



सत्यमेव जयते

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

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)28/EA-02/North/Appeals/20-21

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-56/20-21**

दिनांक Date : **26.02.2021** जारी करने की तारीख Date of Issue : 17.03.2021

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. MP/365/RFD—1A/ITC-Ref/19-20
dated दिनांक: **20.02.2020** 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 Commissioner, Central GST, Div-II, Ahmedabad-North.

Respondent- M/s Pawan Enterprise, (Bipin Meghijbhai Thummar), B-03, Patel Estate, B/h
Muktidham Industrial Estate, Nikol Road, Nikol, Ahmedabad-382325.

(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.



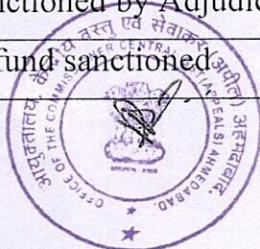
ORDER IN APPEAL

The Department, through the Assistant Commissioner, CGST & C.Ex, Division-II, Ahmedabad North, have filed appeal as per Review Order No. 018/2020-21 dated 01.07.2020 against the RFD-06 Order No. MP/365/RFD-1A/ITC-Ref/19-20 dated 20.02.2020 [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. Pawan Enterprise, (Bipin Meghajibhai Thummar) B-03, Patel Estate, B/h Muktidham Industrial Estate, Nikol Road, Nikol, Ahmedaabd – 382 325[hereinafter referred to as “Respondent”].

2.1 Briefly stated, the facts of the case are that the Respondent is registered with Central Goods & Services Tax Department having GSTIN No. 24AASPP1553B1ZU had filed refund claim amounting to Rs. 1,25,638/- (Rs. 49,482/- IGST, Rs.38,078/- CGST and Rs. 38,078/- SGST) for the month of February-2019 under Section 54 (3) of the CGST Act,2017 on account of input tax credit (ITC) accumulated due to inverted Tax Structure on export of Goods & Service without payment of Integrated Tax. The adjudicating authority has sanctioned the refund claim amounting to Rs.38,078/- CGST, Rs. 38,078/- SGST and Rs. 4948/- IGST vide imposed order dated 20.02.2020.

2.2. The Assistant Commissioner, Audit Cell, CGST & C.EX, Ahmedabad North during post of the above said refund claim 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 IGST head. However, the respondent has debited the amount of Rs. 49,482/- from IGST, Rs.38,078/- CGST and Rs. 38,078/- SGST head. 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 claim amount are mentioned hereinbelow:

Tax Period	Refund claim filed on 29.03.2019		
	IGST	CGST	SGST
Description			
Least of two balances available for debiting refund amount from a particular electronic credit ledger i.e balance at the end of tax period & at the time of filling refund claim.	171140	103395	103395
Amount to be credited as per Circular No.59/33/ 2018-GST dated 04.09.2018	125638	0	0
Amount actually debited by the Respondent	49482	38078	38078
Eligible refund amount	49482	0	0
Refund sanctioned by Adjudicating authority	49482	38078	38078
Excess Refund sanctioned	0	38078	38078



2.3 From the above, 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.

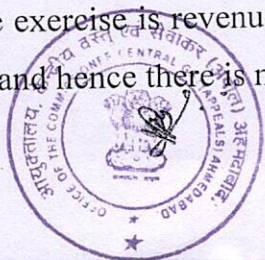
3. Thereafter, the impugned order being examined for its legality and propriety by the Commissioner, CGST & C.EX, Ahmedabad-North Commissionerate and found that the same is not proper and legal as the claimant had to debit the amount of refund IGST as shown in above table in term of circular supra. Thus, the adjudicating authority granted/sanctioned excess refund as shown in table above and hence, the impugned order has been reviewed vide Review Order No. 018/2020-21 dated 01.07.2020 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).”*

4.1 Personal hearing in the matter was held on 22.12.2020 through virtual mode. Shri Tushar R. Shah, CA appeared on behalf of the respondent for hearing and stated that he will submit written submission.

4.2. The respondent vide mail dated 23.12.2020 submitted cross examination and stated that Section 54 of CGST Act, 2017 and/or the Rule 89 and 96 of the CGST Rules made thereunder nowhere state about the head of tax i.e IGST, CGST or SGST under which refund has to be claimed; that priority of IGST to CGST and SGST in refund claim is against fundamental theory of One Nation One Tax under GST Law; that the circular issued by CBIC are not binding on the taxpayers; that in response to deficiency memo, they clarified that they have already claimed IGST refund of Rs. 2,37,536/- lying in credit ledger on 09.01.2020 which was maximum permissible refund under IGST while filing refund claim for the period April-2019 to Setp-2019; that the whole exercise is revenue neutral as no additional refund than entitlement has been claimed and hence there is no case of grant of erroneous refund .



5. I have carefully gone through the facts of the case and submission made by the department in the Appeal Memorandum. 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:

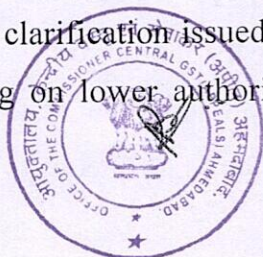
3.2. After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:

- 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 3.2 a) of above circular, while filling refund claim, the claimant was required to debit from Electronic credit ledger, IGST to the extent balance available therein. However, it is observed that the appellant has debited the amount of Rs. 49,482/- from IGST , Rs.38,078/- CGST and Rs. 38,078/- SGST head. Therefore, in view of para 3.2 of aforementioned circular, the eligible amount of refund is shown as below:

Tax Period	Refund claim filed on 29.03.2019		
	IGST	CGST	SGST
Description			
Least of two balances available for debiting refund amount from a particular electronic credit ledger i.e balance at the end of tax period & at the time of filling refund claim.	171140	103395	103395
Amount to be credited as per Circular No.59/33/ 2018-GST dated 04.09.2018	125638	0	0
Amount actually debited by the Respondent	49482	38078	38078
Eligible refund amount	49482	0	0
Refund sanctioned by Adjudicating authority	49482	38078	38078
Excess Refund sanctioned	0	38078	38078

As a result of this unspecified/improper method, excess refund to the tune of the amount Rs.38,078/- CGST and Rs. 38,078/- SGST as mentioned in table 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

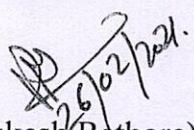


issued in via lotions of the clarifications are not legally sustainable to the extent it sanctioned refund in excess as discussed above.

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 Rs.38,078/- CGST and Rs. 38,078/- SGST as mentioned in table above.

8. In view of the discussion above, I set aside impugned orders and allow the appeals filed by the department for recovery of erroneous refund alongwith interest.

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: .02.2021

Attested



(AtulKumar Amin)
Superintendent
Central Tax (Appeals)
Ahmedabad.



By R.P.A.D.

To,

1. M/s. Pawan Enterprise, (Bipin Meghajibhai Thummar)
B-03, Patel Estate, B/h Muktidham Industrial Estate,
Nikol Road, Nikol, Ahmedaabd – 382 325.
2. The Assistant Commissioner, CGST & Central Excise, Division-II,
Ahmedabad-North. 3rd Floor, Sahajanand Arcade, Near 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

