



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2881/2022 / 1886 - 12
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-ADC-13/2023-24 and 31.05.2023
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपरआयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	01.06.2023
(ङ)	Arising out of Order-In-Original 01/DEM/2022/SUP/AR-III dated 12.07.2022 passed by The Superintendent, CGST, Range- III, Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Jagdish Keshavlal Solanki (Mangal Murti Steel Traders), 52-B, Ashwmegh Industrial Estate, Opp M.N Desai Petrol Pump, Changodhar, Ahmedabad-382211

(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:**

This appeal has been filed by M/s. Jagdish Keshavlal Solanki (Trade Name : M/s. Mangal Murti Steel Traders] 52-B, Ashwmegh Industrial Estate, Opp. M N Desai Petrol Pump, Changodar, Ahmedabad, Gujarat - 382211 [hereinafter referred to as "the appellant"] against Order-In-Original No. 01/DEM/2022/SUP/AR-III dated 12-07-2022 [hereinafter referred to as "impugned order"] passed by the Superintendent, CGST, AR-III, Div-IV, Ahmedabad North Commissionerate [hereinafter referred to the "adjudicating authority"].

2. Facts of the case in brief that during the course of audit of the appellant for the period July 2017 to March 2019 carried out by the Audit party on 08.10.2021, it was pointed out by the Audit Party vide their Final Audit Report No. GST-355/21-22 dated 20.12.2021 that the appellant is registered under the Central Goods and Service Tax Act, 2017 vide GST registration number 24AMBPS5914L1ZT. The appellant is engaged in the supply of goods namely TMT Bars, MS angles, MS channel, MS plates, MS pipes etc. The appellant have issued at tax invoice No. 425 dated 12.03.2019 in the name of M/s. Sushen Medicaments Pvt Ltd., Gulbaitekra, Ahmedabad i.e to the Merchant Exporter amounting to Rs. 7,28,804/- (CGST@0.05% + SGST 0.05%) @0.1% GST payment referring Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017. The said Notification has stipulated the following conditions to avail the benefit of supplying goods @0.01% GST payment:

(i) the registered supplier shall supply to goods to the registered recipient on a tax invoice;

(ii) the registered recipient shall export the said goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier;

(iii) the registered recipient shall indicate the Goods and Service Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;

(iv) the registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce;

(v) the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall be provided to the jurisdictional tax officer of the registered supplier;

(vi) the registered recipient shall move the said goods from the place of registered supplier -

(a) Directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or



(b) *Directly to the registered warehouse from where the said goods shall be move to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;*

(vii) *if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered Warehouse and after aggregation, the registered recipient shall move the goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;*

(viii) *in case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgement of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and*

(ix) *when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.”*

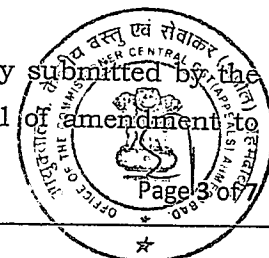
On going through the invoice No. 425 dated 12.03.2019 issued by the appellant the Shipping Bill No. 2685354 dated 12.03.2019, as provided by the appellant, it was observed that the goods supplied by the appellant do not appear to be exported by the registered recipient (i.e Merchant Exporter) in as much as, the goods supplied by the appellant were MS Plate / Channel / Angle falling under Chapter Heading 7208 / 7216 whereas Shipping Bill mentioned the goods details as “MS materials” falling under Chapter Heading 73079190.

It therefore appeared that the goods supplied by the appellant were not the same goods that were exported. Accordingly, the appellant has not complied with the conditions of the Notification No. 40/2017-CT(Rate) dated 23.10.2017 and liable for payment of balance IGST @17.9% i.e Rs. 1,30,030/- and accordingly, the appellant was issued Show Cause Notice No. VI/1(b)-439/IA/AP-36/C-VI/2020-21 dated 28.02.2022 and subsequently the same has been adjudicated by the adjudicating authority by confirming the demand of Rs. 1,30,030/- under Section 74(1) of the CGST Act, 2017 along with interest under the provisions of Section 50 of the CGST Act, 2017 and imposed a penalty under Section 74 of the CGST Act, 2017 read with Section 122(2)(b) of the CGST Act, 2017 read with Gujarat GST Act, 2017.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on 11.10.2022 on the following grounds:



- 1) that the impugned order has been passed in violation of the principles of natural justice, and not maintainable and is required to be quashed and set aside.
- 2) The appellant have supplied the goods to M/s. Sushen Medicaments Pvt. Ltd., @0.1% as per Notification NO. 40/2017-Central Tax (Rate) dtd 23.10.2017 and had satisfied all the condition as mentioned in the aforesaid notification.
- 3) That the merchant exporter M/s. Sushen Medicaments Pvt. Ltd had exported the goods within 90 days from the date of issue of tax invoice vide Shipping Bill No. 2665364 dated 12.03.2019. The details of tax invoice number issued by the appellant i.e Mangal Murti Steel Traders and details of goods supplied is also mentioned in the shipping bill.
- 4) The audit party raised the query during the audit that the goods exported by Sushen Medicaments Pvt. Ltd are not the same goods as supplied by Mangal Murti Steel Traders, as there was difference of HSN mentioned in tax invoice and shipping bill. The appellant further submitted that the goods were already exported by the merchant exporter hence physical verification of the goods not possible. Only due to difference in HSN code mentioned by the appellant in their tax invoice and HSN code mentioned in shipping bill by the merchant exporter, the audit party has raised point and subsequently confirmed the demand by the adjudicating authority.
- 5) The appellant has submitted reply on 17.11.2021 to the department and explained that the HSN code mentioned in the tax invoice was 7208 and 7216, however the HSN code mentioned -73079190 in shipping bill by the merchant exporter was just a man-made typographical error. Further, the appellant has provided "No Objection Certificate" dated 02.12.2021 issued by the Supdt. Of Customs, ICD-Khodiyar, Gandhinagar which was issued with the approval of the Dy. Commr. of Customs (Exports), ICD- Khodiyar, for amendment in shipping bill regarding the error they made in mentioning the HSN code.
- 6) The appellant has submitted 2nd reply to the Audit party on 24th November, 2021 explaining the entire matter. However, the audit party has not considered the reply submitted by the appellant and confirmed the demand by issuing Audit Report.
- 7) The merchant exporter has also received a letter of "Amendment of Shipping Bill No. 2665364 dated 12.03.2019" on 2.12.2021 from the Office of the Dy. Commr. of Customs, ICD Khodiyar, Gandhinagar, which stated that "The Deputy Commissioner has accorded permission to amend Shipping Bill No. 2665364 dated 12.03.2019 under Section 149 of the Customs Act, 1962" by amending the HSN code 73079190 to HSN 72169990.
- 8) The adjudicating authority has not considered the reply submitted by the appellant as well as not considered the letter of approval of amendment to



Shipping Bill and confirmed the demand. The adjudicating authority vide para-20 of the impugned order mentioned that the proper authority to grant approval of amendment to shipping bill is "Additional Commissioner" whereas in the present case amendment is granted by the Deputy Commissioner. The appellant referred to the Public Notice No. 24/2017, dated 04.08.2017 issued by the Office of the Pr. Commr. of Customs, Custom House, Mundra, wherein guidelines regarding post shipment amendments are provided, wherein as per 2.B. iii and iv, it is clearly mentioned that if all the conditions of Section 149 of the Customs Act, 1962 are satisfied the request for amendment may be allowed by the Assistant or Deputy Commissioner of Custom (Export).

9) The appellant further stated that the view taken by the adjudicating authority that approval for amendment to shipping bill is to be obtained from Additional Commissioner and not the Deputy Commissioner, is not supported by any notification / circular / public notice of Customs by the adjudicating authority.

10) The adjudicating authority has ignored the actual facts and merely issued demand on the basis of assumptions and presumptions. The adjudicating authority has not only ignored the approval letter showing details of amendment in shipping bill but also questioned the legality and authorization of approval letter issued by the Deputy Commissioner (Export), Customs, ICD-Khodiya. The adjudicating authority has not decided the case on merits by ignoring the facts and circumstances.

11) They requested to set aside the impugned order alongwith consequential relief.

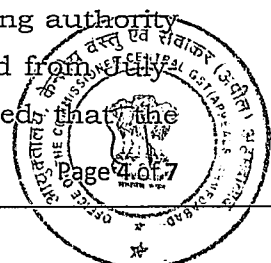
Personal Hearings:

4. Personal hearing in the matter was fixed on 16.12.2022. Mr. Bhavesh T Jhalawadia, Chartered Accountant, appeared before the appellate authority on behalf of the *appellant* as the authorized representative. They have submit and highlighting Public Notice No. 24/17 dated 04.08.2016 issued by the Pr. Commissioner, Customs, Mundra. They have nothing more to add to their written submissions till date.

Discussion and findings:

5. I have carefully gone through the facts of the case, written submissions made by the appellant during the personal hearing and available records. I find that the issue to be decided whether the impugned order is legal and proper or otherwise?

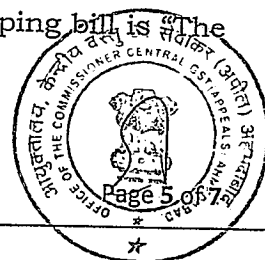
5.1 I find that the impugned order was decided by the adjudicating authority on the basis of audit of the records of the appellant for the period from July 2017 to March-2019. I find that the audit party has observed that the



appellant has supplied goods viz., Invoice No. 425/12.03.2019, Description of Goods : MS Plate (HSN 7208), MS Channel (HSN 7216), MS Channel (HSN 7216) and MS Angle (HSN 7216) amounting to Rs. 7,28,804/- attracting GST @0.1% to the Merchant Exporter M/s. Sushen Medicaments Pvt. Ltd, Ahmedabad by referring the Notification No. 40/2017-Central Tax (Rate), dated 23rd October, 2017. They further observed and concluded that the goods supplied by the appellant to the merchant exporter were not the same goods that were exported under Shipping Bill. No. 2665364 dated 12.03.2019, as the merchant exporter has mentioned the goods as "C" Channel & M S Material under HSN 73079190. Thus, the appellant have not complied with the conditions of the Notification No. 40/2017-Central Tax (Rate), dated 23rd October, 2017, as the details mentioned in Shipping Bill and Invoice did not match / co-relate in respect of description and chapter heading.

6. I find that the Audit party has observed and made conclusion on the basis of Invoice and Shipping Bill provided by the appellant. By examining the invoice and shipping bill as provided by the appellant, I find that in shipping bill, Invoice Number and taxpayers name etc were properly mentioned i.e 73079190 "C" Channel & M S Material (Ganesh Enterprise Inv.947 & Mangal Murti Steel Traders, Inv. 425), whereas, the appellant has mentioned the description of goods in their Invoice No. 425/12.03.2019 is different category of goods. Thus, I find that the appellant is failed to comply with the conditions of Notification No. 40/2017-CT (Rate) dated 23.10.2017 as mentioned in Para-2 above, as the description of goods mentioned in invoice and shipping bill are not match and found different category of goods. The appellant contended that it was just genuine man made typographical mistake and they had been issued a letter by the Customs Department. I also find that the appellant is failed to establish that the goods mentioned in Invoice and goods mentioned in Shipping Bill, exported by the merchant exporter are different in description as well as chapter heading. For this, the appellant has produced a "No Objection Certificate" dated 2.12.2021 issued by the Superintendent of Customs, ICD-Khodiyar, Ahmedabad with the approval of the Deputy Commissioner of Exports, to amend the shipping bill under Section 149 of the Customs Act, 1962.

6.1 I find that the amendment was granted by the Dy. Commr. (Export), Customs, ICD-Khodiyar, Ahmedabad, as the appellant contended that such amendment is also supported by the Public Notice No. 24/2017 dated 04.08.2017 issued by the Pr. Commissioner of Cusotms, Mundra. In this regard, I find that the Public Notice issued in the year 2017 by the Mundra Customs Commissionerate, whereas, as per Clause 23 - Amendment of the Customs Manual 2018, the proper authority to amend the shipping bill is "The Additional Commissioner".



For this, I refer to Clause 23 of the Customs Manual, 2018, which is reproduced as under:

"23. Amendments:

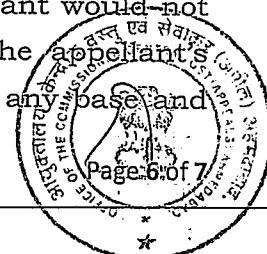
23.1 Any correction/ amendment in the check list generated after filling of declaration can be made at the Service Centre provided the documents have not yet been submitted in the EDI System and the Shipping Bill number has not been generated. Where corrections are required to be made after the generation of the Shipping Bill number or after the goods have been brought into the Export Dock, the amendments will be carried out in the following manner:

(i) If the goods have not been allowed "Let Export" the amendments may be permitted by the Assistant / Deputy Commissioner (Exports).

(ii) Where the "Let Export" order has already been given, amendments may be permitted only by the Additional /Joint Commissioner in charge of Export."

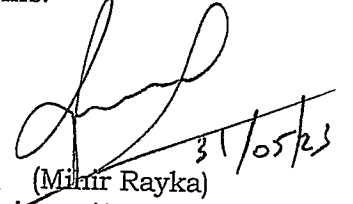
From the above, I find that in the instant case, the goods have already been exported i.e "Let Export" order has already been given, so the amendment may be permitted only the Additional / Joint Commissioner, in charge of export. I find that the appellant is failed to comply the conditions (i) and (ii) of Clause 23. And accordingly, they are unable to establish that the goods supplied by the appellant to the merchant exporter have actually been exported, hence the contentions raised by the appellant is not justified. I also find that the merchant exporter i.e M/s. Sushen Medicaments Pvt Ltd., Ahmedabad (Merchant Export in this case), at any point of time, has not made any disclaimer or committing that they have made typographical mistake while filing or submitting the shipping bill to the Customs department.

7. From the ongoing paras, I do not find any base or element from the submissions made by the appellant which can establish to clarify that the exports benefit of concessional rate of duty was properly availed by them as per Notification No. 40/2017-CT (Rate), dated 23.10.2027. I also find that the appellant is also failed to produce any relied upon evidence, which can established that they have properly followed the conditions and procedures as per the law. I also find that the merchant exporter is also failed to produce any corroborative evidence to prove or establish that it is only a typographical mistake. At the same time, the appellant is also failed to submit merchant exporter's confirming that they have made typographical mistake while filing the shipping bill i.e exporting the goods, or they do not commit their mistake at any point of time before the department. I also find that if audit would not have been taken place, the undue benefit claimed by the appellant would not have been noticed by the Department. Hence, I find that the appellant's contentions on the basis of typographical mistake do not have any base and



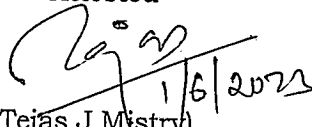
corroborated with any concrete evidence, hence not sustainable. It is a paramount duty of the taxpayer and onus is on the taxpayer to establish that they have fulfilled all the specified conditions while availing duty benefit, if not, which leads to the adjudicating authority that the taxpayer have willful mis-stated to avail undue benefit of duty exemption Notification No. 40/2017-CT(Rate), dated 23.10.2017. Accordingly, I uphold the order passed the adjudicating authority and find the order proper and legal. I therefore, reject the present appeal of the appellant on the grounds discussed above.

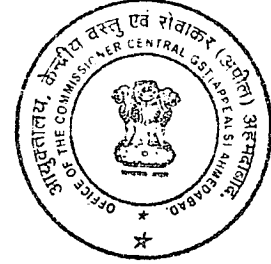
- 8 अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)
Date: .05.2023

Attested


(Tejas J Mistry)
Superintendent,
Central Tax (Appeals), Ahmedabad



By R.P.A.D.

To

Jagdish Keshavlal Solanki [GSTIN -
(Trade Name : M/s. Mangal Murti Steel Traders]
52-B, Ashwmegh Industrial Estate, Opp. M N Desai Petrol Pump,
Changodar, Ahmedabad, Gujarat - 382211

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, A'bad North Commissionerate.
4. The Dy / Assistant Commissioner, Range-III, CGST & C.Ex, Division-IV, Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), A'bad North Comm'te.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
8. Guard File.
9. P.A. File.

