



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.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015

☎ : 079-26305065 टेलीफैक्स : 079 - 26305136

Email- commrappl1-cexamd@nic.in



DIN2021364SW000000F7F0

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)27/EA-2/Appeal/North/2020-21 .

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-60/20-21**
दिनांक Date : **03.03.2021** जारी करने की तारीख Date of Issue : 07.04.2021

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No RFD-06 Order No. MP/353/RFD-1A/ITC-Ref/19-20
dated दिनांक: **03.01.2020** 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, Division-II), Ahmedabad-North

Respondent- M/s United Enterprise (Rizwankhan Abdulrehman Pathan) .

(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 is 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.



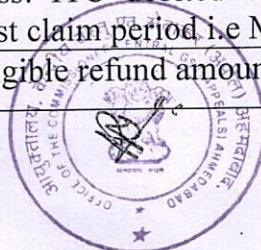
ORDER IN APPEAL

The Department, through the Assistant Commissioner, CGST & C.Ex, Division-II, Ahmedabad North, have filed appeal vide Review Order No. 17/2020-21 dated 01.07.2020 against the RFD-06 Order No. MP/353/RFD-1A/ITC-Ref/19-20 dated 31.01.2020 [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. United Enterprise (Rizwankhan Abdulrehman Pathan) 67/220, GHB, Bapunagar, Ahmedabad- 380 024 [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. 24AMTPP5895M1ZW had filed refund claim amounting to Rs. 1,66,488/- (Rs. 25,045/- and CGST and Rs. 1,41,443/- SGST) for the month of April-19 to June-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. 1,48,482/- (Rs. 16,042/- CGST and Rs. 1,32,440/- SGST) vide imposed order dated 31.01.2020.

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 hereinbelow:

Tax Period April- to June-2019 Description	Refund claim filed on 19.07.2019		
	IGST	CGST	SGST
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.	0	79184	195582
Amount to be debited as per Circular No.59/33/2018-GST dated 04.09.2018	0	74241	74241
Amount actually debited by the Respondent	0	25045	141443
Less: ITC debited wrongly which pertains to post claim period i.e May-2019	0	9003	9003
Eligible refund amount	0	16042	74241



Refund sanctioned by Adjudicating authority	0	16042	132440
Excess Refund sanctioned	0	0	58199

2.3 From the above table, 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.

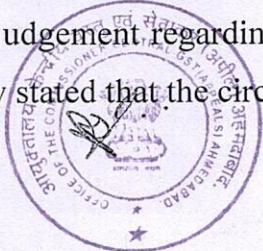
3. Thereafter, the impugned orders being examined for its legality and propriety by the Commissioner, CGST & C.EX, Ahmedabad-North Commissionerate and found that the same are not proper and legal as the claimant had to debit the amount of refund CGST/SGST as shown in table above in term of circular supra. Thus, the adjudicating authority granted/sanctioned excess refund as shown in table-2 above and hence, the impugned order have been reviewed vide Review Order 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).”*

4.1. Personal hearing in the matter was held on 28.01.2021 through virtual mode. Shri Enjaz Savaijiwala, C.A appeared on behalf of the respondent for hearing and stated that they have already filed cross objection vide their submission dated 10.08.2020 and re-iterated the same.

4.2. The respondent filed corss objection vide letter dated 10.08.2020 and stated all the ITC refund claimed by them is totally legal and after submitting all the documents and returns filed with the adjudicating authority has passed the order for refund; that the Circular No. 59/33/2018-GST dated 04.09.2018 is ultra virus of the act and making it against the principal of natural justice to the assessee and also relied upon various judgement regarding non requirement to follow circular by the assessee and hence they stated that the circular issued by the department is not binding to them.

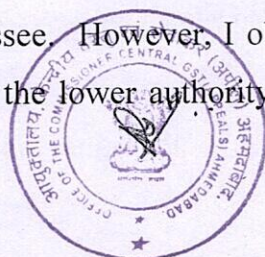


5. I have carefully gone through the facts of the case and submissions made by the department in the Appeal Memorandum and cross examination dated 10.08.2020 filed by respondent in the matter. The limited issue which requires to be decide in the case is whether the refund have been correctly sanctioned 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.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).*

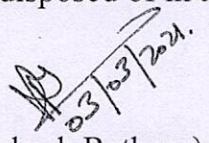
6. As provided under above circular, while filling refund claim, the claimant was required to debit from Electronic credit ledger, IGST to the extent balance available therein and then after Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of 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 respondent has filed refund claim for Rs. 1,66,488/- and there was no balance in IGST head, whereas the balance available under CGST head Rs.79,184/- at the end of tax period for which refund is claimed. Also observed that the appellant has debited Rs. 25,045/- from CGST and Rs. 1,41,443/- from SGST. Hence, I observed that, the sequence prescribed under circular supra has not been followed by the respondent which ultimately resulted in excess sanction of refund to the tune of Rs.58,199/- as mentioned in table above. As a result of this unspecified/improper method, excess refund to the tune of Rs. 58,199/- mentioned in table above has been sanctioned by the adjudicating authority. Furthermore, the appellant relied upon Hon'ble Supreme Court of India in case of Commissioner of Customs, Calcutta Vs India Oil Corporation Ltd reported in 2004 3 SCC 488=2004 (165)ELT 257 (SC) wherein Hon'ble Supreme Court of India held that Circular is not binding to the assessee. However, I observe that the circulars 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 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 alongwith interest and set aside the impugned orders to the extent of refund sanctioned in excess as mentioned in table 2 above.

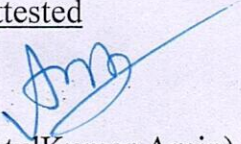
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
All the four appeals filed by the appellant stands disposed of in above terms.


(Mukesh Rathore)

Joint Commissioner, CGST, Appeals.

Date:

Attested


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



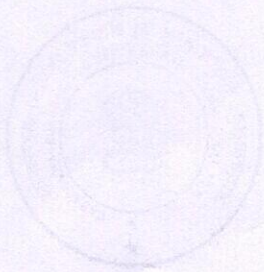
By R.P.A.D.

To,

1. M/s. United Enterprise (Rizwankhan Abdulrehman Pathan)
67/220, GHB, Bapunagar,
Ahmedabad- 380 024
2. The Assistant Commissioner,
CGST & Central Excise, Division-II, Ahmedabad-North,
3rd Floor, Sahajanand Arcade,
Near Helmat 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



Handwritten text, possibly a signature or initials, located on the right side of the page. The text is written in a cursive or slanted style and is partially obscured by the hole punch.