



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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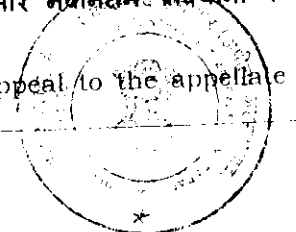


By Regd. Post

DIN NO. : 20211064SW0000888B72

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/538/2020-APPEAL/3894709899
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-45/2021-22 and 21.10.2021
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, संयुक्त आयुक्त अपील Shri Mihir Rayka, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	21.10.2021
(ङ)	Arising out of Order-in-Original No. ZP2407200358541 dated 24.07.2020 issued by Assistant Commissioner, Division – VII (S G Highway East), Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Neety Euro Asia Solar Energy (GSTIN – 24AAHFN8684J1ZP) Address :- 4, Shrinagar Society, Opp. Sardar Patel Stadium, Naranpura, Ahmedabad-380014

(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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying –
(i)	(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 .



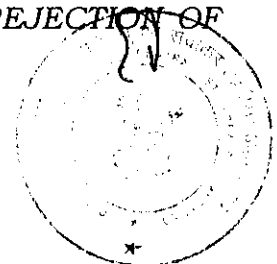
ORDER-IN-APPEAL

M/s. Neety Euro Asia Solar Energy, 4 Shrinagar Society, Opp. Sardar Patel Stadium, Naranpura, Ahmedabad - 380014, Gujarat, (*hereinafter referred as 'appellant'*) has filed the present appeal against the Order No. ZP2407200358541 dated 24.07.2020 passed in the Form-GST-RFD-06 (*hereinafter referred as 'impugned order'*) rejecting refund of CGST - Rs.3,45,803/- and SGST - Rs.77,164/- total Rs.4,22,967/-, issued by the Assistant Commissioner of CGST & Central Excise, Division - VII - S G Highway East, Ahmedabad North Commissionerate (*hereinafter referred as 'adjudicating authority'*).

2(i). The '*appellant*' is holding GST Registration No.24AAHFN8684J1ZP. On 06.06.2020 vide ARN No.AA2406200117160, the '*appellant*' had filed a Refund claim of CGST - Rs.3,45,803/- and SGST - Rs.77,164/- total Rs.4,22,967/- for the F.Y. 2019-20 (Months - December-February). In response to said refund claim the '*adjudicating authority*' had issued a deficiency memo in the form RFD-03 dated 19.06.2020 for the reason "*supporting documents not attached*" with Remarks - "ANNEXURE "B" NOT UPLOADED AS PER CIR. 135/05/2020." Accordingly, the '*appellant*' has again filed refund claim of same amount on 23.06.2020 vide ARN No. AA240620052675D. Simultaneously, GSTR 2A, reconciliation of GSTR 2A and GSTR 2, invoices not found in GSTR 2A, and bifurcation showing Input, Input Services and Capital Goods for the month from December'2019 to February'2020 were submitted by '*the appellant*' through email via cakhilanpatel@gmail.com to div7905@gmail.com. Consequently, '*notice for rejection of application for refund*' vide SCN No. ZZ2407200101574 dated 08.07.2020 was issued by the '*adjudicating authority*' for the reason mentioned therein as '*Other*'. In the said SCN a Remark was mentioned which is reproduced as under:

"NET ITC INCL. OF MIS-MATCH INVOICES RESULTING IN NO REFUND I.E. (-) REFUND AMOUNT."

The appellant was asked to furnish reply within 15 days from date of receipt of SCN and also directed to appear before the '*adjudicating authority*' on 15.07.2020. Thereafter, the '*adjudicating authority*' has rejected the refund claim vide RFD-06 i.e. the '*impugned order*' dated 24.07.2020 wherein mentioned the Remark as - '*NO REPLY TO SCN PROPOSING REJECTION OF REFUND.*'



2(ii). Being aggrieved with the 'impugned order', the 'appellant' filed the present appeal on 27.10.2020 wherein, inter alia, stated that :

- (a) Appellant is engaged in manufacturing of solar panel and maintenance/repairing of the same. Major raw material is chargeable to Tax @ 18% and final product is chargeable to 5% so the appellant has accumulated Input Tax Credit. Accordingly, refund claim was filed on 06.06.2020 for Rs.4,22,967/- for the period December-2019 to February-2020.
- (b) In response to deficiency memo they have filed new refund claim on 23.06.2020 in terms of Circular No. 125/44/2019. As informed by the adjudicating authority they have submitted the additional documents on 02.07.2020 via mail. However, adjudicating authority has erred in law to raise SCN without considering the documents provided by them.
- (c) The adjudicating authority has brushed aside the submission made by the appellant and has rejected the application for refund.

Personal Hearing :

3. Personal Hearing in the matter was through virtual mode held on 12.10.2021. Shri Khilan Patel, Chartered Accountant, appeared on behalf of the 'appellant' as authorized representative. During P.H. he has stated that he would like to submit additional documents. Accordingly, the authorized representative has submitted the documents via mail on 12.10.2021 such as outline of case, copy of old OIO, copy of CBIC's Circular No. 59/33/2018-GST dated 04.09.2018 and Circular No. 135/05/2020-GST dated 13.03.2020.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'appellant' in the Appeal Memorandum as well as at the time of personal hearing and also gone through the additional documents submitted on 12.10.2021. I find that the 'appellant' has submitted the refund claim 06.06.2020 for which deficiency memo was issued on 19.06.2020. Accordingly, the appellant has filed new refund claim of similar amount on 23.06.2020 with required documents. I have also gone through the photocopy of email dated 02.07.2020 in support of appellant's



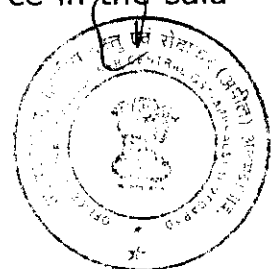
claim that they have submitted additional documents such as GSTR 2A, reconciliation of GSTR 2A and GSTR 2, invoices not found in GSTR 2A, and bifurcation showing Input, Input Services and Capital Goods for the month from December'2019 to February'2020.

4(ii). Further, I find that the *appellant* has mainly contended that without considering the documents submitted by them via mail dated 02.07.2020 the *adjudicating authority* has issued SCN dated 08.07.2020 for rejection of refund claim. Subsequently, the *adjudicating authority* has rejected the refund claim vide *impugned order* dated 24.07.2020.

4(iii). Further, on going through the SCN dated 08.07.2020 it is observed that in the SCN wherein it is mentioned that "NET ITC INCL. OF MIS-MATCH INVOICES RESULTING IN NO REFUND I.E. (-) REFUND AMOUNT." It is also observed that before passing the *impugned order* the *adjudicating authority*, through said SCN asked the *appellant* to furnish reply within 15 days and also asked to appear before the *adjudicating authority* on 15.07.2020. However, the *appellant* has not produced any such documents that they have replied the said SCN or appeared before the *adjudicating authority* on given date and time to contest their claim of refund.

4(iv). I find that the *adjudicating authority* has clearly informed the appellant about no refund arises on account of net ITC as well as mis-match of invoices. The *adjudicating authority* has also given 15 day time to the appellant to furnish reply against this conclusion and also given personal hearing on 15.07.2020. Therefore, it is apparent that the *appeilant* has misconstrued that SCN dated 08.07.2020 was issued by the *adjudicating authority* without considering reply dated 02.07.2020. It is obvious that SCN issued on 08.07.2020 so, the reply dated 02.07.2020 of the *appellant* must have been considered by the adjudicating authority. Further, I find that the *adjudicating authority* has issued the *impugned order* on 24.07.2020 so, sufficient time was provided to the appellant for filing of reply or documents in support of refund claim.

Accordingly, I find that the '*adjudicating authority*' is also bound to process the refund claim and to issue the orders in a time bound manner, as prescribed under the provisions of Section 54 of the CGST Act, 2017 and Rule 92 of the CGST Rules, 2017. Hence, I do not find any force in the said



contention of the 'appellant' that the 'adjudicating authority' has issued the 'impugned order' without considering their reply and documents.

4(v). Further, I find that the main contention of the 'appellant' is that due to inverted duty structure they have accumulated ITC and thus filed the refund claim as per the provisions of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

4(vi). The relevant part of Section 54(3) of CGST Act, 2017 reads as under :

"54. Refund of tax – (3) 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:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies."

4(vii). The relevant part of Rule 89 (5) of the CGST Rules, 2017 reads as under :

"89. Application for refund of tax, interest, penalty, fees or any other amount.- (5) 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

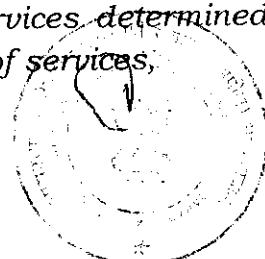
(b) "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).

4(viii). "Adjusted Total turnover" and "relevant period" defined under sub-rule(4) of Rule 89 reads as under :

" 'Adjusted Total Turnover' means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,



excluding-

- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period."

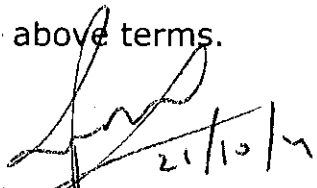
'Relevant period' means the period for which the claim has been filed."

4(ix). A Show Cause Notice dated 08.07.2020 was issued to the appellant stating the reason as "Other" with remarks "NET ITC INCL. OF MIS-MATCH INVOICES RESULTING IN NO REFUND I.E. (-) REFUND AMOUNT." Hence, it is obvious that the 'adjudicating authority' has considered the figures/amounts reflected in the GST Returns of the 'appellant'. However, the 'appellant' failed to submit any evidence/proof in support of their refund claim. The 'appellant' failed to produce details/ground which substantiate the correct amount of refund claim in terms of formula mentioned in Rule 89(5) of the CGST Rules, 2017. In absence of any substantive support of documents and grounds, I do not find any merit in the contentions of the 'appellant' and as such do not find any infirmity in the 'impugned order'.

5. In view of above, the 'impugned order' is upheld. The appeal of the 'appellant' is rejected and disposed of accordingly.

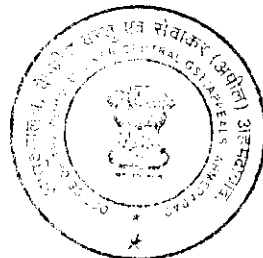
6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

7. The appeals filed by the appellants stand disposed of in above terms.

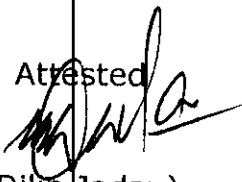

(Mihir Rayka)

Joint Commissioner (Appeals)

Date: 21.10.2021



Attested


(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Neety Euro Asia Solar Energy,
4 Shrinagar Society, Opp. Sardar Patel Stadium,
Naranpura, Ahmedabad - 380014

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, Central GST & C. Ex., Ahmedabad-North.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VII – S G Highway East, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
- ✓ 6. Guard File.
7. P.A. File

