



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/541 & 543/2020-Appeal- O/o COMMR-CGST / 1413 70
APPL-AHMEDABAD 1417

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-ADC-12 & 13/2021-22
दिनांक Date : 21.05.2021 जारी करने की तारीख Date of Issue : 24.05.2021

श्री मोहित अग्रवाल अपर आयुक्त (अपीलस) द्वारा पारित
Passed by Shri. Shri. Mohit Agrawal, Additional Commissioner (Appeals)

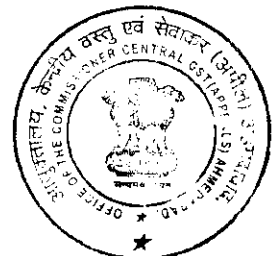
ग Arising out of Order-in-Original No RFD-06 No. ZQ24082000022219 &
ZP24082000022164 both dated 03.08.2020 passed by Deputy Commissioner, CGST
& C.Ex Division-IV, Ahmedabad North

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

Appellant- M/s Parinda Dinesh Patel (Auto Power)

Respondent- Deputy Commissioner, CGST & C.Ex., Division-IV, Ahmedabad North.

(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.



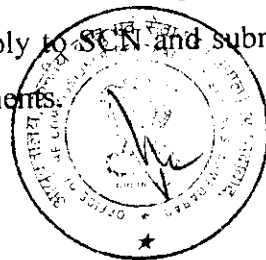
ORDER IN APPEAL

Two appeals have been filed by M/s. Parinda Dinesh Patel (Auto Power), Block No. 97/98, Plot No.1, Opp. Khodiyar Temple, Chacharwadi, Sarkhej Bavla Highway, Ahmedabad 382 210 (here-in-after referred to as the "appellant") against the Orders as per details given in table below (here-in-after referred to as the "impugned orders") issued by the Deputy Commissioner, CGST & C.Ex, Division-IV, Ahmedabad North (here-in-after referred to as the "adjudicating authority").

Sr. No	RFD-06 Order No.	RFD-06 Order Date	Amount of Refund (Rs.)	Period of refund	Amount of Refund sanctioned	Amount of Refund rejected
1	ZQ24082000022219	03.08.2020	1112565	January-20	0	1112565
2	ZP24082000022164	03.08.2020	181280	Sept-2019	0	181280

2.1. The facts of the case, in brief, are that the appellant, engaged in manufacture of Battery operated electric vehicles falling under CTH 8703 and registered under the CGST Act and having registration No. 24AISPP3804H1Z3. The appellant have filed two refund claims as mentioned in para-1 above for the month of September-2019 and January-2020 on account of accumulated input tax credit (hereinafter referred to as ITC) mainly due to inverted duty structure under the provision of Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017.

2.2. On scrutiny of refund claims and RFD-1 with the GSTR-1M and statement 1A for the relevant period, Show Cause Notices in form RFD-08 were issued on 22.07.2020 for both the claim for rejection of refund claim on the grounds that the rate of tax on inputs and the rate of tax on outward supplies are same. As per para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 "*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.*" The appellant vide RFD-09 dated submitted reply to SCN and submitted revised refund working and not submitted any supporting documents.

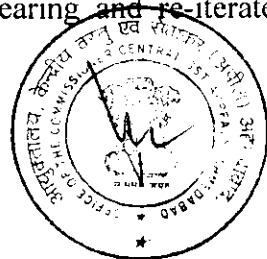


2.3. The adjudicating authority vide impugned orders in RFD-06 dated 03.08.2020 as mentioned in para -1 above, rejected both the refund claim with remarks that **"Rejected as no such duty structure, as detailed in SCN. No satisfactory reply submitted. No any calculation found attached in reply, thus rejected."**

3. Being aggrieved, the appellant have filed the instant appeals on the grounds that:

- that Section 54 deals with the legal and procedural aspects of claiming refund by any person in respect of various reasons mentioned in the Chapter XI of the CGST Act, 2017;
- that as per Section 54(3)(b) of the CGST Act, 2017, refund of unutilized input tax credit can be claimed at the end of any tax period in case if the tax on inputs is higher than the rate of tax on outputs not being nil rated or fully exempt supplies;
- that the manner of calculation of refund amount in case of refund of unutilized ITC in case of zero rated supplies and inverted duty rate is provided in Rule 89(5) of the CGST Rules, 2017;
- that they refer Circular No. 125/44/2019-GST dated 18.11.2019 wherein clarified the calculation of refund amount for claims of refund of accumulate ITC on account of inverted tax structure wherein refund of unutilized ITC can be claimed;
- that as per circular it is very clear that if the rate of outward supply is equal to or lower than that of inward supply, then also an appellant can claim the refund amount as per the formula mentioned in Rule 89(5);
- that appellant has made the outward supplies in the month of Sept-19 and Jan-20 @ 5% of Battery operated electrical vehicles and 18% for Electrical resistors, AC Drive and maintenance and repair service and submitted sample invoices;
- that the appellant received inputs in the month of Sept-19 and Jan-20 @ 18% and 28% and submitted sample invoices;
- that the appellant have already uploaded all the documents/details mentioned in the Circular No. 125/44/2019-GST dated 18.11.2019 while filling refund application;
- that the outward rate of tax is 5% and 18% and there are multiple rate of inward tax and as per clarification issued vide Circular No. 125/44/2019-GST dated 18.11.2019, appellant is eligible for refund amount as per Rule 89(5) of the CGST Rules, 2017.

4. Personal hearing in the matter was held on 16.04.2021 through virtual mode. Ms Pooja Sheth, C.A appeared on behalf of the appellant for hearing and re-iterated the submissions made in Appeal Memorandum.



5. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum. The issue to be decided in the present appeal is whether the impugned orders rejecting the refund claims are correct, legal, proper or otherwise.

6. It is observed that the appellants had filed the refund claims under Section 54 of CGST Act, 2017 read with Rule 89 of CGST Rules, 2017 in respect of unutilized input tax credit (ITC) accumulated on account of inverted duty structure i.e rate of tax on inputs are equal and higher than the rate of the output supplies. The adjudicating authority while scrutiny of refund claims, observed that the rate of tax on input and the rate of tax on outward supplies are same; that there is mismatch in adjusted total turnover; that Appellant claims have not fulfilled the condition laid down under para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 and have not submitted detailed worksheet alongwith documents and hence, SCNs in form RFD-08 were issued.

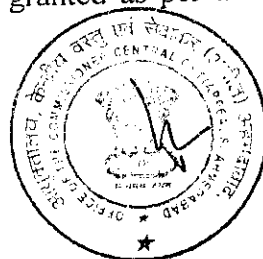
7. It is observed that the adjudicating authority has rejected the refund claims of Input Tax Credit accumulated on account of Inverted Duty Structure filed by the appellant under Section 54 of the CGST Act, 2017 vide impugned order and held that the rate of tax on inputs and the rate of tax on outward supplies are same and the appellant has neither submitted satisfactory reply submitted nor any calculation in their reply to SCNs. Also observed that the adjudicating authority while deciding the refund claims, relied upon para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020. Therefore, the accumulated input tax credit appeared not to be on account of inverted tax structure and dis-allowed the refund claim of Input Tax Credit accumulated on account of Inverted Tax Structure.

8. *The relevant portion of Section 54(3) of the CGST Act, 2017 reads as under :-
"Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period :
Provided that no refund of unutilised input tax credit shall be allowed in cases other than -*

(i) zero-rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council :

9. As per Rule 89(5) of CGST Rules, 2017 in the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula :-



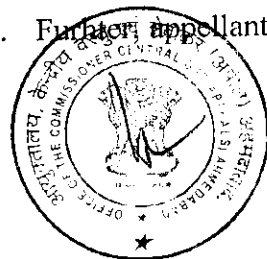
Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such Inverted rated supply of goods and services.

Explanation. - For the purposes of this sub-rule, the expressions -

- (a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and*
- (b) ["Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).]*

10. As per para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 "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."

11. It is observed from the show cause notice issued by the Deputy Commissioner, CGST & C.Ex, Division-IV, Ahmedabad North that the rate of tax on input and the rate of tax on outward supplies are same and as per Circular No. 135/05/2020-GST dated 31.03.2020 the refund of accumulate ITC 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. The appellant was directed to furnish reply to SCN alongwith documents in support of their claim. On receipt of said SCN, the appellant submitted reply vide RFD-9 wherein they stated that they have enclosed revised refund working and supporting documents. However, as observed by the adjudicating authority under RFD-06 i.e impugned order that no any calculation found attached in the reply to SCN filed by the appellant. Adjudicating authority also noticed on perusal of the GST RFD-09 that no supporting documents were found attached. In absence of such documentary evidence, the contention of the appellant is not acceptable. Further, appellant did not submit any documentary evidence before me to establish that the rate of tax on input supplies was higher when rate of tax on outward supplies. In view of the facts as discussed above, I find that the appellant was provided sufficient opportunities to furnish necessary documents in support of their claim. However, the appellant could neither provide supporting documents as called for nor provided any submission to support their claim that the rate of tax on input is higher than the rate of tax on outward supplies. Further, appellant did not



submit any documentary evidence before me to establish that the rate of tax on input supplies was higher when rate of tax on outward supplies.

12. From the facts discussed hereinabove, the adjudicating authority was right in holding that the claim is not covered under the provision of the Section 54 of CGST Act, 2017 read with Rule 89 of CGST Rules, 2017 and has correctly rejected the refund claim of the appellant. I therefore do not find any infirmity in the impugned order as the claim has been rightly rejected after giving proper opportunity to the appellant in term of natural justice.

13. In view of the discussions above, I reject the appeal filed by the appellant and uphold the impugned order.

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

Mohit Agrawal 21/5/21

(Mohit Agrawal)
Additional Commissioner (Appeals)
Ahmedabad
/05/2021

Attested

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



By R.P.A.D

To

M/s. Parinda Dinesh Patel (Auto Power),
Block No. 97/98, Plot No.1,
Opp. Khodiyar Temple, Chacharwadi,
Sarkhej Bavla Highway,
Ahmedabad 382 210

Copy to:

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