



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)15/EA-2/North/Appeals/20-21

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-052 to 55/20-21**
दिनांक Date : **21.01.2021** जारी करने की तारीख Date of Issue : **18.02.2021**

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **107/Final/19-20**, dated दिनांक: **09.10.2019** passed by Assistant/Deputy Commissioner, Central GST, Division-VI, Ahmedabad-North

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

Appellant- Assistant/Deputy Commissioner, Central GST, Division-VI, Ahmedabad-North

Respondent- M/S S R Ventures, Swati Bunglow, No 31, sindhu Bhavan Road, New Bodakdev, Ahmedabad - 380015

(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 - (iii) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (iv) 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-VI, Ahmedabad North, Ahmedabad (hereinafter referred to as the 'appellant') has filed the present appeal as per Review order No. 14/2020-21 dated 25.06.2020 issued under F.N. IV/18-34/Refund/20-21-RA passed by Commissioner, CGST & C.Ex. Ahmedabad North against RFD-06 Order-in-Original No. 107/Final/19-20 dated 09.10.2019 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Division-VI, CGST & Central Excise Ahmedabad North, (hereinafter referred to as 'the adjudicating authority') in the matter of refund claims filed by M/s S R Ventures, Swati Bunglow, No. -31, Sindhu Bhavan Road, New Bodakdev, Ahmedabad-380015 (hereinafter referred to as 'respondent').

2. The facts of the case, in brief, are that the respondent, had filed a refund claim of Rs. 36,098/- (IGST: Rs. 36,098/-) filed under Section 54 of CGST Act, 2017, for refund of accumulated ITC due to Inverted Tax Structure. The adjudicating authority has sanctioned the total refund claim of Rs. 36,098/- (IGST: Rs. 36,098/-).

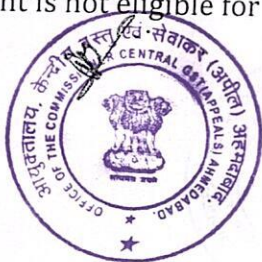
3. The said claim file was sent for post-audit purpose. The Assistant Commissioner (Audit) vide letter F.No.VI/1(b)-72/Post-Audit/Div-VI/17-18 dated 18.06.2020 has observed that the claim pertains to refund of unutilized ITC accumulated on account of inverted duty structure. It has been examined and observed that as per the claim papers and copy of purchase/supply invoices as well as summary statement of purchase invoices available in file, the input and output is same, though attracting different tax rates at different points in time.

(i) In this regard, it has been clarified vide Circular No.135/05/2020 - GST dtd 31/03/2020 that:

3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54. of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same."

(ii) In view of above, in respect of the claims sanctioned in all such similar cases are also required to be recovered for the period from July 2017 as per the above provisions of the CGST Act, 2017.

Therefore, in compliance of the instructions in the aforementioned circular, in the instant case, the adjudicating authority has sanctioned erroneous refund of Rs. 36,098/- to the claimant. The said claimant is not eligible for refund of Rs. 36,098/-.



4. 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. 014/2020-21 dated 25.06.2020 authorized the appellant to file an appeal against the impugned order raising the following grounds:

- The refund of accumulated ITC in terms of clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies; In this regard, it has been clarified vide Circular No.135/05/2020 - GST dtd 31/03/2020 It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same."

In view of above, the claimant is not eligible for refund claimed for Rs. 36,0981- as it is found that as per the claim papers and copy of purchase/supply invoices as well as summary statement of purchase invoices available, the input and output are same, though attracting different tax rates at different points in time.

- *That, the adjudicating authority has sanctioned erroneous refund of Rs. 36,0981- to the claimant. The claimant has been paid refund of Rs.36,098/- which is inadmissible and ineligible to claimant*
- *That, The Adjudicating Authority has erred in sanctioning of Refund claim in as much as the Refund claim is sanctioned in violation of Section 54(3)(ii) of CGST Act, 2017 read with para 3.2 of Circular No. 135105/2020-GST dated 31.03.2020;*

5. 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. 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.

6. I have carefully gone through the facts of the appeals and the department's grounds of appeal in the Review Order as well as submission made by respondent vide his letter dated 24.07.2020. I find that the date of receipt of the impugned order as mentioned in the review orders is 23.10.2019 and the above appeals have been filed on 29.06.2020. In view of the COVID-19 pandemic outbreak, the Govt. of India, Ministry of Finance, Department of Revenue, vide Press Note dated 31.03.2020 has brought in an Ordinance on 31.03.2020 which provides for extension of various time limits under the Taxation and Benami Acts which provides for extension of time limits contained in the Rules or Notification which are prescribed/issued under these Acts. Government of India, Ministry of Finance, Department of Revenue has extended the last date for filing of appeal from 20th March, 2020 to 29th June, 2020, the same has been extended to 30th June, 2020. I find that the above appeal have been filled within time limit.



7. In the present case, I find that the appellant has filed the appeals on the ground that, the claimant has filed refund claim of Rs. 36,098/- (IGST: Rs. 36,098/-) under Section 54 of CGST Act, 2017, for refund of accumulated ITC due to Inverted Tax Structure but the same is inadmissible as per the claim papers and copy of purchase/supply invoices as well as summary statement of purchase invoices available in file and in compliance of the instructions laid down in Circular No.135/05/2020 - GST dated 31.03.2020. Therefore, in compliance of Circular No.135/05/2020 - GST dated 31.03.2020 and as per the claim papers and copy of purchase/supply invoices as well as summary statement of purchase invoices available in file, the input and output is same though attracting different tax rates at different point in time, the refund sanctioned by the sanctioning authority is ineligible and required to be recovered.

8. It is evident from the above Circular No.135/05/2020 - GST dated 31.03.2020, that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST act would not be applicable in cases where the input and the output supplies are the same. In present case, and as per submission made by respondent vide letter dated 24.07.2020, the respondent have filed refund claim under section 54 of the CGST Act, 2017 of refund of accumulated ITC due to inverted Tax Structure where input and the output supplies are the same i.e. plywood. Hence, in compliance of para 3.2 of CBIC circular No.135/05/2020 - GST dated 31.03.2020, the adjudicating authority has sanctioned erroneous refund of Rs. 36,098/- to claimant which is inadmissible and ineligible. 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 refund to the respondent and therefore the 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
21/01/2021

(मुकेश राठौर)

संयुक्त आयुक्त(अपील्स)

Date : 21.01.2021

Attested

(Atul Amin)

Superintendent(Appeals),
Central Tax, Ahmedabad



By R.P.A.D/Speed Post.

To,

M/s S R Ventures,
Swati Bunglow, No. -31,
Sindhu Bhavan Road,
New Bodakdev,
Ahmedabad-380015

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



