



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissioner- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015

☎ : 079-26305065

टैलेफैक्स : 079 - 26305136

Email- commrappl1-cexamd@nic.in



DIN20210264SW00000E7B7

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : V2(GST)18 to 21/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 : **18.02.2021** 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 **MP/366,367,369,370/RFD-1A/Inverted Ref/19-20,**
dated दिनांक: **20.02.2020 & 21.02.2020** 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 Amtech Controls Ltd.(Maheshkumar Chandubhai Dhaduk), 49, Raghuvir
Park- 1, Near Swaminarayan Nagar, Nikol Gam road, Ahmedabad 382350

(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 - (v) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (vi) 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 Department, through the Assistant Commissioner, CGST & C.Ex, Division-II, Ahmedabad North, have filed following four, as per Review Order No. as per details given in table-1 below against the orders as per details given in table-1 below [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST & C.Ex, Division-II, Ahmedabad North [hereinafter referred to as "adjudicating authority"] in the case of M/s. Amtech Controls Ltd.,(Maheshkumar Chandubhai Dhaduk), 49, Raghuvir Park-1, Near Swaminarayan Nagar, Nikol Gam Road, Ahmedabad 382 350 [hereinafter referred to as "Respondent"]].

TABLE-1

Sr. No.	RFD-06 Order No.	RFD-06 Order Date	Amount of Refund (Rs.)	Date of filling claim	Period of refund	Review Order No.	Review Order Date	Remarks
1	MP/367/RFD-1A/Inverted Ref/19-20	20.02.20	54,291/-	28.12.18	April to June- 2018	026/2020-21	01.07.2020	SGST Sanctioned Rs.53,087/-
2	MP/366/RFD-1A/Inverted Ref/19-20	20.02.20	32,870/-	28.12.18	January to March 2018	025/2020-21	01.07.2020	SGST Sanctioned Rs.31,182/-
3	MP/369/RFD-1A/Inverted Ref/19-20	20.02.20	47,504/-	28.12.18	July to Sept. 2108	027/2020-21	01.07.2020	SGST Sanctioned Rs.47,504/-
4	MP/370/RFD-1A/Inverted Ref/19-20	21.02.20	23,361/-	25.12.18	October to December 2017	028/2020-21	01.07.2020	SGST Sanctioned Rs.16,789/-

2.1 Briefly stated, the facts of the case are that the Respondent is registered with Central Goods & Services Tax Department having GSTIN No. 24BQCPD7808L1ZT had filed four refund claims as mentioned in above table-1 under Section 54 (3) of the CGST Act,2017 on account of input tax credit (ITC) accumulated due to inverted Tax Structure. The adjudicating authority has sanctioned the refund claims as mentioned in above table-1.

2.2. The Assistant Commissioner, Audit Cell, CGST & C.EX, Ahmedabad North during post Audit of the above said refund claims observed that the refund claims were filed after the issuance of Circular No.59/33/2018-GST dated 04.09.2018 and as per para 3.2 of the said circular, the entire amounts of refunds were to be debited equally from CGST and SGST. The details of Balance in ledger at the end of tax period & at the time of filling claim, Amount to be debited, Amount actually debited and eligible refund claims amounts are mentioned in Table-2 below:



TABLE-2

Sr No	Amount of Refund (Rs.)	Refund sanctioned	Balance in ledger at the end of tax period & at the time of filling claim		Amount to be debited		Amount actually debited by the claimant		Refund amount rejected	Eligible refund amount	Excess amount sanctioned (amount under dispute)
			CGST	SGST	CGST	SGST	CGST	SGST			
1	54291	SGST Sanctioned Rs.53,087/-	73357	54997	27145.5	27145.5	0	54291	1204	27145.5	25941
2	32870	SGST Sanctioned Rs.31,182/-	49408	55482	16435	16435	0	32870	1688	16435	14747
3	47504	SGST Sanctioned Rs.47,504/-	94041	706	47504	0	46798	706	0	46798	706
4	23361	SGST Sanctioned Rs.16,789/-	17897	23971	11680.5	11680.5	0	23361	6572	11680.5	5108

2.3 From the above table-2, it is observed by the Audit that the adjudicating authority had sanctioned inadmissible/excess amount of the refund claim in view of Circular No. 59/33/2018-GST dated 04.09.2018 which required to be recovered from the respondent.

3. Thereafter, the impugned orders being examined for its legality and propriety by the Commissioner, CGST & C.EX, Ahmedabad-North Commissionerate and found that the same are not proper and legal as the claimant had to debit the amount of refund CGST/SGST as shown in table-2 above in term of circular supra. Thus, the adjudicating authority granted/sanctioned excess refund as shown in table-2 above and hence, the impugned order have been reviewed vide Review Orders as mentioned in Table-1 and directed the adjudicating authority to file the aforementioned appeal raising the grounds that the impugned order is issued in violation of para 3.2 of Circular No. 59/33/2018-GST dated 04.09.2018 which states that :

“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).”*



4. Personal hearing in the matter was granted on 22.12.2020, 12.01.2021 and 09.02.2021. Nobody appeared for personal hearing.

5. I have carefully gone through the facts of the case and submissions made by the department in the Appeal Memorandum. It is observed that the respondent neither attended any of the three personal hearing nor filed any cross examinations in the matter, I therefore, take up the issue for decision without furthering to them. The limited issue which requires to be decide in the case is whether the refund have been correctly sanctioned by the adjudicating authority in view of para 3.2 of Circular No. 59/33/2018-GST dated 04.09.2018 or otherwise?. I find that the whole dispute of amount of refund, for which appeal has been preferred, arose on account of clarification issued under CBIC Circular No.Circular No.59/33/2018-GST dated 04.09.2018, relevant part of which is reproduced below:

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).

6. As provided under above circular, while filling refund claim, the claimant was required to debit from Electronic credit ledger, IGST to the extent balance available therein and then after 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). It is observed that the appellant has debited entire amount from SGST in three cases above and in one case majority amount from CGST. In none of the above claim, sequence prescribed under circular supra has not been followed which ultimately resulted in excess sanction of refund to the tune of the amount of dispute mentioned in table 2 above. As a result of this unspecified/improper method, excess refund to the tune of the amount



mentioned in table 2 above has been sanctioned by the adjudicating authority. Furthermore, no evidence has been placed or argued by the respondent to the effect that clarification issued under Boards Circular supra has been invalidated by verdict from any higher forum/court and hence I observe that said clarification issued under Circular supra holds good and the same are entirely binding on lower authority. Therefore, the impugned orders which are issued in via lotions of the clarifications are not legally sustainable to the extent it sanctioned refund in excess as discussed above.

7. In view of the discussion above, I accept the appeals to the extent the claim of excess amount of refund and reject the impugned orders to the extent it sanctioned refund in excess as mentioned in table 2 above.

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

All the four appeals filed by the appellant stands disposed of in above terms.

(Mukesh Rathore)

Joint Commissioner, CGST, Appeals.

Date:

Attested

(Atul Kumar Amin)
Superintendent
Central Tax (Appeals)
Ahmedabad.



By R.P.A.D.

To,

1. M/s. Amtech Controls (Maheshkumar Chandubhai Dhaduk), 49, Raghuvir Park-1, Near Swaminarayan Nagar, Nikol Gam Road, Ahmedabad 382 350.
2. The Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad-North. 3rd Floor, Sahajanand Arcade, Nr-Helmt Circle, Memnagar, Ahmedabad-380052.

Copy to:

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

