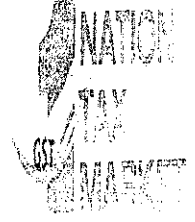


सत्यमेव जयते

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. : 20220164SW0000523930

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1299/2021-APPEAL/6627 70 5632
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-86/2021-22 and 05.01.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त अपील Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	06.01.2022
(ङ)	Arising out of Order-in-Original No. ZT2406210288230 dated 23.06.2021 issued by The Assistant Commissioner, Division-I (Naroda), Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Metro Industries (Legal Name – Shashi Rohtasbhai Sharma) (GSTIN – 24CASPS4336R1ZT) Address :- 6375/43, Rabari Vas, Bunglow Area, Kubernagar, Ahmedabad, Gujarat-382340

(A)	इस आदेश(अपील) से व्यक्ति 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. Metro Industries (Legal Name – Shashi Rohtasbhai Sharma), 6375/43, Rabari Vas, Bungalow Area, Kubernagar, Ahmedabad - 382340 (hereinafter referred as '*appellant*') has filed the present appeal against Order No. ZT2406210288230 dated 23.06.2021 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') rejecting entire amount of refund claim of Rs. 9,34,146/-, issued by the Assistant Commissioner, CGST & C. Ex., Division – I, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

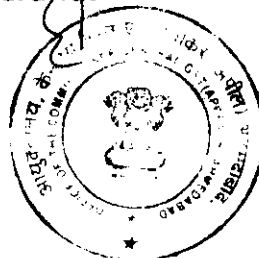
2. The '*appellant*' is holding GSTIN No.24CASPS4336P1ZT has filed the present appeal on 13.07.2021. As per the statement of facts mentioned in the appeal memo –

- the '*appellant*' is engaged in business of sale of Grocery Items and they have made exports under 'LUT'.
- that they had filed a Refund claim of Rs.9,34,146/- (IGST-84002 + CGST-425072 + SGST-425072) for the period from June-2020 to March-2021 in respect of ITC on Export of Goods & Services without payment of Tax under GST-RFD-01 vide ARN No. AA240521078330N dated 28.05.2021.
- that they have provided all required documents for GST Refund with Application and some documents with deficiency memo.
- However, the refund application was rejected by the '*adjudicating authority*' without given any reason or providing rejection order.

Accordingly, the '*appellant*' had filed the present appeal on 13.07.2021. The appellant has stated in the grounds of appeal that –

- they have made exports under LUT and claimed the refund on ITC on Export of Goods & Services without payment of Tax for the period from June-2020 to March-2021.
- the '*adjudicating authority*' has rejected the refund application without providing any reason and also not provided order of rejection dated 23.06.2021.

Considering above facts, the '*appellant*' has requested to set aside the *impugned order* dated 23.06.2021 and pass an order directing the concern Assistant Commissioner to sanction the GST Refund.



3(i). The *appellant* had filed refund claim under GST-RFD-01 with ARN No. AA240521078330N for the period from June-2020 to March-2021. The details of refund claim is as under :

Computation of Refund to be claimed (Statement 3A)

	Turnover of zero rated supply of goods and services (1)	Adjusted total turnover (2)	Net Input Tax Credit (3)	Maximum refund amount to be claimed (4) [(1*3)/2]
Integrated Tax	16077281	18300253	1063310	934147
Central Tax				
State/UT Tax				
CESS				
Total	16077281	18300253	1063310	934147

In the refund application the *appellant* has declared the balance in the Electronic Credit Ledger and stated that - ***the balance in the Electronic Credit Ledger is only for 'Matched ITC'***

3(ii). The relevant Section 54(3)(i) of the CGST Act, 2017 is reproduced as under :

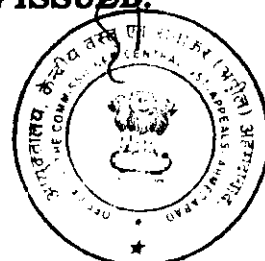
(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

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;

After examination of the said refund application, "Notice for rejection of application for refund" was issued to the 'Appellant' in the Form-GST-RFD-08 on 13.06.2021. In the said Show Cause Notice it was alleged that "refund application is liable to be rejected on account of reasons "Other". Further, in the SCN a 'Remark' was mentioned as - "PL COMPLY". Through this Show Cause Notice the 'Appellant' was asked to furnish a reply to this notice within fifteen days and also offered personal hearing on 18.06.2021 at 2.48PM.

Thereafter, the 'Adjudicating Authority' has passed the *impugned order* vide which considered the entire amount of Refund claim of Rs.9,34,147/- as inadmissible with remark as - ***annex b as circular 135 uploaded which was send by tp on div mail becex could not upload in scn due to tech glitch. RFD-06 IS BEING ISSUED.***



4. Since, the appellant has claimed that – “*despite submitted all relevant documents as per deficiency memo, the refund claim is rejected without given any reason or without providing rejection order*” a letter dated 09.09.21 was issued to the Assistant Commissioner, CGST, Division – I Naroda by this Appellate Authority. Through this letter it was asked to inform about the reasons/grounds on the basis of which the refund claim was rejected. It was specifically asked to comment on *appellant's* aforesaid contention also. In response to same the Assistant Commissioner, Division-I, Ahmedabad North vide letter dated 29.09.2021 has replied as under :

*- it is to inform that at the time of issuing RFD-06, the following remarks of the erstwhile Assistant Commissioner could be seen on screen- :
- Annexure-B as per Circular 135 uploaded. Which was send by the Tax Payer on the Division Mail because could not upload in SCN due to technical glitch. RFD-06 is being issued (Copy Enclosed). Further PMT03 has also been issued in the case (Copy Enclosed).*

Personal Hearing :

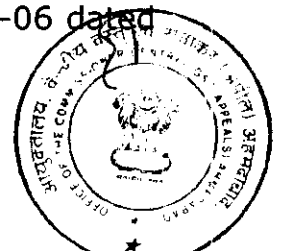
5. Personal Hearing in the matter was through virtual mode held on 13.12.2021. Shri Ankur Pipaliya, CA and Mr. Jignesh Sharma both appeared on behalf of the ‘Appellant’ as authorized representative. During P.H. they have reiterated the written submission made till date and informed that they do not want to add any other additional submission.

Discussion and Findings :

6(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 reply of the Assistant Commissioner, Division – I, Ahmedabad North along with documents/details.

I find that the ‘Appellant’ has filed the refund application of Rs.9,34,147/- of the unutilized ITC on account of Export of goods without payment of Tax i.e. under LUT. The refund claim pertains to period from June-2020 to March-2021. The ‘Appellant’ has mainly contended that the *adjudicating authority* has rejected the refund claim without giving any reason/grounds.

6(ii). Further, on going through the letter dated 29.09.2021 of the Assistant Commissioner, Division – I, Ahmedabad North, it is observed that he has forwarded the copy of impugned order i.e. GST-RFD-06 dated



23.06.2021 as well as copy of GST-PMT-03 i.e. "Order for re-credit of the amount to cash or credit ledger on rejection of refund claim" dated 28.06.2021. On going through same I find that the PMT-03 is generated by the 'adjudicating authority' vide which ordered for re-credit of Rs.9,34,146/-.

6(iii). Further, on going through the copy of 'impugned order' I find that the 'adjudicating authority' has rejected the entire amount of refund claim of Rs.9,34,146/- with remark that Annexure-B as per Circular No. 135 send by Tax Payer on Divisional mail, because could not uploaded due to technical glitch. Since, all the documents/ details available on records suggest that the entire refund claim is rejected in connection with Annexure-B as per Circular No. 135, I find it pertinent to refer the said Circular. Accordingly, I find that CBIC has issued a Circular No. 135/05/2020-GST, dated 31-3-2020. As per the para 5 i.e. *Guidelines for refunds of ITC under Section 54(3)* it is mentioned that -

*In terms of para 36 of circular No. 125/44/2019-GST, dated 18-11-2019, the refund of ITC availed in respect of invoices not reflected in **FORM GSTR-2A** was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST, dated 9-10-2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the **FORM GSTR-2A** of the applicant.*

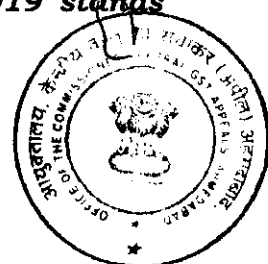
*5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18-11-2019 stands modified to that extent.*

Further, I find that as per para 6 of Circular it is mentioned as under -

6. New Requirement to mention HSN/SAC in Annexure 'B'

6.1 References have also been received from the field formations that HSN wise details of goods and services are not available in **FORM GSTR-2A** and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in Annexure-B of the circular No. 125/44/2019-GST, dated 18-11-2019 so as to easily identify between the supplies of goods and services.

6.2 The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. **Accordingly, Annexure-B of the circular No. 125/44/2019-GST, dated 18-11-2019 stands modified to that extent.**



Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

Sr. No.	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Category of input supplies		Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Ces s	Eli-gible for ITC	Amount of eligible ITC
			Invoice No.	Date	Value	Inputs/ Input Services / capital goods	HSN / SAC					Yes/No / Partially	
1	2	3	4	5	6	7	8	9	10	11	12	13	14

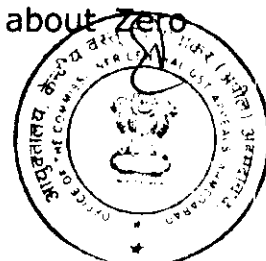
On going through the above Circular I find that as the HSN wise details of goods and services were not available in FORM GSTR-2A hence it was difficult to distinguish ITC on capital goods and/or input services out of total ITC hence, the CBIC has modified the Annexure B as above.

On going through the *impugned order* I find that the *appellant* has sent the Annexure B on Division's mail. The *appellant* has produced the copy of said Annexure B and on going through same I find that all the above details are mentioned in the said Annexure B.

6(iv). Further, I find that the *appellant* has filed the refund application on 28.05.2021 and in response to said refund application the *adjudicating authority* has issued "Notice for rejection of application for refund" on 13.06.2021. As per Notice, 15 days time was given to the *appellant* to furnish reply and Personal Hearing fixed on 18.06.2021 at 2.48PM. I find that though 15 days time was provided to the *appellant* to furnish reply to the Notice however, without waiting the expiry of said 15 days time during which technical glitch (due to which Annexure B send by Tax Payer on Division mail) could be sorted out, but the *adjudicating authority* has issued the *impugned order* on 23.06.2021.

7(i). In view of above, I find that in this case the claim was rejected only on the ground that copy of Annexure B send by Tax Payer on Division mail and could not uploaded due to technical glitch. Therefore, it transpires that there is no dispute with regard to refund of unutilized ITC on account of Export of Goods & Services without payment of Tax (under LUT) which otherwise allowable to *appellant*.

Further, from the *impugned order* as well as reply of the AC, Division-I, Ahmedabad North I find that there is no dispute about Zero



rated supply i.e. export without payment of tax or dispute about the ITC. Accordingly, the *appellant* is eligible to claim refund of accumulated ITC as per Section 54(3) of the CGST Act, 2017.

7(ii). Since, the refund of accumulated ITC on account of export of goods without payment of tax otherwise admissible to the *Appellant*, I am of the view that the refund claim rejected on the sole ground of copy of Annexure B send by Tax Payer on Division mail is not proper. Further, the *appellant* is also contending that they have provided all required documents for GST Refund with Application and some documents with deficiency memo. Further, the *appellant* has produced the copy of Annexure B before this Appellate Authority also. Therefore, the refund claim so rejected by the adjudicating authority on the sole ground of 'copy of Annexure B send by Tax Payer on Division mail' is not proper.

8. In view of above discussions, I reject the ground of the *impugned order* based on which entire amount of refund claim is so rejected. Accordingly, I hereby set aside the *impugned order* and allow the appeal filed by the *appellant* without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

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

The appeal filed by the '*Appellant*' stand disposed off in above terms.

(Signature)
05/01/2022
(Minir Rayka)

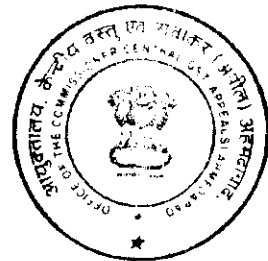
Additional Commissioner (Appeals)

Date: 05.01.2022

Attested
(Signature)
17-01-2022
(Dilip Jadav)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Metro Industries
(Legal Name – Shashi Rohtasbhai Sharma),
6375/43, Rabari Vas, Bungalow Area,
Kubernagar, Ahmedabad - 382340



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

