



सत्यमेव जयते

आयुक्तकाकार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeal Ahmedabad Commissionerate

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

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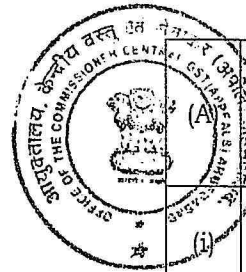
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/103/2024 / 13621 - 22
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-162/2023-24 and 27.03.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	02.04.2024
(ङ)	Arising out of Order-In-Original No. 249/AC/Demand/23-24 dated 27.09.2023 passed by The Assistant Commissioner, CGST, Division-I, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shyam Industries (GSTIN: 24AAFFS4338E1ZE) 402-403, GIDC, Naroda, Ahmedabad-382330

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. Shyam Industries, 402-403, GIDC, Naroda, Ahmedabad-382330, (hereinafter referred to as "the appellant"), holding GSTIN 24AAFFS4338E1ZE has filed appeal against Order-In-Original No. 249/AC/DEMAND/23-24 dated 27.09.2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division-I, Ahmedabad North Commissionerate (hereinafter referred to as the "*adjudicating authority*").

**2(i).** An intelligence was received by Anti evasion wing of CGST, Ahmedabad North, indicating that the Taxpayer was exporting their finished/manufactured goods out of India under payment of Integrated Goods and Services Tax (in short "IGST") and availing benefit of refund in terms of Rule 96 of the Central Goods & Services Tax Rules, 2017 (in short "CGST Rules, 2017") although they were not eligible to claim such refund under the said Rules. An Explanation was added to Rule 96(10) of the Rules by Notification No. 16/2020-CT dated 23.02.2020.

*10. In the said rules, in rule 96, in sub-rule (10), in clause (b) with effect from the 23<sup>rd</sup> October, 2017, the following Explanation shall be inserted, namely,*

*Explanation-For the purpose of this sub-rule, the benefit of the notification mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basis Customs Duty (BCD) under the said notifications."*

**2(ii).** From the above, it appears that by inserting the Explanation in Rule 96(10) of the Rules, the option for claiming refund under clause (b) to the Rule 96(10) of the Rules, the option for claiming refund under clause (b) to the Rule is only for the exporters who avail the exemption of Basis Customs Duty (BCD) only and pay IGST on the inputs. However, as per the provisions of Rule 96(10) of CGST Rules the taxpayer can avail either refund of IGST paid on goods exported or exemption of IGST on the goods imported under Customs notification no. 79/2017 dated 13.10.2017. Once exemption of IGST is availed

F.No. : GAPPL/ADC/GSTP/103/2024-APPEAL

on the input materials, refund of IGST on export good stands prohibited and vice versa. Thus, the amount of Rs. 1,15,05,173/- of IGST Refund on finished/final goods exported by the appellant, whose raw material/ inputs had been procured through import under benefit of advance authorization license is required to be demanded and recovered from the taxpayer under the provisions of Section 74(1) of the CGST Act 2017 alongwith interest as applicable under Section 50(1) of the said Acts and the Rules made there under and penalty under Section 74(1) of CGST Act, 2017 for contravention of provision of CGST Act, 2017 /IGST Act, 2017 and rules made thereunder.

2(iii). On combined reading of Notification 16/2020-Central Tax dated 23.03.2020 and judgement of Hon'ble High Court of Gujarat in the matter of M/S. Cosmo Films Ltd. Vs UOI, it is clear that the Notification No. 54/2018-Central Tax dated 09.10.2018 is made retrospective, effective from 23rd October 2017 and since it has been made retrospective refund under Rule 96(10) is allowed to exporters if IGST on import of raw material is duly paid. Consequent upon amendment made in the said Rule vide Notification No. 16/2020-Central Tax dated 23.03.2020, the appellant have recalled for Bill of entries for re-assessment and have paid IGST along with Interest on such import cargoes which were imported under advance authorization scheme. since, the appellant has re-assessed the bill of entries and paid the IGST thereon, and has not availed benefit of exemption of IGST on imported goods, the Adjudicating Authority has drop the proceeding initiated against the appellant and only impose penalty of Rs. 1,15,05,173/- under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.

3. In this regard, Show Cause Notice was issued on 30.03.2023 and further adjudicating authority has issued impugned order dated 27.09.2023 and drop the proceeding initiated against the appellant and confirm the penalty of Rs. 1,15,05,173/- under Section 74(1) of the CGST Act 2017 read with Section 20 of the IGST Act 2017 on the following grounds: -

- *The anti evasion wing of CGST, Ahmedabad North launched an investigation and it was observed from the submission of the Notice that the said Notice had availed the refund of IGST paid on Zero Rated Supplies simultaneously availing benefit of exemption from payment of IGST along with BCD on the imported inputs and raw materials in terms of Notification No. 79/2017-Customs dated 13.10.2017 and thus, contravened the provisions of Notification No. 16/2020-CT dated 23.03.2020;*



- that as per rule 96(10) of CGST Rules if the exporter has imported inputs without payment of IGST, the exporter cannot export goods on payment of IGST and claim refund of IGST. He can claim refund of ITC only; that aforementioned changes were made effective from 09.10.2018 which means that refund granted under Rule 96(10) till 08.10.2018 were valid;
- that since, the notice has re-assessed the bill of entries and paid the IGST thereon, I find that the Notice has not availed benefit of exemption of IGST on imported goods and therefore refund has become admissible;
- that the notice by approaching the Customs Authorities for re-assessment process proves the acceptance by the notice that they were not eligible for refund of IGST paid on export;
- that only after issuance of Notification No. 16/2020-Central Tax dated 23.03.2020 the Notice has opted to pay IGST on imported goods by way of re-assessment;
- that the taxpayer had failed to self assess the eligibility of the refund thereby contravening the provisions of Section 59 of the Central Goods and Service Tax Act, 2017 and therefore has clearly and intentionally suppressed the fact to the department, thereby making them liable for action under Section 74 and therefore they are liable for penalty by invoking extended period.



4. Being aggrieved with the impugned order dated 27.09.2023, the appellant filed the present appeal on 07.12.2023 on the following grounds:-

- The Impugned SCN has been issued and impugned order has been passed with a pre-determined set of mind without appreciating the facts and circumstances of the case and completely ignoring the submissions made by the appellant. so, the impugned SCN and impugned order is neither proper nor legal;
- that appellant has exported the goods without payment of IGST and it has imported the inputs/input services against Advance Authorisation availing the benefit available to it under the Customs Act. The appellant has not applied for refund but through automated system the refund is credited to the account of appellant. The appellant has filed its periodical returns and has recorded and reflected the transactions in its returns. So, this clearly leads to the conclusion that appellant has not misrepresented or suppressed anything;

- that since the inception of GST law on 01/07/2017 there has been ambiguity in various provisions of the Statute. As a result, the Government comes out with different Notifications and Circulars from time to time to clear the ambiguities;
- that when this provision was in existence, there was no restriction on availing dual benefit i.e. import of inputs/input service against Advance Authorisation because the supplier supplying such goods is located outside india in non-taxable territory and it has not availed benefit of any Notification and at the same time using such inputs/input services exports could be done without payment of IGST and refund could be claimed;
- The aforementioned ambiguity in the provisions itself where even Government had to keep on amending the provision for numerous times cannot be termed as any wilful intention of the appellant to evade tax. The appellant has strictly acted accordingly to the language of the Statute and in doing so appellant cannot be found at fault, much less suppression or misrepresentation or intention of wilful evasion;
- The facts and circumstances of the case of the appellant clearly indicate that there is neither any misrepresentation nor suppression nor intention for wilful evasion of tax. Even the authorities below have failed to establish the same on record except random and blind statements and allegations. So, imposition of penalty and that too to the tune of Rs. 11505173/- is completely unjustified, unwarranted and unlawful;
- In the case of *M/s. Hindustan Steel Ltd. vs State of Orissa-25 STC 211 (SC)* and *E.I.D. Parry (i) Ltd. vs. Assistant Commissioner of Commercial Taxes and Another-117 STC 457 (SC)*, wherein Court has held that the penalty would not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest;
- Further the reference can also be made to another decision of Honourable Apex court in the case of *Commissioner of Sales Tax, U.P. Vs. Sanjiv Fabrics -CA No. 2344-2347/2004 dated 10.09.2010* wherein Honourable Apex Court has specifically said that mens rea is the most important ingredient and a precondition for before levying penalty and if no mens rea is established than penalty cannot be levied;
- the claim of the appellant in availing dual benefit Stands justified and substantiated by Notification No.54/2018 having prospective by judgement of Honourable Supreme Court and hence, the appellant was not liable to payback IGST refund claimed and interest thereon. However, as the appellant is made to pay the same, now the IGST amount paid by the



*appellant and also the interest paid thereon is required to be refunded to the appellant;*

- *On overall consideration of facts and circumstances of the case vis- a-vis provisions of Statute, submissions made by the appellant and well settled legal position as submitted above, it becomes abundantly clear that entire SCN and impugned OIO are bad in law and unlawful. The IGST amount paid by the appellant under pressure needs to be refunded back or credited in Electronic Credit Ledger or Electronic Cash Ledger of the appellant and the amount of interest needs to be refunded to the appellant, in any case, imposition and levy of penalty to the tune of Rs. 1,15,05,173/- deserves to be quashed and removed entirely.*

**Virtual Hearing:**

5. Virtual hearing in this case was held on 05.03.2024. Mr. Nishant C. Shukla, Advocate, attended the case on behalf of the appellant as authorised representative. During the personal hearing he submitted that issue was not clear and ambiguous and no benefits were availed after 09.10.2018. Hon'ble Supreme Court in Cosmo Films held that Notification No. 54/2018 has only prospective effect. Since they have already paid back the refund amount, though not payable as the issue pertains to prior to 09.10.2018 no penalty under Section 74 is applicable as no reasons including suppression, mens-rea, mis-declaration exist. He further reiterated the written submissions and requested to allow appeal.


**DISCUSSION AND FINDINGS:-**

6. I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal as well as at the time of personal hearing and find that the appellant is mainly contesting on the issue that whether the incidence of IGST refund claimed and received Rule 96 (10) of the CGST Rules, 2017 could be treated as Fraud or any wilful misstatement or suppression with deliberate attempt to evade tax and penalty could be imposed in terms of section 74 of CGST ACT, 2017.

7(i). In the instant case, it is observed that the anti evasion wing of CGST, Ahmedabad North launched an investigation and availed that the appellant had availed the refund of IGST paid on Zero Rated Suppliers

simultaneously availing benefit of exemption from payment of IGST along with BCD on the imported inputs and raw materials in terms of Notification No. 79/2017-Customs dated 13.10.2017 and thus, contravened the provisions of Notification No. 16/2020-CT dated 23.03.2020. The appellant had availed the refund of IGST paid on Zero Rated Supplies after availing benefit of Notification no. 79/2017-Customs dated 13.10.2017. Whereas, in terms of Rule 96(10) of the Central Goods and Service Tax Rules, 2017 the appellant availing refund of IGST paid on Zero rated Outward Supplies should not have availed the benefit of Notification no. 79/2017- Customs dated 13.10.2017.

**7(ii).** Consequent upon amendment made in the said Rule vide Notification No. 16/2020-Central Tax dated 23.03.2020, it is observed that the appellant has recalled for Bill of entries for re-assessment and have paid IGST along with Interest on such import cargoes which were imported under advance authorization scheme. Since, the appellant has re-assessed the bill of entries and paid the IGST thereon, and has not availed benefit of exemption of IGST on imported goods, the Adjudicating Authority has drop the proceeding initiated against the appellant and impose penalty of Rs. 1,15,05,173/- under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.



**8(i).** Now the issue to be decided in the present appeal is whether the appellant for imposition of penalty of Rs. 1,15,05,173/- under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 or otherwise? In the instant case it is observed that in compliance to the Hon'ble Supreme Court's judgement dated 28.04.2023 in the matter of Civil Appeal No. 290 of 2023 (UOI and others vs. Cosmo Films Ltd.), Customs has issued the Circular No. 16/2023 dated 07.06.2023. In light of the above Circular, it is informed that all the imports made under Advance Authorization Scheme on or after 13.10.2017 & upto and including 09.01.2019 which could not meet the pre-import condition may be regularized by making payments as prescribed in the Customs Circular.

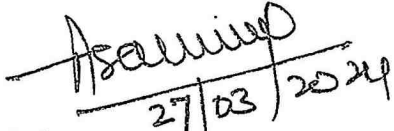
**8(ii).** In view of the Hon'ble Supreme Court's judgement dated 28.04.2023 and Customs Circular No. 16/2023 dated 07.06.2023, the appellant has recalled for Bill of entries for re-assessment and have paid IGST along with Interest on such import cargoes which were imported under advance authorization scheme. Since, the appellant has re-assessed the bill of entries and paid the IGST thereon, I find that the appellant is not liable to pay

penalty. Further in the O-I-A itself it has been mentioned that the proceeding initiated against the appellant are dropped, to which I agree.

9. In view of the above discussion, since, IGST alongwith interest has been paid as per circular issued by CBIC and matter is regularised, I drop the penalty imposed under provisions of Section 74(1) of the CGST Act 2017 and allow the appeal of the "Appellant".

अपील कर्ता 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.

  
27/03/2024  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: 27.03.2024

Attested

  
27/03/24

(Sandheer Kumar)  
Superintendent (Appeals).

By R.P.A.D.

M/s. Shyam Industries,  
402-403, GIDC, Naroda,  
Ahmedabad-382330.



Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad North Commissionerate.
4. The Deputy/ Assistant Commissioner, CGST & C. Ex, Division-I Ahmedabad North Commissionerate.
5. The Deputy/ Assistant Commissioner (RRA), CGST & C. Ex, Ahmedabad North Commissionerate.
6. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
7. Guard File/ P.A. File.

