is inadmissible and hence, it would be irrelevant and illogical to presume that since the raw materials were used in manufacturing of finished goods, ITC is admissible. In the instant case, ITC is inadmissible irrespective of the fact whether goods were used in manufacture of finished goods or not. Once the goods are destroyed, ITC attributable on the raw material/finished goods/work in progress cannot be held admissible. In view of the discussions above, the arguments of the appellant that there is no provision for demanding ITC on input, input services and capital which have already been used for manufacture of finished goods; that there is only provisions under clause (h) of Sec.17 of the CGST Act, 2017 which talks of reversal of inputs or capital goods itself on the goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; that it does not cover the goods destroyed by fire which place took during manufacture activities' going on, etc, are not acceptable.

8. They further argued that there is no express provision in the GST law for reversal of ITC on goods lost/destroyed on account of fire or on account of the circumstances which are not in control of the appellant as like the provisions in Central Excise Rules,2002 for remission of duty on goods destroyed due to fire, subject to reversal of cenvat credit use therein. In this context, it is observed that Section 17(5)h of CGST,Act,2017 specifically provides that input tax credit shall not be available in respect of goods **destroyed**. Said provision emphasis on non availability of ITC on goods destroyed. The statute thus, specifically provides for non availability of ITC on goods destroyed and therefore, the contention of the appellant that there are no provisions for reversal of ITC, is not maintainable. It is further contested that excise duty was levied on the 'manufacture' and duty liability already arisen as soon as goods were manufactured. Based on this analogy, they contested that since the destruction took place during manufacture i.e. during the furtherance of business, there is no such express provision available in GST law governing such situation. They cited Ruling passed by Authority for Advance Ruling,



Maharashtra in order No.GST-ARA-79/2018-19/B-168 dated 24.12.2018. In this context, it is observed that in the present issue, it is not important as to at which stage, tax liability arises. There is no doubt that the goods have been used in manufacture i.e. during the furtherance of business. However, Section 17(5)h of CGST,Act,2017 specifically provides that input tax credit shall not be available in respect of goods **destroyed**. Further, there are no express provisions which stipulate for non requirement of reversal of the ITC on goods destroyed due to any situations not in control of the manufacturer/supplier of goods. In view of this, the provision, which already exist i.e. Section 17(5)h of CGST Act,2017, shall undisputedly succeed and any view contrary to this provision cannot be prevail. Further, the issue involved in case of Authority for Advance Ruling, Maharashtra in order No.GST-ARA-79/2018-19/B-168 dated 24.12.2018 pertains to reversal on finished goods destroyed after it was sent for testing, and hence the ratio of the same cannot be made applicable in the facts and circumstances of the case on hand.

9. It is further contested by the appellant that since the liability of tax arise on "supply" in GST law rather than "manufacture" in erstwhile law, the occurrence of theft, loss due to fire etc do not fall in the definition of "supply" and hence reversal of tax on ITC cannot be demanded on the input content in finished goods lost or destroyed. In this context, it is observed that the remission of duty subject to reversal of cenvat credit was there in the erstwhile law whereas in the GST law specific provision in this regard exists i.e 17(5)h of CGST Act,2017, which debar ITC on goods destroyed. Therefore, in view of said provision, the argument of the appellant focusing on the liability of tax whether arise on "supply" in GST law and "manufacture" in erstwhile law is irrelevant. It is also argued that **conditions for availing ITC** as provided in Section 16 of the CGST Act, 2017 and CGSR Rules,2017 has been complied with by the appellant and hence entitled to avail ITC which cannot be demanded. In this context, it is observed that the issue on hand pertains to admissibility of ITC on the portion of goods destroyed only for which specific provision denying the ITC is available in the CGST Act, 2017 as discussed above. Therefore said argument of the appellant cannot help them.



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

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

अपीलकर्ता द्वारा दर्ज की गयी अपीलों का निपटारा उपरोक्त तरीके से किया जाता है !

(Mukesh Rathore)

Joint Commissioner,CGST(Appeals)

Date:

Attested

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



By R.P.A.D/Speed Post

To,  
M/s. Big Box Containers Pvt Ltd.,  
Survay No.881/1, Near Hotel Kankavati,  
Village-Rajoda, Sarkhej-BavlaRoad, Ahmedabad-382220,

**Copy to:**

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST, Appeals, Ahmedabad.
3. The Commissioner of Central Tax, Ahmedabad-North.
4. The Addl./Joint Commissioner, Central Tax (System), Ahmedabad- North.
5. The Asstt./Deputy Commissioner, Central Tax, Division-V, Dholka, Ahd-North.
6. Guard File
7. P.A. File