



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 : GAPPL/ADC/GSTD/03 & 04/2020-Appeal

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-57 to 58/20-21**
 दिनांक Date : **10.03.2021** 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 (Div-VII/GST-Refund/161 & 162/Rolyplast/2019
 both **dated** दिनांक: **16.10.2019** passed by Assistant/Deputy Commissioner, Central GST,
 Division-VII, Ahmedabad-North

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

Appellant- Assistant Commissioner, Central GST, Div-VII, Ahmedabad-North.

Respondent- M/s Rolyplast Industries, 110, Heritage Plaza, Opp. Gurukul Tower, Drive In
 Road, Ahmedabad-380052.

(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) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as admitted/accepted by the appellant, and (ii) 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-VII, Ahmedabad North, have filed following two appeals as per details given in table below against the adjudication orders [hereinafter referred to as “impugned order”] passed by the Assistant Commissioner, CGST & C.Ex, Division-VII, Ahmedabad North [hereinafter referred to as “adjudicating authority”] in the case of M/s. Rolyplast Industries, 110, Heritage Plaza, Opp. Gurukul Tower, Drive In Road, Ahmedabad 380052 [hereinafter referred to as “Respondent”].

TABLE

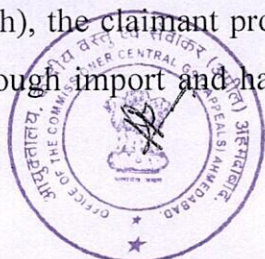
Sr. No	RFD-06 Order No.	RFD-06 Order Date	Amount of Refund (Rs.)	Date of filling claim	Period of refund	Review Order No.	Review Order Date	Sanctioned amount Rs.
1	Div-VII/GST-Refund/ 161/ Rolyplast/ 2019	16.10.19	718976/-	24.09.19	May-19	030/2020-21	23.07.20	718319/-
2	Div-VII/GST-Refund/ 162/ Rolyplast/ 2019	16.10.19	266853/-	24.09.19	July-19	031/2020-21	23.07.20	266853/-

2.1 Briefly stated, the facts of the case are that the Respondent is engaged in imports, trade and/or manufacture/assemble of “Agriculture Knapsack Sprayer” both mechanical and power/battery/hand operated which is used generally in agriculture and registered with Central Goods & Services Tax Department having GSTIN No. 24AAMFR2054F1ZD had filed two IGST refund claims as mentioned in above table in respect of accumulated ITC on account of rate of tax on inputs being higher than the rate of output supplies. The adjudicating authority has sanctioned the refund claims as mentioned in above table.

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 are not proper and legal and hence not eligible under Section 54(3) of CGST Act, 2017.

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 on the following grounds:

- That as per the claim papers and copy of purchase invoices/documents as well as summary statement of purchase invoice and statement 1A filed under Rule 89(2)(h), the claimant procured the sprayers from the registered person as well as through import and had paid IGST @18% (HSN 84248200- Scheduler III



Sr. No. 325 as per GST Notification No. 01/2017 (rate) and @ 12% (Schedule-II 195B) on the same items, on their inward/outward supplies. Thus, their tax rates for supply on the same items are 18% and 12% at different points of time.

- That the subject products i.e Agriculture Mechanical Sprayer and parts thereof is classifiable under Chapter Head 8424 of the GST Tariff and all the items of Chapter head 8424 are initially covered under Schedule III Sr. No. 325 as per GST Notification No. 01/2017 dated 28.06.2017, attracting tax @ 18%;
- That vide Notification No. 06/2018 w.e.f 25.01.2018 (25th GST Council Meeting), for mechanical sprayers, drip irrigation and sprinklers items, GST rate is reduced to 6% (6% CGST + 6% SGST), with a view to support agriculture/irrigation systems. Henceforth, Heading/Sub headings of Chapter 8424 as specified in Sr. No. 325 of Schedule III through covering works "mechanical appliances" do not cover mechanical devices used for agricultural/irrigation purposes. Thereafter, Sr.No.195B has been inserted into the Schedule-II vide Notification No.06/2018-CT(R) and the product under question Mechanical Sprayers is categorically mentioned there under, attracting GST @12% with effect from 25.01.2018.
- That, such mechanical sprayers used for agriculture are still mechanical sprayers and now covered under Sr. No. 195B of Schedule-II to **Notification No. 01/2017-CT(R)** as amended vide **Notification No.06/2018-CT(R) dtd. 25.01.2018** and subject to GST @6% (effectively 12%). The said changes are tabulated as under:

S. No.	Chapter/Heading/ Sub- heading/ Tariff item	Description: Schedule -II 6% of Goods
Schedule -III-9% (effectively 18%).		
325	8424	Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines *[other than fire extinguishers, whether or not charged]
		(Substituted wef 15-11-17 vide not. 41/2017 dated 14-11-17) Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than and Nozzles for drip irrigation equipment or nozzles for sprinklers]
		(Substituted wef 25-01-2018 vide Not. No. 06/2018)



		Mechanical appliances(whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines[other than sprinklers; drip irrigation systems including laterals; mechanical sprayer; nozzles for drip irrigation equipment or nozzles for sprinklers)” shall be substituted;
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Description: Schedule -II 6% of Goods (effectively 12%).		
195B	8424	Sprinklers; drip irrigation system including laterals; mechanical sprayers (wef 25-01-2018 vide Not. No. 06/2018)

That the context, para 3 of Circular No.135/05/2020 – GST dated 31/03/2020 is reproduced herein below:

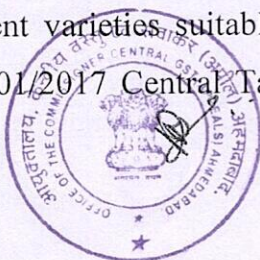
3. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate:

3.1 It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods “X” attracting 18% GST. However, subsequently, the rate of GST on “X” has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.

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.

4.1. Personal hearing in the matter was held on 09.02.2021 through virtual mode. Shri Bharat Thakkar, Advocate appeared on behalf of the respondent for hearing and stated that he has already submitted their written submission and re-iterated the same.

4.2. The respondent in their cross objection stated that they imported mechanical sprayers of different varieties, suitable for use in agriculture as per Sr. No. 325 of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 where in applicable



rate of tax for such entry was 18% and accordingly, the respondent were paying duty on purchase/import as well as sale till 25.01.2018; that vide Notification No. 06/2018-Central Tax (Rate) dated 25.01.2018 wherein entry at Sr. No. 195B falling under Schedule-II included which attract 12% for Sprinklers, drip irrigation system including laterals and mechanical sprayers. Accordingly, they the respondent filed Bills of Entry with Customs Department for import of Mechanical sprayers charging IGST @12%. However, the customs department not accepted their claim on the ground that entry 195B will not cover all varieties of sprayers such as battery operate sprayers and hence the respondent were paying IGST @18% under protest; that the Commissioner (Appeals), Customs vide OIA No. AHD-CUSTM-000-APP-22 TO 26-19-20 dated 02.05.2019 in their own case rejected their claim classification of all sprayers under Sr. No. 195B inserted vide Notification No. 07/2018-I.T (Rate) dated 25.01.2018 attracting 12% duty and the same covered under Sr. No. 325 of Notification No. 01/2017 -I.T. dated 28.06.2017 attracting IGST @ 18%; that the Board vide **Circular No. 113/32/2019-GST dated 11.10.2019 clarified that Sr. No. 195B of the Schedule II to Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 covers "mechanical sprayers" of all types** whether or not hand operated (like hand operated sprayer, power operated sprayers, battery operated sprayers, foot sprayer, rocker etc); that the respondent paying IGST @ 18% as charged by the Customs Authorities on their inputs by way of import of mechanical sprayers and paying 12% for output supplies under GST Acts which resulted into unutilized input tax credit balance in their electronic credit ledger for which respondent filed refund claim under Section 54(3) of the GST Act and accordingly correctly granted by the authority after verifying their records. The respondent also contended that the interpretation sought to be canvassed in the appeal filed by the department is contrary to scheme and purpose of Section 54; that they were forced to pay higher rate of tax on inputs; that Circular No. 135/05/2020 dated 31.03.2020 relied upon by the department is contrary to law and therefore, it is not binding and relied upon the judgement of Hon'ble Supreme Court in case of Commissioner of Central Excise, Bolpur Vs Ratan Melting and Wire Industries reported in 2008 (12) STR 416 (SC) and in case of J K Lakshmi Cement Ltd Vs Commercial Tax Officer, Pali reported in 2018 (14) GSTL 497 (SC). Also stated that no interest is leviable under GST Act even if it is presumed for the sake of argument that refund was erroneously granted to them and relied upon various judgements in support of their claim.



5. I have carefully gone through the facts of the case and submission made by the department in the Appeal Memorandum and also cross examination filed by the respondent at the time of personal hearing. 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 of Circular No. 135/05/2020-GST dated 31.03.2020 or otherwise?.

6. I observed 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. 135/05/2020-GST dated 31.03.2020, relevant part of which is reproduced below:

3. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate

3.1 *It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.*

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.*

6. As provided under para 3.2 of above circular, 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. In the said Circular, it is 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. Furthermore, the appellant relied upon Hon'ble Supreme Court of India in case of Hon'ble Supreme Court in case of Commissioner of Central Excise, Bolpur Vs Ratan Melting and Wire Industries reported in 2008 (12) STR 416 (SC) and in case of J K Lakshmi Cement Ltd Vs Commercial Tax Officer, Pali reported in 2018 (14) GSTL 497 (SC) wherein



Hon'ble Supreme Court of India held that Circular is not binding to the assessee. However, I observe that the circular have the force of law and are binding on the lower authority and hence, the 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 violations of the clarification are not legally sustainable as discussed above.

7. 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।
The appeal filed by the appellant stands disposed of in above terms.

(Mukesh Rathore)
Commissioner (Appeals)
Ahmedabad
/03 /2021

Attested

(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D

To,

M/s. Rolyplast Industries,
110, Heritage Plaza,
Opp Gurukul Tower,
Drive In Road, Ahmedabad 380052

Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex, Ahmedabad North.
3. The Assistant Commissioner, CGST & C.Ex, Division-VII, Ahmedabad North.
4. The Assistant Commissioner, System-CGST, Ahmedabad North.
5. Guard File.
6. P.A. File.



