



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad-380015
☎: 079-26305065 टेलीफैक्स : 079 - 26305136
Email- commrappl1-cexamd@nic.in



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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/687/2020-Appeal- O/o COMMR-CGST-APPL-AHMEDABAD / 2423 TO 2424
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-ADC-25/2021-22
दिनांक Date : 26.07.2021 जारी करने की तारीख Date of Issue : 28.07.2021

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

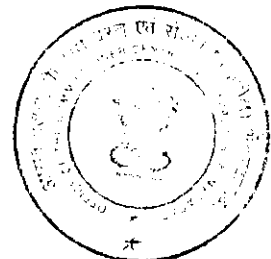
ग Arising out of Order-in-Original No Z02409200111176 dated 08.09.2020 passed by Assistant/Deputy Commissioner, CGST & C.Ex Division-VII-S.G. Highway East Ahmedabad North

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

Appellant- M/s Amrutdhara Tubewell (GSTIN-24ABLFA5865D1ZG)

Respondent- Assistant Commissioner, CGST & C.Ex Division-VII-S.G. Highway East Ahmedabad North .

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| (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 provided that the appeal to tribunal can be made within three months from the date of coming into force 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

M/s. Amrutdhara Tubewell, 19, ground Floor, Yogeshwar Complex, S.G. Highway Near Sola Over Bridge, Thaltej, Ahmedabad-380054 (*hereinafter referred to as 'appellant'*) has filed the present appeal against Order-In-Original No.: Z02409200111176 dated 08.09.2020 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, CGST & C.Ex., Division-VII, S.G. Highway East, Ahmedabad North (*hereinafter referred to as 'adjudicating authority'*).

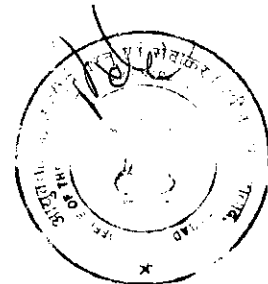
2. The facts of the case, in brief, are that the appellants, having G.S.T.I.N 24ABLF5865D1ZG, has filed a claim for refund of Rs. 315601/- for the refund on supplies made to SEZ with payment of tax involving period from December 2019 to January-2020 online vide ARN -AA240820024 and submitted the physical documents in this regard. As the appellant failed to submit the complete claim up to the satisfaction of the adjudication authority, notice for rejection of the subject claim was issued in Form GST-RFD-08 (under Rule 92(3) of CGST Act, 2017. The adjudicating authority vide impugned order has rejected the said refund claim due to non-submission of prescribed documents, under the provision of Rule 89 of CGST Rules read with Section 54.

3. Being aggrieved, the appellant has filed the present appeal before me on the following grounds:

- The impugned order is Ex-Facie bad and illegal both in law and on the facts and hence the same deserves to be quashed and set aside.
- The impugned order is passed without Hearing The Appellant and without Giving him appropriate time period to be heard.
- The Assistant Commissioner has not understood the fact that we all are facing difficulties due to Covid-19 Pandemic and It was not possible for us to get details within time period he has allowed to us and he was not ready to provide further period of time to get all the details he required.
- The Assistant Commissioner has not applied Appropriate frame of Mind and Rejected Refund as a whole, Which is not at all in good faith and illegal in Law and Fact both

4. A personal hearing in the matter was held on 10.06.2021. Shri Jigarbhai Thakkar and Harshil Thakkar both, appeared before me on behalf of the appellant and reiterated the grounds of appeal.

5. I have gone through the facts of the case and submissions made in the appeal memorandum. The limited point to be decided is whether the appellant is eligible for the Refund claim which was rejected by the adjudicating authority in the impugned order on the ground, that the appellant failed to produce prescribed documents as per Rule 89 of CGST Rules, 2017 Read with Section 54.



6. Before going to decide the case, I hereby produce the relevant part of, Rule 89 of the CGST Rules, 2017, for the ease of the case:

RULE 89. Application for refund of tax, interest, penalty, fees or any other amount. — (1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01* through the common portal, either directly or through a Facilitation Centre notified by the Commissioner :

Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3* or FORM GSTR-4* or FORM GSTR-7 as the case may be :

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the -

(a) **supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;**

(b) **supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone :**

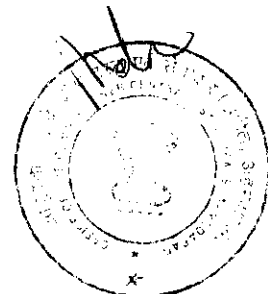
[Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

- (a) the recipient of deemed export supplies; or
(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund] :

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01*, as applicable, to establish that a refund is due to the applicant, namely :-

- (a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount



specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

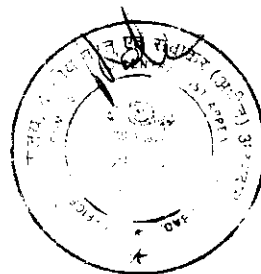
(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods;

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

7. Part (a) of Second proviso to above rule states that in respect of supply to SEZ unit or SEZ developer the application has to be filed by the supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone and Part (b) of Second proviso to above rule states that in respect of supply to SEZ unit or SEZ developer the application has to be filed by the supplier of service along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone. In so far as requirement of endorsement by specified officer is concerned, I find that there is no ambiguity in the provisions. An endorsement made by specified officer regarding receipt of goods/service for use in authorized operations, is specifically emphasized in the provision itself which leaves no room for interpretations in any other way. Again at clause (d) & (e) of sub rule (2) of above rule, there is a mention regarding what documents has to be furnished along with refund application. It states that a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) needs to be furnished along with refund application. In spite of such specific provisions for furnishing an endorsement made by specified officer along with refund application, the appellant failed to comply with the same.



8. From the above, it is very crystal clear that, without submission of all pertinent correct documents pertaining to refund claim by the appellant, it is not possible for adjudicating authority to quantify the legitimate amount of refund. I, further, find that before rejection of Refund claim, notice for rejection of claim in form GST-RFD 08 dated 20.08.2020 was issued to the appellant, which clearly indicated that adequate steps/opportunities were taken/provided by the adjudicating authority before deciding the case. Therefore, I do not find any reason to interfere in the impugned order.

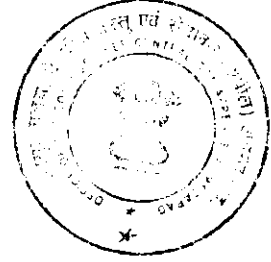
9. In view of above discussions, I uphold the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant.

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

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

Mohit Agrawal
26/7/21

Mohit Agrawal
(मोहित अग्रवाल)
अपर आयुक्त (अपील्स)



Date : .07.2021

Attested

(Signature)
(Atulkumar B Amin)

Superintendent(Appeals),
Central Tax, Ahmedabad

To,

M/s. Amrutdhara Tubewell,
19, Ground Floor, Yogeshwar Complex,
S.G. Highway Near Sola Over Bridge,
Thaltej, Ahmedabad-380054.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad.
4. The Commissioner of Central Tax, Ahmedabad-North.
5. Deputy/Assistant Commissioner, CGST & C.Ex., Division-VII, S.G. Highway East, Ahmedabad North .
6. The Assistant Commissioner(RRA), Central GST, Ahmedabad North.
7. Guard file
8. P.A. file.