



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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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2250/2023 / ६४०० - ०६
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-62/2023-24 and 26.09.2023
(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	04.10.2023
(ङ)	Arising out of Order-In-Original No. ZL2404230399896 dated 28.04.2023 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 Aarti Selection (GSTIN: 24ABCFA1073C1Z7), Shop Number 8 to 15, Dev Complex, Opp. J P Complex, Naroda Gam, Ahmedabad, Gujarat-382330

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to <u>twenty five per cent</u> 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 information 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. Aarti Selection, (GSTIN 24ABCFA1073C1Z7) Shop Number 8 to 15, Dev Complex, Opp. J P Complex, Naroda Gam, Ahmedabad, Gujarat, 382330 [hereinafter referred to as "the Appellant"] have filed an appeal dated 27-05-2023 against Refund Order RFD-06 ZL2404230399896 dated 28-04-2023 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST & C.Ex., Division-I, Ahmedabad-NORTH [hereinafter referred to the "adjudicating authority"]

2. Facts of the case in brief, are that the Appellant M/s. Aarti Selection (GSTN: 24ABCFA1073C1Z7) had filed a Refund Claim bearing ARN No.AA240323078730F dated 23.03.2023 under category of ITC Accumulated Due To Inverted Tax Structure for the tax period April-2021 to March-2022 for an amount of Rs.29,32,212/-. On verification of refund claim and documents submitted it was noticed that the Appellant is Wholesaler/Distributor of GARMENTS, Made up of Fabrics of Heading 5602, 5603, 5903, 5906 OR 5907 & Woven Fabrics Of Synthetic Filament Yarn, Including Woven Fabrics Obtained From Materials Of Heading 5404. They are selling their products through e-commerce operators and e-commerce operators charged GST on services provided by them. The Appellant is availing ITC of these services and packaging material as well. They are purchasing their inputs which attract GST @5% and also sell after packing/repacking through e-commerce operators and paying GST @5%. The Appellant had filed refund of ITC accumulated on account of services received from e-commerce operators on which GST was paid @18% and other packaging materials attracting GST @12% or 18%. As per Section 54(3) of CGST Act, 2017 read with Rule 89(5) of CGST Rule, 2017 and Circular No.125/44/2019-GST dated 18.11.2019 Refund of ITC accumulated on account of Capital Goods and input Services is restricted in case of Refund in the category "Inverted Duty Structure". Therefore, SCN in the form of RFD-08 dated (Rule 92(3)) dated 05.04.2023 was issued to the A that "on examination it appears that refund application is liable to be rejected on account of the following reasons":

Sl.No.	Description (select the reasons of inadmissibility of refund from the drop down)	Amount Inadmissible
1	There is no such Inverted Duty Structure case of application of refund due to Inverted Duty Structure	Rs.29,32,212/-

3. The Appellant vide RFD-09 dated 14.04.2023 submitted that they are engaged in the business of purchasing textile materials such as Sarees etc. in

bulk and after repacking they are supplying the same through electronic platforms such as Amazon etc. They also submitted that the activity of repacking amounts to manufacture and its cost are included in their supply value. The packing material used for supply of their goods attracts 12%/18% GST and Portal charges attracts 18% GST. The packing material is input and portal charges are services used for supply of their goods. They further submitted that in term of Section 54(3)(ii) of CGST Act, 2017 read with Rule 89(5) they have correctly claimed the Refund.

4. The adjudicating authority vide the impugned order found that as per Section 54(3) of CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017 the refund of ITC accumulated on Services and Capitals Goods is not admissible in case Refund of ITC Accumulated on account of Inverted Duty Structure which is further clarified vide Circular No.125/44/2019-GST dated 18.11.2019. Further, they found that the Appellant have failed to segregate the ITC accumulated on account of Packaging Materials and Services of Online Platforms to ascertain the admissibility of Refund of ITC accumulated on packaging materials used in supply of their goods. The adjudicating authority passed the following order in the above matter:

"the refund claim of Rs.29,32,212/- is found inadmissible to the tax-payer/claimant. Accordingly, the same is rejected vide issuance of Sanction Order RFD-06 in the AIO".

Being aggrieved with the above impugned order of the adjudicating authority, the Appellant filed the present appeal on the following grounds:

At the outset it is submitted that the Impugned Order has been passed in ignorance and/or without fully appreciative of the facts, relevant to the present proceedings and contrary to the applicable legal provisions and the settled law on the legal issues involved. The Impugned Order is therefore, bad in law and deserves to be set aside for the reasons set out herein below:

(A) The learned adjudicating authority failed to appreciate that there exists Inverted rate Structure.

As submitted in the statement of facts, the Appellant the Appellant procures Fabrics in Bulk pack and then it is subjected to the process of cutting and repacking of standard sizes of 'Sarees' for use by the customers. During this process Fabric procured in bulk pack attracts 5% of GST and packing material is used for making outward supply which attracts 12% or 18% GST and Sarees so packed ready for sale would attracts 5% GST. Accordingly, the tax on inputs being higher than the rate of tax on output supplies, there exists inverted rate structure in their case as provided in Section 54(3)(ii) of CGST Act, 2017. Further Section 54(3)(ii) provides that;

54(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;
- (ii) 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:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where-the goods exported out of India are subjected to export duty :

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Perusal of the said section clearly reflects that the Appellant's case is clearly eligible for claim of refund of unutilized ITC arising as there exists inverted rate structure in their case.

However, the learned adjudicating remained evasive with regard to existence of Inverted rate structure and conveniently ignored the facts of the Appellant's case and simply stated that the Inward and out ward supplies attracts, 5% rate of GST by conveniently ignoring the facts that the Appellant procures Fabrics as could be seen from the Inward supplies Invoices in Bulk pack and then it is subjected to the process of cutting and re-packing of standard sizes of 'Sarees' as could be seen from the out ward supplies Invoices for use by the customers.

During this process Fabric procured in bulk pack attracts 5% of GST and ,packing material is used for making outward supply which attracts 12% or 18% GST and 'Sarees' so packed ready for sale would attracts 5% GST.

The forms of "Inward supplies" and "Outward supplies" is very much changed and during this change in the forms various packing materials are used. Therefore the activities of the Appellant is not mere supply of Inward as it is as outward supply i.e. not merely trading of the goods as understood by the learned adjudicating authority.

Thus, undisputedly there exists Inverted tax structures in their case and the Appellant have rightly claimed the refund under Section 54(3)(ii) of the CGST Act,2017.

(B) The Appellant have not claimed ITC of Input services and capital goods in their statement uploaded on the portal along with refund claim and thereby complied with the provisions of Section 54(3)(ii) of CGST Act,2017 and Rule 89(5) of CGST Rules, 2017

The learned adjudicating authority while rejecting the refund claim has observed that

"I find that as per Section 54(3) of CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017 the refund of ITC accumulated on Service and Capital goods is not admissible in case Refund of ITC accumulated on account of Inverted duty structure which is further clarified vide Circular No.125/44/2019-GST dated 18.11.2019. I find that the claimant have failed to segregate the ITC accumulated on account of Packing Materials and services of Online Platforms to ascertain the admissibility of Refund of ITC accumulated on packing materials used in supply of their goods".

In this regard the Appellant would like to contend that the aforesaid findings of the learned adjudicating authority is factually not correct.

The Appellant have not availed any ITC on the capital goods, that the Appellant have not included ITC of Input service of Online Platform in the parameter of Net ITC available in the formula of Refund claim prescribed in Rule 89(5) of the CGST Rules, 2017. This could be evident from Statement Annexure-B uploaded along with refund application wherein, against the Invoices related to Input services the Appellant has clearly mentioned 'NO' in column meant for Eligible for ITC and accordingly such ITC were not included in 'Net ITC' parameter of the formula of refund claim. Further in the last column meant for eligible ITC, the ITC availed on input service is excluded. As per the said statement in Annexure-B.

	IGST	CGST	SGST	Total
ITC availed on Input and input services during tax period	5034451	2768544	2768544	10571539
ITC claimed in 'Net ITC' for Refund claim.				9989551
Balance of Input Service which was not claim in Net ITC				581988

Further, to substantiate the said facts that the Appellant have not claimed ITC of Input services in the parameter of Net ITC claimed for refund, the Appellant paste here in below the computation sheet for refund claim and excerpt of Form GST RFD-01 here in below.



Rule 89(5) As per Notification No: 14/2022- CGST Tax Date 05.07.2022 Calculation for Refund- Audit Solutions (From April-2021 to March-2022)							
1	2	3	4	5	6	7	
Month	Turnover of Inverted	Tax Payable on Inverted	Adjusted Total Turnover	Net Input Tax Credit	Total ITC	Eligible Refund - Old Formula	Refund Amount
Q1 (April to June-21)	2,56,17,894.45	12,80,894.72	2,56,17,894.45	19,51,195.00	19,79,129.00	6,70,300.28	6,88,379.20
Jul-21	1,30,19,049.58	6,50,952.48	1,30,19,049.58	8,06,563.00	8,21,744.00	1,55,610.52	1,67,636.30
Aug-21	1,37,78,574.15	6,88,928.71	1,37,78,574.15	8,65,118.00	8,95,850.00	1,76,189.29	1,99,822.89
Sep-21	1,25,47,232.04	6,27,361.60	1,25,47,232.04	9,08,481.00	9,38,406.00	2,81,119.40	3,01,125.45
Oct-21	1,55,16,563.01	7,75,828.15	1,55,16,463.01	10,58,557.00	10,75,836.00	2,82,735.67	2,95,196.25
Nov-21	92,53,957.55	4,62,697.88	92,53,957.55	5,67,941.00	6,09,068.00	1,05,243.12	1,36,486.56
Dec-21	99,67,464.71	4,98,363.99	99,67,464.71	7,04,511.00	7,75,386.00	2,06,147.01	2,51,700.51
Jan-22	76,11,924.57	3,80,613.41	76,11,924.57	3,11,801.00	4,35,120.00	-68,812.41	39,058.67
Feb-22	1,05,20,691.86	8,26,034.59	1,05,20,691.86	10,45,037.00	11,34,472.00	2,19,002.41	2,84,122.04
Mar-22	2,47,87,145.88	12,39,357.29	2,47,87,145.88	17,70,345.00	18,53,500.00	5,30,987.71	5,86,589.95
Total	14,86,20,497.80	74,31,032.83	14,86,20,397.80	99,89,549.00	1,05,18,511.00	25,58,523.00	29,50,117.81

Calculation:-	
Turnover of Inverted	14,86,20,497.80
Tax Payable on Inverted	7057336.018
Adjusted Total Turnover	14,86,20,497.80
Net Input Tax Credit	99,89,549.00
Refund Amount	29,52,212.98

Excerpt from Form GST-RFD-01

Computation of Refund to be claimed (Statement 1) (In INR)

	Turnover of Inverted rated supply of goods and services (1)	Tax payable on such inverted rated supply of goods and services * (Net ITC / ITC availed on inputs and input services) (2)	Adjusted total turnover (3)	Net Input tax credit (4)	Maximum Refund amount to be claimed (5) [(1x4/3)-2]
Integrated Tax	148620497	7057337	148620497	9989549	2932212
Central Tax					
State/UT Tax					
CESB		0		0	0
Total	148620497	7057337	148620497	9989549	2932212

Accordingly, the Appellant contend that in their claim they have not included any ITC whether of capital goods or Input services in the Net ITC for claiming refund and thereby complied the provisions of Section 54(3)(ii) read with Rule 89(5) and Circular No. 125/44/2019-GST dated 18.11.2019. Therefore the Appellant submits that the findings of the learned adjudicating authority that

'the claimant have failed to segregate the ITC accumulated on account of Packing Materials and services of online Platforms to ascertain the admissibility of Refund of ITC accumulated on packing materials used in supply of their goods.' are arrived at without proper verification and scrutiny of the refund claim.

(C) Re-quantification of refund claim.

The Appellant have inadvertently in their Annexure-B related to NET ITC have included some service which was related to Packing of goods at the end of E-commerce operator due to wrong interpretation. However, now Annexure-B is revised wherein in the ITC available for Fabric Purchased in bulk quantity meant for converting in to 'Sarees' attracting 5% GST and Packing material attracting 18% GST used to pack Sarees for sales to retail customers. Thus NET ITC would reduced to Rs.54,21,120/- instead of Rs.99,89,549/- consequently refund claim amount would be reduced to Rs.15,91,250/- as against Rs.29,32,212/- claimed earlier.

Accordingly, the Appellant contend that learned adjudicating authority could have reduced/curtailed the refund claim of Rs.29,32,212,- to Rs.15,91,250/- instead of rejecting refund claim out rightly, however failed to do so.

(D) Impugned order is factually and legally not correct and not sustainable

In view of above grounds of appeal, the Appellant say and submit that that the impugned order in Form GST-RFD-06 No. ZL2404230399896 dated 28.04.2023 is factually and legally not correct and not sustainable and be set side with direction to the learned adjudicating authority sanction their refund claim after quantifying to Rs.15,91,250/- as aforesaid.

Further the Appellant has prayed to set aside the impugned order Form GST-RFD-06 No. ZL2404230399896 dated 28.04.2023 issued by the learned adjudicating authority with consequential relief and direct the learned adjudicating authority to consider their refund claim; or pass any other order.

PERSONAL HEARING:

6. Personal hearing in the matter was held on 05.09.2023, Shri Vijay N.Thakkar, Consultant, appeared on behalf of the Appellant in the present appeal. During the Personal Hearing he submitted that by mistake credit of some service invoices was availed but the refund sanctioning authority has rejected the whole refund without considering the facts. Instead the Ld. Refund sanctioning authority should have reduced the refund amount. He further submitted that they are eligible for refund of Rs.15,91,250/- and working of the same has been submitted. Thus they are eligible for refund. Further their fabric is not covered under note eligible category as per Notification No.05/2017-CT(Rate) dated 28-06-2017 as amended. Further he requested to allow the appeal.

DISCUSSIONS AND FINDINGS:

7. I have gone through the facts of the case, available documents on record and written submissions made by the 'Appellant'. I find that the main issue to be decided in the instant case is:

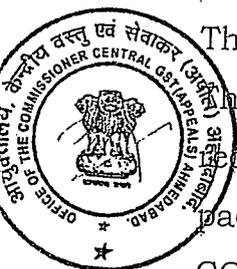
(i) whether the impugned refund order passed by the Adjudicating Authority is legal & proper or not?

7.1 At the foremost, I observed that in the instant case the "impugned order" is of dated 28-04-2023 and the present appeal is filed online on 27-05-2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeals are filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

7.2 I find that the present appeal is filed to set aside the impugned order as the adjudicating authority has rejected the whole refund instead of sanctioning the eligible amount of refund as per Section 54(3) of CGST Act, 2017 and Rule 89 (5) of the CGST Rules, 2017.

7.3 In this regard, I find that the Appellant is Wholesaler/Distributor of garments, made up of Fabrics of Heading 5602, 5603, 5903, 5906 OR 5907 & Woven Fabrics of Synthetic Filament Yarn, Including Woven Fabrics Obtained From Materials Of Heading 5404. They are purchasing their inputs which attract GST @5% and sell their products after packing/repacking through e-commerce operators and paying GST @5%. They are selling their products through e-commerce operators who charges GST on services provided by them. The Appellant is availing ITC of these services and packaging materials as well. The Appellant had filed refund of ITC accumulated on account of services received from e-commerce operators on which GST was paid @18% and other packaging materials attracting GST @12% or 18%. As per Section 54(3) of CGST Act, 2017 read with Rule 89(5) of CGST Rule, 2017 and Circular No.125/44/2019-GST dated 18.11.2019 Refund of ITC accumulated on account of Capital Goods and input Services is restricted in case of Refund in the category "Inverted Duty Structure".

7.4 I find that the dispute in the present case is not with regard to sanction of whole refund claim filed by the Appellant. *The Appellant has contend that in their claim they have not included any ITC whether of capital goods or Input services in the Net ITC for claiming refund and thereby complied the provisions of Section 54(3)(ii) read with Rule 89(5) and Circular No. 125/44/2019-GST dated 18.11.2019. However the Appellant have admitted that inadvertently in their Annexure-B related to NET ITC have included some service which was related to Packing of goods at the end of E-commerce operator due to wrong interpretation which is not available to them for refund as per the provisions of Section 54(3) read with Rule 89(5) of the CGST Act, 2017. As there is no dispute with regard to eligibility of the claim to that extent of ITC paid on services, I am not going*



through those provisions of the CGST Act and Rules, 2017 as the Appellant is not contesting the in-admissibility of the same.

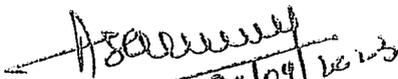
7.5 I find that the Appellant has provided the working of amount of Refund of Rs.15,91,250/- on account of inverted duty structure for which they have submitted that the same does not include the amount of ITC with regard to availment of services by them. Earlier the Refund application was filed by them for an amount of Rs.29,32,212/- which included the ITC availed in r/o services also, which is not allowed in terms of the provisions ibid.

7.6 In view of the above, I am of the view that the Appellant is eligible for refund under the inverted duty structure for the amount of Rs.15,91,250/-.

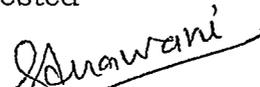
8. I therefore, set aside the impugned order passed by the adjudicating authority. I direct the Appellant to submit the revised working of the refund amount to the adjudicating authority i.e. refund sanctioning authority who shall verify the documents and pass the order accordingly.

In view of the above, I allow the appeal filed by the Appellant to the above extent.

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


(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

Attested


(Sunita D. Nawani)
Superintendent,
CGST & C.Ex.,
(Appeals), Ahmedabad



By R.P.A.D.

To:

M/s. Aarti Selection, Shop Number 8 to 15, Dev Complex, Opp. J P Complex, Naroda Gam, Ahmedabad, Gujarat, 382330. (GSTIN 24ABCFA1073C1Z7)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Addl./Joint Commissioner (Systems), CGST & C.Ex, Ahmedabad-North Commissionerate.
5. The Dy./Assistant Commissioner, CGST & C.Ex. Division-I Ahmedabad-North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/ P.A. File.

