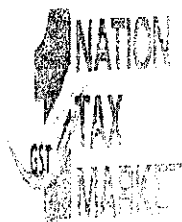




सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in

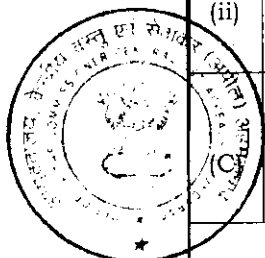


By Regd. Post

DIN NO. : 20211264SW000000AE3A

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/415/2021-APPEAL <i>मामल 704319</i>
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-72/2021-22 and 06.12.2021
(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	07.12.2021
(ङ)	Arising out of FORM-GST-RFD-06 Order No. ZU2410200254877 dated 21.10.2020 issued by The Deputy Commissioner, CGST, Division-IV, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s SSC Tradecom Pvt. Ltd. (GSTIN - 24AAYCS6618K1ZL) Address:- Plot No. 3, Block No. 295, Panchratna Industrial Estate, Sarkhej Bavla Highway, Village-Changodar, Ahmedabad-382213

(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.	
	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 .	



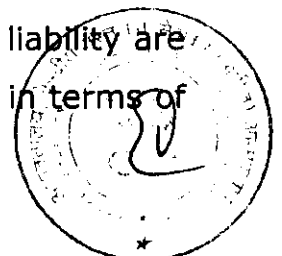
ORDER-IN-APPEAL

M/s. SSC Tradecom Private Limited, Plot No. 3, Block No. 295, Panchratna Industrial Estate, Sarkhej Bawla Highway Village, Changodar, Ahmedabad - 382213, Gujarat, (*hereinafter referred as 'appellant'*) has filed the appeal against the Order No. ZU2410200254877 dated 21.10.2020 passed in the Form-GST-RFD-06 (*hereinafter referred as 'impugned order'*) rejecting refund claim of Rs.58,13,806/- (CGST - 2904372 + SGST - 2909434), issued by the Deputy Commissioner of CGST & C. Ex., Division - IV - Changodar, Ahmedabad North Commissionerate (*hereinafter referred as 'adjudicating authority'*).

2(i). The '*appellant*' is holding GSTIN No.24AAYCS6618K1ZL and engaged in supply of groceries, fruits, vegetables, cosmetics, bakery items, other household items, flowers etc. As per grounds of appeal, the '*appellant*' is engaged in trading of goods, majority of goods are taxable at the rate of 5% & 12%. Further, in addition to availing ITC on procurement of goods used for making outward supply, '*appellant*' is also availing credit of warehousing services used to store such goods. '*Appellant*' has further stated in grounds of appeal that in the instant case they are availing Input Services which are taxed at rate of 18% and are used for making outward supply of goods which are taxable at rate of 5% and 12% resulting in accumulation of unutilized ITC.

Considering the above facts, the '*appellant*' had filed the Refund claim of Rs.58,13,806/- of accumulated Input Tax Credit for the period from April-2019 to March-2020 on 04.09.2020 with ARN No. AA240920014285K on the ground of Inverted Duty Structure (Where rate of GST on inward supplies being higher than the outward supplies). In response to said refund claim the '*adjudicating authority*' had issued Show Cause Notice dated 25.09.2020 alleging why refund application should not be rejected on the following grounds :

- In terms of para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020, refund of accumulated ITC due to inverted duty structure is not available when the input and output supplies are same. *Appellant* being trader, its output tax liability and input tax liability are same and hence not eligible for refund of accumulated ITC in terms of abovementioned Circular.



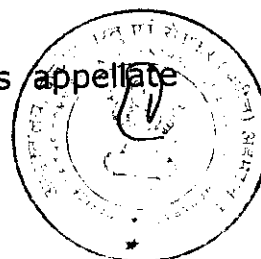
- In terms of para 53 of Circular No. 125/44/2019-GST dated 18.11.2019, refund of ITC availed on input services and capital goods is not allowed where the refund is applied for accumulated ITC due to inverted tax structure.
- Annexure B uploaded along with refund application by *appellant* is not in the prescribed format as per Circular No. 135/05/2020 dated 31.03.2020.

In response to said SCN the '*appellant*' had filed detailed reply on 07.10.2020 in form GST RFD 09. Subsequently, the SCN was adjudicated by the *adjudicating authority* and rejected the refund claim on the grounds mentioned in aforesaid SCN vide above stated RFD-06 i.e. the '*impugned order*' dated 21.10.2020.

2(ii). Being aggrieved with the '*impugned order*', the '*appellant*' has filed the present appeal on the ground that -

- *Impugned order is passed without proving opportunity of being heard.*
- *By referring Section 54 and Section 2 of the CGST Act, 2017 the appellant submit that unutilized input tax credit means ITC unutilized on account of both input and input services. Accordingly, a registered person is eligible to claim refund of unutilized ITC of both Input and Input Services.*
- *Appellant has relied on the judgement of Hon'ble Gujarat High Court in the case of VKC Footsteps India Private Limite Vs. UOI (2020-TIOL-1273-HC-AHM-GST). In the said judgement it was held that Explanation (a) to Rule 89(5) of the CGST Rules, 2017 which denies the refund on "unutilized input tax" paid on "input services" as part of "input tax credit" accumulated on account of inverted duty structure, is ultra vires the provisions of Section 54(3) of the CGST Act.*
- *As regards to binding of above judgement on department, the appellant has referred judgement of Hon'ble Gujarat High Court in the matter of Astik Dyestuff Pvt Ltd Vs. CCE (2014-TIOL-237-HC-AHM-ST) wherein it was held that if there is any conflict between the jurisdictional High Court and the CBEC Circular, the decision of the jurisdictional High Court is binding on the department rather than CBEC Circular.*
- *In view of above the appellant has submitted that they have rightly applied for refund of accumulated ITC.*

3. The '*appellant*' vide letter dated 23.09.2021 to this *appellate* authority has informed that -



- Present appeal was filed in view of decision of Hon'ble Gujarat High Court in the case of *VKC Footsteps India Private Limited Vs. UOI [2020-TIOL-1273-HC-AHM-GST]*.
- The said decision of Hon'ble High Court of Gujarat has been overruled by the Hon'ble Supreme Court vide 2021-VIL-81-SC..
- That post the decision of Hon'ble Supreme Court, there is no merit in the refund claim.
- Therefore, the *Appellant* wishes to withdraw the refund claim.

Further, considering the above submissions, the appellant vide aforesaid letter most respectfully prays that –

- o Decide the present appeal in favour of Respondent and against the *Appellant*.
- o Direct the Respondent to re-credit the rejected amount to the electronic credit ledger of the *appellant* through Form GST PMT-03 in accordance with Circular No. 125/44/2019 – GST dated 18.11.2019.
- o Pass any further order(s) as deem fit and proper in the facts and circumstances of the present case.

4. Since the '*appellant*' has claimed the refunds of accumulated ITC of '*Input Services*' on the ground of Inverted Duty Structure which is inadmissible as per the Hon'ble Supreme Court's judgement in the case of M/s. VKC Footspets India Private Limited and the *appellant* has requested for withdrawal of appeal, the appeal under consideration has become infructuous. Accordingly, considering the *appellant's* request for withdrawal of appeal, I dismiss the appeal as withdrawn.

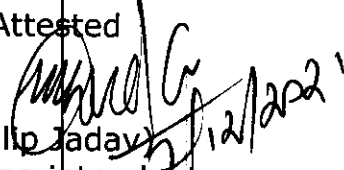
5. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

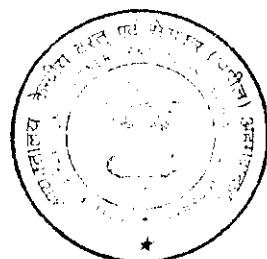
5. The appeals filed by the appellant stand disposed of in above terms.


(Mihir Rayka)

Joint Commissioner (Appeals)

Date: 06.12.2021

Attested

(Dilip Jaday)
Superintendent
Central Tax (Appeals)



Ahmedabad

By R.P.A.D.

To,

M/s. SSC Tradecom Private Limited,
Plot No. 3, Block No. 295, Panchratna Industrial Estate,
Sarkhej Bawla Highway Villate, Changodar,
Ahmedabad - 382213

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-IV -
Changodar, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. Guard File.
7. P.A. File

