



सत्यमेव जयते

आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी, अहमदाबाद 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015.

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DIN NO. : 20220364SW0000888FED

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/577/2021-APPEAL /7185-90

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-114/2021-22**
दिनांक Date : **31-03-2022** जारी करने की तारीख Date of Issue : 31-03-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No **ZR2412200252591** dated **23.12.2020** issued by Assistant Commissioner, Central Goods and Services Tax, Division-II (Naroda Road), Ahmedabad North

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

M/s. Dhall Exports,

Post Saijpurbogha, Nr. G. D. High School,

Naroda, Saijpurbogha,

Ahmedabad, Gujarat – 382345

(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.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .

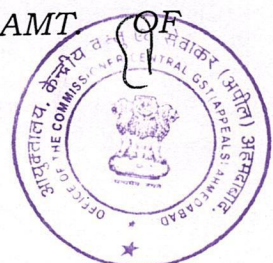


ORDER IN APPEAL**Brief Facts of the Case :-**

M/s. Dhall Exports, Post Saijpurbogha, Nr. G. D. High School, Naroda, Saijpurbogha, Ahmedabad - 382345 (hereinafter referred as '*Appellant*') has filed the present appeal against Order No. ZR2412200252591 dated 23.12.2020 (hereinafter referred as '*impugned order*') passed in the form GST-RFD-06 by the Assistant Commissioner, CGST & C. Ex., Division - II Naroda Road, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

2. Briefly stated the facts of the case are that the '*appellant*' is holding GST Registration having GSTIN 24AABFD3516H1ZX has filed the present appeal on 12.03.2021. The '*Appellant*' had purchased goods from the sister concern under Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017 under Tax Invoice dated 30.12.2018 for export of the same. The said goods was subsequently exported under LUT (without payment of IGST) by the '*Appellant*' under Shipping Bill No.9997824 dated 31.12.2018. The '*Appellant*' has produced the copy of BRC in support of realization of foreign remittance in the matter. Though the export was without payment of IGST however, while filing the GST Returns the '*Appellant*' has made mistake and shown the said consignment as Export under payment of IGST and accordingly IGST was debited from Electronic Credit Ledger.

3. The '*appellant*' upon realizing the mistake has filed refund application under ARN AA241120039874H on 13.11.2020 for amount of Rs.10,53,804/- on account of excess payment of Tax for the period December 2018. A Show Cause Notice was issued in this regard in Form RFD-08 dated 03.12.2020 informing that the refund application is liable to be rejected on account of reason "*Other*". In the SCN a Remark is mentioned as "*NO RECORD I/R. S/B IN ICE GATE AGAINST WHICH TAX HAS BEEN PAID. NO DOCS PROD. REGD. AMEND. OF SAME. TAX PAID THRO' ITC AS CASH REF. INADMISSIBLE*" Thereafter, the refund claim is rejected by the *adjudicating authority* vide *impugned order*. In the *impugned order* a Remark is mentioned as "*THE CLAIMANT DID NOT SUBMIT REPLY, EVEN AFTER 15 DAYS. AS SUCH RFD-06 IS BEING ISSUED FOR REJECTION OF REFUND AMT*" OF Rs.10,53,804/-".



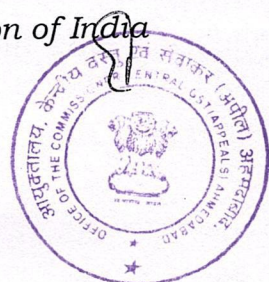
4. Being aggrieved with the *impugned order* the 'Appellant' has preferred present appeal on 12.03.2021 on the following grounds :

- *The PH in the matter was fixed on 10.12.2020 and they appeared before the adjudicating authority. During PH they had explained the reason for excess payment of IGST due to clerical error. However, the adjudicating authority at all not considered the facts which were brought to his notice. Hence, the order is passed in gross violation of natural justice.*
- *The appellant had procured the goods for export under Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017. The goods were exported under LUT which is recorded in export invoice and Shipping Bill. In the GST Regime, the refund of IGST is processed on the basis of shipping bill by the Customs Authority. Once IGST is not shown in shipping bill, then no refund can ever be processed by the Customs authority*
- *They have correctly exported the goods under LUT. However, while filing GST Returns, the aforesaid supply is shown on payment of IGST and accordingly IGST was debited from Electronic Credit Ledger. This is clearly a clerical error and therefore, same is to be refunded to them.*
- *It is settled law that Government cannot keep any amount which is not tax or duty. The aforesaid wrong debit is nothing but amount incorrectly deposited with the Government which is required to be refunded. Hence, order for rejecting refund is not sustainable and requires to be quashed and set aside.*

Personal Hearing :-

5. Personal Hearing in the matter was held on 22.03.2022 wherein Shri Nirav Shah, Advocate appeared on behalf of the 'Appellant' as authorized representative to defend the case. During P.H. he has reiterated the written submission made till date and also defend the case in the light of following case laws :

- (1) 2018(18) G.S.T.L. 410 (Mad.) 3E Infotech V/s. CESTAT, Chennai
- (2) 2006(206) E.L.T. 90 (Kar.) Commissioner of C. Ex., Meerut-II V/s. Motorola India Pvt. Ltd.
- (3) 2022(379) E.L.T. 183 (Guj.) UPL Ltd. V/s. Union of India



Discussion and Findings :-

6(i). I have carefully gone through the facts of the case and submissions made by the '*appellant*'. I find that the issue involved in the present matter is that the '*Appellant*' has exported goods under LUT i.e. without payment of Tax however, by mistake it was shown under GST Returns as Export on payment and accordingly, payment Rs.10,53,804/- was done through Electronic Credit Ledger erroneously. Accordingly, the '*Appellant*' has claimed refund of said erroneous payment. On going through the SCN and *impugned order* I find that the said refund claim is rejected by the *adjudicating authority* on the ground that -

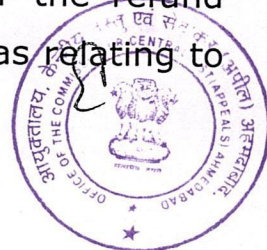
- *No records of Shipping Bill found on ICEGATE for which Tax paid.*
- *No documents produced regarding amendment.*
- *Tax paid through ITC so refund in cash inadmissible.*

6(ii). Further, on going through the copy of Shipping Bill produced by '*Appellant*' I find that there is no mention of any amount against '*IGST Amt. Paid*'. Further, I find that in the relevant Shipping Bill against the details of each item in respect of '*IGST Payment Stat*' it is mentioned as '*LUT*'. Accordingly, it become apparent that export was not on payment of Tax. Therefore, I find that it is a case of refund of payment made by mistake and not a case of refund on account of export under payment of tax. Further, I find that the payment of Rs.10,53,804/- is neither disputed in SCN nor in *impugned order*. Therefore, I find that regarding payment made by '*Appellant*' there is no dispute. So far as refund in the GST is concerned I find it germane to refer the provisions of the Section 54 of the CGST Act, 2017. The same is reproduced as under :

***Section 54. Refund of tax.-**

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

6(iii). In view of above, any person claiming refund of any tax paid may make application before expiry of two years from the relevant date. Here in the present matter the refund application was filed on 13.11.2020 and the refund was relating to



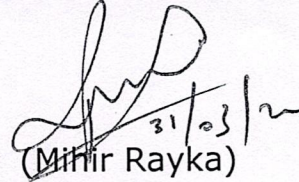
December 2018. Therefore, I find that refund application is made within prescribed time limit.

6(iv). In view of foregoing, I find that the 'Appellant' is eligible for the refund of Tax so paid by mistake. Since, the payment was made through Electronic Credit Ledger, refund may be given in Electronic Credit Ledger.

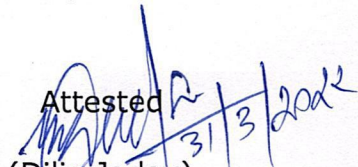
7. In view of the above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and the appeal of the 'Appellant' is allowed.

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

The appeal filed by the appellant is disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Attested 
(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad

Date: 31.03.2022



By R.P.A.D.

To,
M/s. Dhall Exports,
Post Saijpurbogha,
Nr. G. D. High School, Naroda,
Saijpurbogha, Ahmedabad - 382345

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division - II Naroda Road, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
- ✓ 6. Guard File.
7. P.A. File