



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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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/321/2021 -APPEAL/3438-13
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-66/22-23 & 26.09.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका ,संयुक्त आयुक्त अपील Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	26.09.2022
(ङ)	Arising out of Order No. ZW2411200250490 dated 20.11.2020 passed by The Deputy Commissioner, Division - III (Sanand), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Maxxis Rubber India Pvt. Ltd., SM-12 + SM-51/2, Sanand-II, Industrial Estate, Ahmedabad, Gujarat - 382110

(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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .

**ORDER-IN-APPEAL****Brief Facts of the Case :**

**M/s. Maxxis Rubber India Private Limited**, SM-12 + SM-51/2, Sanand-II, Industrial Estate, Ahmedabad - 382 110 (hereinafter referred as '*Appellant*') has filed the present appeal against Order No. ZW2411200250490 dated 20.11.2020 (hereinafter referred as '*impugned order*') rejecting refund claim of Rs.1,53,85,273/-, passed by the Deputy Commissioner, CGST & C. Ex., Division - III Sanand, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

**2(i).** Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No.24AAJCM7177Q1ZM has filed the present appeal on 25.01.2021. The '*Appellant*' is engaged in manufacturing of tyres for two wheelers and four wheelers and for manufacturing the same, used imported inputs also. The appellant in the appeal memo informed that as per the direction of the DGGI, Ahmedabad Zonal Unit, Ahmedabad they have discharged the liability of payment of IGST on Ocean Freight on such imports for the period July'2017 to October'2018. Further, they continued discharging IGST liability from December'2018 till April'2020.

However, in the month of January'2020 the dispute over constitutional validity of IGST liability on Ocean Freight was concluded by the **Hon'ble High Court of Gujarat in the case of writ petition filed by M/s. Mohit Menerals Pvt. Ltd. (Civil Application No. 726 of 2018) and Hon'ble Calcutta High Court in the case of M/s. Adani Wilmar Limited (WP 13330(w) of 2019)**. The Hon'ble High Courts have declared that the entry no. 10 of Notification 10/2017 - Integrated Tax (Rate) dated 28.06.2017 (notifying procurement of ocean freight services from an entity located in non-taxable territory subject to IGST under RCM) is **ultra vires** to Section 5(3) of the IGST Act, 2017 as well as Article 14 of the Constitution of India. Further, **M/s. Gokul Agro Resources Ltd. (SCA 1758 of 2020)** and **M/s. Bharat Oman Refineries Ltd. (SCA 8881 of 2020)** had also approached Hon'ble Gujarat High Court seeking refund of GST paid on ocean freight amount from the authorities, which was allowed by the Hon'ble High Court.

**2(ii).** The '*Appellant*' relying upon the above judgments, had filed refund application vide ARN AA2409200737049 dated 22.09.2020



claiming refund of the IGST paid on ocean freight under reverse charge basis for the period from July'17 to April'20. In response to said refund application, a Show Cause Notice was issued to the appellant proposing rejection of refund claim for the reason that –

1. *Payment of Tax was done on suo moto basis and not under protest.*
2. *Credit of Tax so paid has already been taken, hence refund of same does not arise.*

Thereafter, the refund claim was rejected by the *adjudicating authority* vide *impugned order* on the ground that –

1. *The Claimant in their written reply vide RFD-09 dated 23.10.2020 stated that “reply to the SCN enclosed herewith” but no reply/document has been submitted. Also the claimant did not appear for the personal hearing scheduled on 29.10.2020.*
2. *Since, credit has already been taken for the amount of IGST paid on ocean freight; the question of refund does not arise. The refund amount as per Rule 89 of the CGST Rules, 2017 and Section 54 of the CGST Act, 2017 comes to “0” (zero).*

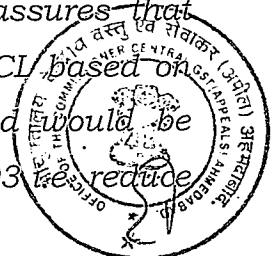
**2(iii).** Being aggrieved with the “*impugned order*” the ‘Appellant’ has filed the present appeal on 25.01.2021 wherein stated that –

- *At the outset, the Appellant would like to submit that the learned Deputy Commissioner has passed an order without giving a reasonable opportunity of being heard to present the case appropriately. The adjudicating authority has passed an ex parte order which is a gross violation of principle of natural justice.*
- *As per order, claimant did not appear for PH on 29.10.2020; however, no intimation was received regarding PH on 29.10.2020 by the appellant. This action of tax authorities is in complete violation of principle of natural justice. In this regard, relied upon decision of Hon’ble Odisha High Court in case of National Thermal Power Corporation Ltd. Vs. State of Orissa and Others [2002-128-STC-321-Ori].*
- *They have submitted the reply to SCN on 23.10.2020 on GST Portal. However, it appears that because of some technical glitch on the GSTN Portal, such reply is not visible to the authority.*
- *Decision of making payment of IGST on ocean freight was based on the scenario of ambiguities prevailing at that time. On one hand the ‘investigation’ arm of the department was asking the Appellant for payment of tax on such levy whereas on the other hand the writ petitions were filed before the various High Courts of the Country to declare such levy as unconstitutional. The appellant has made payment*



for peace of mind and to avoid prolonged legal battle with the department.

- The decision of discharging payment of tax on ocean freight was solely because of the fact that when the Appellant received summons from DGGI, various cases dealing with similar facts were pending before various courts and were not concluded.
- Payment of IGST on Ocean Freight has been made from October 19, 2018 onwards and the application for refund was filed on 22.09.2020 i.e. within 2 years from the date of payment.
- As regards to the contention of adjudicating authority that since credit taken question of refund does not arise, it is to submit that although the ITC availed from time to time but from very first instance of payment of tax on ocean freight i.e. October, 2018, the average monthly balance of GST credit has remained near to 100 Crores. The appellant has never utilized such ITC for payment of outward tax liability.
- Since, the balance of input tax credit is extremely large as compared to the input tax credit on ocean freight, it is crystal clear that the input tax credit was never utilized.
- By virtue of reply to SCN, the appellant had communicated such fact to adjudicating authority that they would reverse the ITC availed by filing DRC-03. Unfortunately, such statement of the Appellant could not reach to the adjudicating authority because of the technical issue on the GST portal.
- Nonetheless, the Appellant reiterates that they are willing to reverse input tax credit once the authority is satisfied that the amount claimed is payable as refund then based on such request in writing from department to debit the said amount from electronic credit ledger (ECL), the Appellant would immediately debit ECL by filing DRC-03 and provide the proof of the payment.
- It is important to note that above referred methodology is already suggested by CBIC vide Circular No. 125/44/2019 – GST dated 18.11.2019.
- Though the above clarification is for exporter, however, same provides clarity from procedural perspective when the registered person applies for refund under any other category.
- Considering above, the Appellant humbly submits and assures that when the Respondent would request in writing to debit ECL based on the fact that the application is complete and the refund would be granted, the Appellant would debit the ECL by filing DRC-03 to reduce the claim of credit.



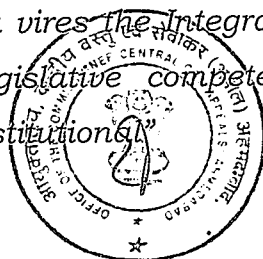
3. Personal Hearing in the matter was through virtual mode held on 18.08.2022 wherein Ms. Divya Sone, CA and Mr. Hardik Shah, CA appeared on behalf of the 'Appellant' as authorized representative. During P.H. they have reiterated the submissions made till date and informed that they want to give additional submission/information, which was approved and 7 working days period was granted. Accordingly, the appellant has submitted the additional written submission on 25.08.2022 wherein stated that

- Refund application was filed in the light of ruling pronounced by Hon'ble Gujarat High Court in the case of M/s. Mohit Minerals Pvt. Ltd. (Civil Application No. 726 of 2018) wherein the levy of IGST on ocean freight was struck down.
- Hon'ble Supreme Court in the case of M/s. Mohit Minerals has upheld the decision of Hon'ble Gujarat High Court and has concluded that the levy of IGST on ocean freight is struck down.
- In the line with above referred Ruling of Hon'ble Supreme Court, Gujarat High Court has granted refund of IGST on ocean freight while dealing with following two other matters.
  - o M/s. ADI Enterprise (Misc. Civil Application 01 of 2020 in Special Civil Application 10479 of 2019)
  - o M/s. Louis Dreyfus Company India Private Limited (Civil Application 11540 of 2021).

In the light of decision of Hon'ble Supreme Court striking off levy of IGST on ocean freight and above referred decision of Hon'ble Gujarat High Court, the appellant has requested for granting refund of IGST paid on ocean freight along with interest from the date of payment of IGST.

#### **Discussion and Findings :**

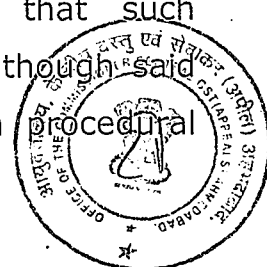
4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that as being pointed out by the DGGI, Zonal Unit, Ahmedabad, the 'Appellant' had paid IGST on Ocean Freight under reverse charge basis. However, Hon'ble Gujarat High Court in the case of M/s. Mohit Minerals Pvt. Ltd. [2020 (33) G.S.T.L. 321 (Guj.)] has held that "The impugned Notification No. 8/2017-Integrated Tax (Rate), dated 28th June, 2017 and the Entry 10 of the Notification No. 10/2017-Integrated Tax (Rate), dated 28th June, 2017 are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional."



Further, I find that in the matter of *M/s. Gokul Agro Resources Ltd. (SCA 1758 of 2020)* and *M/s. Bharat Oman Refineries Ltd. (SCA 8881 of 2020)* Hon'ble Gujarat High Court has allowed the refund of GST paid on ocean freight. Accordingly, the appellant had preferred the refund application, claiming refund of the IGST paid on ocean freight under reverse charge basis for the period from July'17 to April'20. I find that in response to said refund application a SCN was issued to the appellant proposing rejection of refund for the reason that "*Tax was paid suo moto*" and "*Credit of tax so paid has already been taken*". Thereafter, the refund claim was rejected by the adjudicating authority vide *impugned order* on the ground that "*no reply/document submitted by appellant or appear for PH on 29.10.2020*" and "*as credit of tax so paid has already been taken, question of refund does not arise*".

**4(ii).** I find that the appellant in the present appeal contended that the impugned order is passed without giving reasonable opportunity of being heard to present the case appropriately, which is gross violation of principle of natural justice. The appellant in the present appeal also contending that they have not received any intimation of Personal Hearing on 29.10.2020. Hence, the impugned order passed ex-parte is complete violation of principle of natural justice. Further, I find that the appellant has submitted in the present appeal that they have submitted the reply to SCN on 23.10.2020 on GST Portal, however, because of some technical glitch on the GSTN Portal, such reply may not be visible to the authority.

Further, as regards to the credit so availed of IGST paid on Ocean Freight under RCM basis the appellant has submitted in the present appeal that the average monthly balance of GST Credit has remained near to 100 Crores from very first instance of payment of tax on ocean freight i.e. October, 2018. Hence, such ITC is never utilized for payment of outward tax liability. Further, I find that the appellant is contending that they are willing to reverse input tax credit once the authority is satisfied that the amount claimed is payable as refund then based on such request in writing from department to debit the said amount from electronic credit ledger (ECL), the Appellant would immediately debit ECL by filing DRC-03 and provide the proof of the payment. In this regard, the appellant has referred the CBIC's Circular No. 125/44/2019 - GST dated 18.11.2019 and submitted that such methodology is already suggested by CBIC in said Circular, though said clarification is for exporter but same provides clarity from procedural



perspective when the registered person applies for refund under any other category.

**4(iii).** Looking to the facts and circumstances of the present case, I have referred the judgment passed by the Hon'ble Gujarat High Court in case of *M/s. Comsol Energy Pvt. Ltd. Vs. State of Gujarat* cited at 2021 (55) G.S.T.L. 390 (Guj.). The relevant para are reproduced as under :

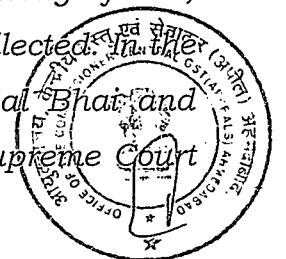
2. The writ-applicant herein filed the refund claims of the Integrated Goods and Services Tax (for short, the 'IGST') paid on the Ocean Freight under the reverse charge mechanism after the decision of this Court in the writ-applicant's own case which was connected with the main petition of *Mohit Minerals (Pvt.) Ltd. v. Union of India and Others* (Special Civil Application No. 726 of 2018) [2018 (10) G.S.T.L. 424 (Guj.)]. This Court, vide Order and Judgment dated 23-1-2019, held that the Notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017 and the Entry No. 10 of the Notification No. 10/2017 under the Integrated Tax (Rate), dated 28-6-2017 lack legislative competency and the same were accordingly declared as unconstitutional.

3. Upon filing of the refund claims, the respondent No. 3 issued the Deficiency Memo in both the claims separately on an erroneous premise that the refund claims were not filed within the statutory time limit as provided under Section 54 of the CGST Act inasmuch as Section 54 does not provide separate category for claiming refund of such amount.

4. The writ-applicant has preferred the captioned writ-application on the following grounds :

5. This Court in the writ-applicant's own case vide order dated 23-1-2020 declared the Notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017 and the Entry No. 10 of the Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 ultra vires as they lacked the legislative competency. This Court held that the levy of the IGST under the RCM on the Ocean Freight for the service provided by a person located in a non-taxable territory by way of transportation of goods through vessel from a place outside India to customs frontier of India is unconstitutional.

6. Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Since the amount of IGST collected by the Central Government is without authority of law, the Revenue is obliged to refund the amount erroneously collected. In the case of *State of Madhya Pradesh and Another v. Bhailal Bhair and Others*, AIR 1964 SC 1006, a Constitution Bench of the Supreme Court



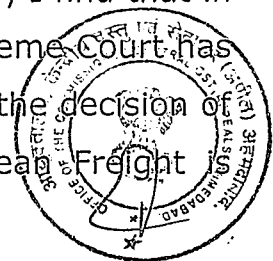
held that, where sales tax, assessed and paid by the dealer, is declared by the competent Court to be invalid in law, the payment of tax already made is one under a mistake of law within the meaning of Section 72 of the Contract Act and, therefore, the Government to whom the payment was made by mistake must be repaid. The Supreme Court further held that in that respect the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, has power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realized by the Government without the authority of law.

**7. Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the GGST Act. The amount collected by the Revenue without the authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable. In such circumstances, Section 17 of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Revenue under mistake of law.**

**11. The issue is squarely covered by the decision of this Court in the case of Gokul Agro Resources Ltd. v. Union of India (Special Civil Application No. 1758 of 2020, decided on 26-2-2020) [2020 (35) G.S.T.L. 82 (Guj.)], wherein this Court directed the respondent to pass an appropriate order in the refund application preferred by the assessee without raising any technical issue, within a period of four weeks.**

**12. Similarly, this Court, in the case of Bharat Oman Refineries Ltd. v. Union of India (Special Civil Application No. 8881 of 2020, decided on 18-8-2020) [2020 (41) G.S.T.L. 292 (Guj.)] directed the respondent to sanction the refund of the IGST paid by the assessee pursuant to the Entry No. 10 of the Notification No. 10/2017-IGST, dated 28-6-2017 declared to be ultra vires in the case of Mohit Minerals Pvt. Ltd. (supra).**

**4(iv).** In view of above judgment, I find that the Hon'ble Gujarat High Court has held that the amount collected by the Revenue without the authority of law is not considered as tax collected by them and therefore, Section 54 is not applicable in such cases. Further, I find that in the matter of M/s. Mohit Minerals Pvt. Ltd. the Hon'ble Supreme Court has dismissed the appeal filed by the Union of India and upheld the decision of Hon'ble Gujarat High Court wherein levy of IGST on Ocean Freight



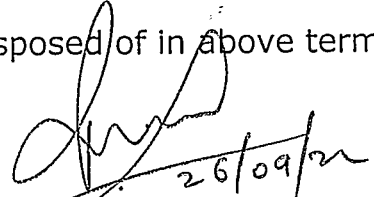


considered as unconstitutional. Accordingly, I find that in the present case the appellant has also paid the IGST on ocean freight which is held by the Hon'ble Courts as tax collected by Revenue without authority of law in similar cases as discussed in foregoing paras. Therefore, in the light of aforesaid judgments the appellant is eligible for refund of IGST so paid on ocean freight. As regards to the rejection of refund on the ground that the credit of IGST is already availed by appellant I find that since, the levy of IGST on Ocean Freight is held as unconstitutional, rejection of such refund is not justified particularly when appellant is ready to reverse the credit so availed.

5. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper. Since, the appellant has availed the ITC of IGST paid on ocean freight and simultaneously claim refund of same, the appellant is directed to reverse the ITC so availed and produce the proof of same before the refund sanctioning authority. Accordingly, I allow the appeal of the "*Appellant*" subject to reversal of credit so availed by them.

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

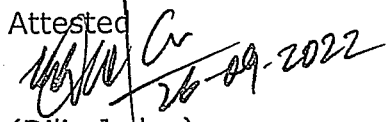
The appeal filed by the appellant stands disposed of in above terms.

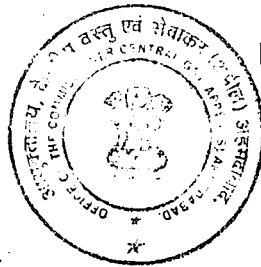
  
26/09/22  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 26.09.2022

Attested

  
26-09-2022  
(Dilip Jadav)  
Superintendent (Appeals)  
Central Tax, Ahmedabad



By R.P.A.D.

To,  
M/s. Maxxis Rubber India Private Limited,  
SM-12 + SM-51/2, Sanand-II,  
Industrial Estate, Ahmedabad - 382 110

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

