



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTD/147/2022-APPEAL / 2675 - 81
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-051/2022-23 & 20.07.2022
(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	20.07.2022
(ङ)	Arising out of RFD-06 Order No. ZN2411210011935 dated 01.11.2021 issued by the Assistant Commissioner, CGST & C.Ex., Division – II (Naroda Road), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant/Deputy Commissioner, CGST & C.Ex., Division-II (Naroda Road) Ahmedabad North Commissionerate Address :- 3 rd Floor, Sahajanand Arcade, 132 Ft. Road, Helmet Circle, Memnagar, Ahmedabad-380009
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s MR Brand Elastics Pvt. Ltd. (GSTIN-24AANCM1350R1Z1) Address:- I-10/I-11/L-10, Shayona Estate, Near Memco Circle, Naroda Road, Ahmedabad, Gujarat-380025

(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 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:-**

The following appeal has been filed by the Assistant Commissioner, CGST & C. Ex., Division - II (Naroda Road), Ahmedabad North Commissionerate (hereinafter referred as '*appellant*' / '*department*') in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against FORM-GST-RFD-06 Order No. ZN2411210011935 dated 01.11.2021 (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST & C. Ex., Division - II (Naroda Road), Ahmedabad North (hereinafter referred as '*adjudicating authority*') in the case of M/s MR Brand Elastics Pvt. Ltd., located at (GSTIN-24AANCM1350R1Z1), I-10/I-11/L-10, Shayona Estate, Near Memco Circle, Naroda Road, Ahmedabad, Gujarat-380025 (hereinafter referred as '*Respondent*').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/147/2022-APPEAL dated 11.02.2022	22/2021-22 dated 24.01.2022	ZN2411210011935 dated 01.11.2021

2.1 Briefly stated the facts of the case are that the '*Respondent*', holding GSTIN No. 24AANCM1350R1Z1, had filed a refund claim of Rs.7,42,519/- of IGST, CGST and SGST for the period from 01.10.2020 to 30.11.2020 under Section 54 of the CGST Act, 2017. The claim was filed on account of accumulation of ITC due to Inverted Tax Structure. The *adjudicating authority* has sanctioned the said refund claim of Rs.7,42,519/- under *impugned order* dated 01.11.2021.

2.2 During scrutiny of the said order the *department* has observed that the assessee had calculated refund amount with net ITC for Rs. 24,46,097/-, in Annexure-1 in Statement -1 (rule 89(5) of the CGST Rules, 2017) as under :-

Turnover of inverted rated supply of goods and services	Tax payable on such inverted rated supply of goods and services	Adjusted total turnover	Net Input Tax Credit	Maximum Refund amount to be claimed
(Amount in Rs.)				
(1)	(2)	(3)	(4)	(5) = [(1*4)/3] - 2
2,36,68,250	11,83,412	3,00,60,696	24,46,097	7,42,519

2.3 Further, on scrutiny of the documents uploaded by the assessee with refund claim, it is observed that the amount of net ITC shown is Rs.22,50,652/-, in the mandated Annexure-B (Statement of Invoices to be submitted with application for refund of unutilized ITC).

2.4 In connection to the difference of Rs. 1,95,446/- between net ITC taken in RFD-01 and net ITC available in Annexure-B, the *department* has stated that, the claimant have submitted eight invoices of inputs and clarified that the relevant GSTR-1 vis-à-vis the said invoices was filed late by their concerned supplier and these invoices are reflected in GSTR-2A of December 2020, which is not in consonance/conformity with the circulars and clarification issued by



CBIC vide 139/09/2020-GST dated 10.06.2020. Accordingly, the admissible amount of refund is calculated as under:-

Turnover of inverted rated supply of goods and services	Tax payable on such inverted rated supply of goods and services	Adjusted total turnover	Net Input Tax Credit	Maximum Refund amount to be claimed
(Amount in Rs.)				
(1)	(2)	(3)	(4)	(5) = [(1*4)/3] - 2
2,36,68,250	11,83,412	3,00,60,696	22,50,652	5,88,636

2.5 Thus, it appears that **excess refund of Rs.1,53,883/-** (Refund sanctioned Rs.7,42,519/- minus Admissible Refund Rs.5,88,636/-), has been sanctioned by the *adjudicating authority*, as shown in above table:-

3. Considering the above facts the *Department* has filed present appeal on 11.02.2022 and, submitted that the *impugned order* is not proper and legal and accordingly, makes prayer for relief as under:-

- To set aside the *impugned order* to the extent of excess amount refunded of Rs.1,53,883/-.
- To pass an order directing to the original authority to recover the amount erroneously refunded to the claimant with interest
- To pass any other order(s) as deemed fit in the interest of justice.

Personal Hearing:

4. A letter dated 29.04.2022, was issued to the *Respondent*, instructing to file memorandum. In response, the *Respondent*, vide their reply dated 18.05.2022, has acknowledged that, excess refund has been sanctioned to them. The *Respondent*, further, requested to pass suitable order in connection to appeal filed by the *department*.

Discussion and Findings:

5.1 I have carefully gone through the facts of the case available on records, submissions made by the '*Department*' in the Appeal Memorandum. I find that the '*Respondent*' has preferred refund claim of Rs.7,42,519/- of IGST, CGST and SGST for the period from 01.10.2020 to 30.11.2020 under Section 54(3) of the CGST Act, 2017. The said refund claim was filed on account of accumulation of ITC due to Inverted Tax Structure, i.e. 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. The *Adjudicating Authority* has sanctioned the said refund claim vide *impugned order*. However, the department has observed that the adjudicating authority has sanctioned the refund claim, without conforming the Circular No.135/05/2020-GST dated 31.03.2020 read with the Circular No. 139/09/2020-GST dated 10.06.2020, which as under :-



5.1 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 09.10.2019, 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.**

5.2 Para 36 of the Circular No. 125/44/2019-GST dated 18.11.2019, is reads as under:-

Guidelines for refunds of unutilized Input Tax Credit

36. Applicants of refunds of unutilized ITC, i.e. refunds pertaining to items listed at (a), (c) and (e) in para 3 above, shall have to upload a copy of FORM GSTR-2A for the relevant period (or any prior or subsequent period(s) in which the relevant invoices have been auto-populated) for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the accountal of the supply by the corresponding supplier(s) in relation to which the input tax credit has been availed by the applicant. Such applicants shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B along with the application for refund claim. Such availment of ITC will be subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules inserted vide Notification No. 49/2019-CT dated 09.10.2019. The applicant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said format for enabling the proper officer to determine the same. Self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in Annexure - B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the application in FORM GST RFD 01. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in FORM GSTR-2A of the relevant period uploaded by the applicant.

6.1 In the instant case, the Respondent has filed for refund claim as per para 36 of the Circular No. 125/44/2019-GST dated 18.11.2019, confirmed by their letter dated 18.05.2022. They have shown the additional net ITC for the calculation of admissible refund amount. The Respondent has clarified that the amount of eight invoices of inputs, which were reflected in GSTR-2A of December-2020 due to late filing of the relevant GSTR-1 vis-a-vis the said

invoices by their concerned supplier, were considered in net ITC inadvertently by them.

6.2 In light of Circular No. 139/09/2020-GST dated 10.06.2020, it becomes very clear that the Adjudication Authority has sanctioned excess amount of Refund. Further, I find that the *Respondent* has also admitted vide their letter dated 18.05.2022 that excess amount of refund has been sanctioned to them vide impugned order and, they are willing to pay up the said excess refund amount.

7. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside to the extent of sanction of excess amount of refund of Rs.1,53,883/-. Accordingly, the appeal filed by the '*Department*' is allowed and set aside the '*impugned order*' to the extent of sanction of excess amount of Refund of Rs.1,53,883/-.

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

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

(Mihir Rayka)

Additional Commissioner (Appeals)

Date 20.07.2022

Attested

(Signature)
20/7/22

(Dilip Jadav)

Superintendent

Central Tax (Appeals)

Ahmedabad



By R.P.A.D.

To,

Appellant

The Assistant Commissioner, CGST & C. Ex., Division – II (Naroda Road), Ahmedabad North.

Respondent

M/s MR Brand Elastics Pvt. Ltd. (GSTIN-24AANCM1350R1Z1)
I-10/I-11/L-10, Shayona Estate, Near Memco Circle,
Naroda Road, Ahmedabad, Gujarat-380025

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-II (Naroda Road), Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File.
8. P.A. File