



सत्यमेव जयते

आयुक्तकाकार्यालय
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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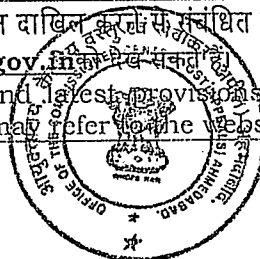


By Regd. Post

DIN NO.: 20231064SW0000166631

(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1842/2023 / 2078 - 32
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-67/2023-24 and 28.09.2023
(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	10.10.2023
(ङ)	Arising out of Order-In-Original No. 43/AC/Demand/NA/2022-23 dated 24.02.2023 passed by The Assistant Commissioner, CGST, Division-V, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Bharat Talakshibhai Thakkar (Akash Enterprise) (GSTIN: 24AAHPT8438L1Z2), Near Umesh Mamra Pauva Factory, Bavla, Ahmedabad, Gujarat-382220

(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 देखें। 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 :

M/s Akash Enterprise (Prop. Bharat Talakshibhai Thakkar) is a proprietary firm having their principal place of business at NEAR UMESH MAMRA PAUVA FACTORY, BAVLA, Ahmedabad, Gujarat, 382220 (GSTIN 24AAHPT8438L1Z2) (hereinafter referred to as "Appellant") has filed appeal against Order-In-Original 43/AC/Dem/NA/2022-23 dated 24-02-2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division-V, Ahmedabad-North Commissionerate (hereinafter referred to as the "adjudicating authority").

2. The facts of this case are that the Appellant are engaged in the business of supply of goods namely "Rice Bran & Cattle Feed" and are holding GSTIN 24AAHPT8438L1Z2. It was observed by the Audit Officers of Audit Ahmedabad that the appellant had supplied RICE BRAN having HSN code 2302 for Cattle Feed purpose only, which attracts NIL rate of GST as per Notification No. 02/2017 CT (Rate) dated 28.06.2017 issued under Section 11 of the CGST Act, 2017. The CBIC had issued Circular in the form of frequently asked Question (FAQ's) vide letter F. No. 332/2/2017- dated December 2017 wherein they have clarified the classification and rate of GST of Rice Bran as under:

Sl.No.	Queries	Replies
	What is the HS Code and GST Rate on Paddy, Husk and is it different from Rice Bran?	Cereal straw and husks, including rice husks or rice hulls, unprepared, whether or not chopped, ground, pressed or in the form of pellets fall under HS Code 1213 and attract NIL GST. 2. RICE BRAN fall under HS Code 2302 and attract NIL GST if supplies as cattle feed or 5% if supplied for other purpose.

3. Further, from the Tax invoices issued, it was observed that the tax payer had mentioned "**Cattle Feed**" as the description of goods supplied and mentioned HSN 2302 in general in their invoices. Further it was observed that the Appellant procured "**Cattle Feed Powder**" etc. from various traders wherein 5% GST was charged as the traders had an impression that they were not supplying the cattle feed powder directly for cattle feed. The Appellant availed the credit of GST paid by them, to their supplier and after value addition they had supplied the same goods i.e. "**Cattle feed only**" under Tax invoice and charged 5% GST instead of NIL rate of tax with the sole intent to avail and utilize the ITC earned on the purchase invoices. Since the supply attracts Nil rate of Tax as per explanation under Section 11 of the CGST Act, 2017 read with Section 11 of the Gujarat GST Act, 2017, it appeared that the appellant has availed irregular ITC on exempted goods by way of clearing and showing the exempted goods as taxable in GSTR-1 and wrongly discharging the

GST. Therefore, the appellant was issued show-cause-notice dated 31-03-2022 as to why:

(i) ITC amounting to Rs.1,32,98,372/- (CGST Rs.40,76,431/- + SGST Rs.40,76,431/- + IGST Rs.51,43,510/-) should not be demanded and recovered from them under Section 74(1) of the CGST' 2017 and corresponding section in Gujarat GST Act' 2017 read with Section 20 of IGST Act'2017;

(ii) Interest at appropriate rate should not be demanded and recovered from them on the amount mentioned at Sl. No. (i) under Section 50 of the CGST Act' 2017 and the corresponding section in Gujarat GST Act'2017 read with Section 20 of IGST Act 2017;

(iii) Penalty should not be imposed on them on the amount at Sr. No. (i) above under Section 74(1) of the CGST Act' 2017 read with Section 122 of the C3ST Act' 2017 and the corresponding Section of the Gujarat GST Act' 2017 read with Section 20 of IGST Act' 2017 for the aforementioned contraventions.

4. The adjudicating authority, vide the impugned order dated 22-03-2023, passed the following order:

"(1) I hereby order to pay the wrongly availed ITC amounting to Rs.01,32,96,372/- (CGST Rs.40,76,431/- + SGST Rs.40,76,431/- + IGST Rs.51,43,510/-) under Section 74 (1) of the CGST Act, 2017 and corresponding Section in Gujarat GST 'Act, 2017 read with Section 20 of IGST Act, 2017.

(2) I hereby order to pay the interest on the above confirmed demand, under Section 50 of the CGST Act, 2017 and the corresponding section in Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017.

(3) I hereby impose a penalty of Rs.01,32,96,372/- (CGST Rs.40,76,431/- + IGST Rs.40,76,431/- + IGST Rs.51,43,510/-) on the said assessee under Section 74(1) read with Section 122(2)(b) of the CGST Act, 2017 and corresponding section in Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017".

5. Being aggrieved with the impugned order, the appellant filed present appeal on the following grounds:

(A) The Circular No. F. No. 332/2/2017-TRU issued in the Month of December, 2017 is applicable for the period 01.07.2017 to 25.01.2018 and not thereafter.

The appellant would like to submit that from the history of amendment in Notification No 1/2017-CTR and 2/2017-CTR clearly suggests that Rice Bran is not exempted from 01.07.2017, however there were several ambiguity was prevailing. This being Lhe case CBIC has issued Circular No. F. No. 332/2/2017-TRU in the form of FAQ to clarify the ambiguity prevailing with regard to Rate of GST applicable to Rice Bran during the period 01.07.2017 to 25.01.2018. The position become very clear after issue of Notification No.6/2018-CTR dated 25.01.2018 and amendment in Notification No.2/2017-CTR which gives exemption to De-oiled Rice Bran and not to Rice Bran.

(B) Circular cannot over ride the statutory Notifications issued in terms of Section 11 and 12 of the CGST Act, 2017.

The appellants have categorically submitted in their submission that though in the said circular it was clarified that 'Rice Bran' if supplied as Cattle Feed will attract Nil rate, however in none of the Notification No. 1/2017-CTR and 2/2017-CTR, no such words are used. The supply of goods would be considered exempted only if such supply is covered in the Notification issued under Section 11 or Section 12 of the CGST Act, 2017. The Circular cannot override the statutory notification issued under Section 11 and 12 of the CGST Act, 2017. In this regard the appellants have relied on the following case law of *Bimetal Bearings Ltd vs Commissioner of Central Excise, Chennai* reported at 2008(232)ELT(Tri-LB) wherein it was categorically held that;

Departmental clarifications - Validity of instructions vis-a-vis statutory provision - Departmental instruction not overrides statutory provision in case of conflict - Circulars can clarify provision consistent with relevant provisions - Scope of statutory provision cannot be enlarged or reduced by circular or instructions - Section 37B of Central Excise Act, 1944. [para 7]

[emphasis supplied]

However, the learned adjudicating authority failed to appreciate the contention of the appellant.

(C) Rice Bran is an Input for manufacture of Cattle Feed, would attract GT @ 5%. [Relied: CBIC Circular No. 80/54/2018-GST, dated 31-12-2018 issued from F.No. 354/432/2018-TRU]

It was contended by the appellant that Rice Bran per se is not the Cattle Feed; that for manufacture of Cattle Feed various other ingredients are needed for which the appellant do not have any infrastructure, that the appellant was selling Rice Bran as it is and has not altered any form of Rice Bran; that the appellant is merely supplying Rice Bran to their customers who are mainly manufacturer of the Cattle Feed who uses Rice Bran as one of the ingredients to manufacture Cattle Feed. Therefore their supply can not in any way be considered as supply as Cattle Feed. The expression used for granting Exemption to Rice Bran is "**if supplied as Cattle Feed**".

The Rice Bran has got various uses. One of the use is it is used in the manufacture of Cattle Feed. In other words Rice Bran is one of the Input for manufacture of Cattle Feed. Therefore there is distinction between Input of Cattle Feed and Input used in the manufacture of Cattle Feed.

In this regard the Appellant would like to draw attention to relevant facts of the CBIC Circular No. 80/54/2018-GST, dated 31-12-2018 issued from F.No. 354/432/2018-TRU, reproduced as under:

(The text of relevant paras of the above circular).....

Thus the contention of the Appellant that Rice Bran is classifiable under HSN 2302 is used as Input in the manufacture of Cattle Feed and therefore it cannot be said that Rice Bran is Cattle Feed as clarified in the above circular based on the Decision of Larger Bench of Hon'ble Supreme court of India in the *Commissioner of Customs (Import), Mumbai v. Dilip Kumar* [2018 (361) EL.T. 577] has laid down that inputs for animal feed are different from the animal feed. Accordingly, it would be prudent to refer the case law of *COMMISSIONER OF CUS. (IMPORT), MUMBAI Versus DILIP KUMAR & COMPANY* reported at 2018 (361) E.L.T. 577 (S.C.)

Tax exemption under a Notification - Burden to prove for its entitlement is on assessee claiming exemption - If there is any ambiguity in exemption Notification, benefit of such ambiguity cannot be claimed by assessee and it must be interpreted in favour of Revenue - Ratio of Supreme Court judgment in Sun Export Corporation [1997 93] E.L.T. 641 (S.C.) and all decisions taking similar view as in Sun Export Corporation (supra) overruled - Notification No. 20/99-Cus. - Section 25 of Customs Act, 1962 corresponding to Section II of Central Goods and Services Tax Act, 2017 and Section 5A of Central Excise Act, 1944. [paras 27, 40, 41, 43, 47, 48, 52]

Taxability - Interpretation of taxing statute imposing tax liability on assessee - Burden to prove tax liability of an assessee is on Revenue - In case of any ambiguity in a taxing statute imposing tax liability on the assessee, benefit of doubt to be given to assessee. [para 43]

Interpretation of statutes - Statute must be construed according to the intention of Legislature - General Clauses Act applicable if while interpreting a statutory law, any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined - Notwithstanding this, when there is repugnancy or conflict as to the subject or context between General Clauses Act and a statutory provision which falls for interpretation, Court must necessarily refer to the provisions of statute. [paras 15, 18]

Interpretation of statutes - Words in a statute when clear, plain and unambiguous and only one meaning can be inferred, Courts bound to give effect to the said meaning irrespective of consequences - In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation especially in fiscal statutes and penal statutes. [paras 19, 20]

Interpretation of taxing statute - Tax liability - Regard must be had to the clear meaning of words and matter should be governed wholly by the language of the notification, equity or intendment having no place in interpretation of a tax statute - If words are ambiguous in a taxing statute (not exemption clause) and open to two interpretations, benefit of interpretation is given to the subject. [paras 25, 26, 28, 43]

The ratio of the CBIC circular referred and as laid down in the aforesaid decision, the appellant contend that as submitted in the statement of facts there exists ambiguity in exemption Notification with regard to Rice Bran, the appellant have chosen to pay GST 5% favoring to the Revenue. The aforesaid decision the Hon'ble Supreme Court has held that "If there is any ambiguity in exemption Notification, benefit of such ambiguity cannot be claimed by assessee and it must be interpreted in favour of Revenue". Therefore the ratio of the aforesaid decision is squarely applicable to the appellant.

Further, the appellant have also referred a Ruling of the Appellate Authority in he case of Shri Kanakadadurga Rice and Floor Mills reported at 2020(37) GSTL Appellate Authority-AP) has held that;

Rice bran - Bran not exempted from GST and levy of tax on sale value of such bran to be upheld - Section 74 of Central Goods and Services Tax Act, 2017 - Section 74 of Andhra Pradesh Goods and Services Tax Act, 2017. [para 22]



Thus from the above it could be undoubtedly seen that Rice Bran attracts GST @ of 5%. Hence the supply of Rice Bran by the Appellant on payment of 5% GST is correctly assessed, merely mentioning the word Rice Bran-Cattle Feed in the invoice would not alter the facts that the appellant has supplied only Rice Bran as received as their Inward supply.

(D) The prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis by CBIC vide Circular No. 179/11/2022-GST, dated 3-8-2022 issued from F. No. CBIC-190354/172/2022-TRU.

As submitted elsewhere in the statement of facts that Rice Bran is a byproduct while processing Paddy. Rice Bran is used by the Dairy Industries for manufacture of Cattle Feed and per say Rice Bran is not the Cattle Feed. On Roll out of GST, there persists various doubts with regard to applicability of rate on Rice Bran was arise as to whether Rice Bran can attract Nil rate of 5% of GST leads to the different interpretations. The reason for different interpretation and genuine doubt could be noticed from the History of various amendment and changes in the Notification No.1/2017-CTR and Notification No.2/2017-CTR, which leads to various representations from the trade and industries across India. To settle the issue, the CBIC have issued Circular No. 179/11/2022-GST, dated 3-8-2022 issued from F. No. CBIC-190354/172/2022-TRU, wherein at par 8.1 to 8.7 it has been clarified as under:

Applicability of GST on by-products of milling of Dal/Pulses such as Chilka, Khanda and Churi:

(Text of paras 8.1 to 8.7).....

In view of above, clarification, as clarified at para 8.6 and 8.7 in view of prevailing multiple interpretation and genuine doubts regarding the applicability of GST, the issue for past periods may be regularised on as is basis and goods which inter alia is used as Cattle Feed ingredient are appropriately classifiable under heading 2302 and attracts

GST at the rate of 5% vide Sr.No.103A of Schedule-I of Notification No.1/2017-Central Tax (Rate).

In view of above the treatment given by the Appellant has to be accepted. Therefore the argument of the department that the Appellant has mentioned in their Invoice that Rice Bran supplied as Cattle Feed does not in any way be construed that Rice Bran Become Cattle Feed. Even otherwise as clarified in para 86 of the aforesaid circular, the assessment has to be accepted on as is basis. Therefore, there could not be any point in disturbing or re-opening of assessment carried out by the Appellant.

In view of above, it is contended that the demand raised for paying back ITC would not sustain and its confirmation vide impugned order is also not sustainable.

(E) Re-opening of Assessment is not warranted as clarified by CBIC vide Circular No.179/11/2022-GST, dated 3-8-2022. Accordingly, ITC availed by the Appellant on their Inward supply of 'Rice Bran' is correctly availed,; the appellant have correctly discharged GST @ 5%. No need to re-open assessment.

As submitted in the previous grounds of appeal it could be seen that, the appellant have rightly availed ITC on their Inward supplies of Rice Bran on which GST@ 5% charged by their vendors: that they have rightly discharged GST on their outward supply of Rice Bran: that it is admitted facts that the Appellant is registered for supply of Rice Bran by way of trading activities. Accordingly, the Appellant purchases Rice Bran from their vendors who charge GST @5%. This being the case the Appellant is availing ITC of the GST charged in the Invoice of Inward supply so received. The learned adjudicating authority has not disputed that the Appellant is not receiving Rice Bran.

Therefore in terms of CBIC circular No. 179/11/2022-GST, dated 3-8-2022 issued from F. No. CBIC-190354/172/2022-TRU there remains no need to re-open the assessment of the appellant.

(F) Alternative Plea- Revenue Neutrality.

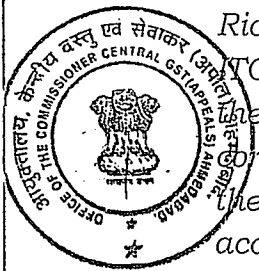
It is submitted that the Appellant have availed ITC on Rice Bran @5% on their Inward Supply of Rice Bran, and the same supply was taken place as their outward supply and accordingly they have used the said ITC for paying their GST @5%.

(i) In this regard assuming without admitting that the appellant have wrongly availed ITC, than it is contended by the Appellant that unless the assessment of their vendor from whom the appellant have received their Inward Supply wherein GST@ 5% was charged, the appellant is entitled to avail ITC

(ii) Further, as submitted in the previous grounds, the Rice Bran attracts GST @5%, however, the contention of the department that the Appellant have mentioned in their Invoices that Rice Bran-Cattle Feed and as clarified by CBIC Rice Bran if supplied as Cattle Feed it would attract Nil rate of duty, and hence ITC is wrongly availed as their outward supplies becomes Exempted; assuming the contention of the department to be correct than the appellant would like to contend that; Circular cannot override Notifications as contended herein above; there is no exemption notification which grants exemption to Rice Bran and accordingly the Appellant have rightly collected GST @5% and deposited in to the Government Treasury. If at all by way of Circular on which learned adjudicating authority has relied Rice Bran if considered to be exempted, than the GST collected and deposited by the appellant on their outward supply has to be considered collection of GST by the Government without authority of law and has to be considered as deposits with the government and the same may be adjusted against the demand raised. Thus the entire exercise is revenue neutral.

(G) No Interest and Penalty.

In view of aforesaid grounds of appeal, the appellant would like to submit that they have not violated any of the provisions of CGST/GGST Act, 2017, IGST Act, 2017 or rules made there under. They have correctly availed IT on their Inward supplies and correctly discharged the GST leviable on the out ward supplies, they are not liable to pay wrongly availed ITC of Rs.1,35,96,372/-as the show cause notice is not sustainable and so is the impugned order. Accordingly, the appellant contend that they are not liable to pay any Interest or not liable to pay any penalties as imposed vide impugned order.



(H) The Appellant have no other alternative, equally efficacious remedy available to the Appellant and the reliefs prayed for in the Appeal, if granted, would be adequate and complete.

(I) The Appellant request to drop the impugned order and order to sanction the refund along with applicable interest for causing delay in processing the refund.

(J) The Appellant request to add such other and further grounds, reliefs and submissions as may be urged at the time of hearing of this appeal.

(K) The Appellants craves leave to add to, alter or amend the grounds mentioned above, before the present Appeal is heard and disposed of.

The appellant further requested to Set aside the order in Order No.43/AC/Demand/NA//2022-23 dated 24.02.2023 issued by the Assistant Commissioner, Central Tax with consequential relief or pass any other order your Honor deem fit.

PERSONAL HEARING:

6. Personal hearing in this case was held on 14.08.2023. Shri Vijay N. Thakkar, and Shri Nitin Thakkar, Consultants, as authorized representatives appeared in person, on behalf of the appellant. They submitted that this is a case of mis-interpretation of word "cattle feed use". The subject goods are Rice Bran supplied for production of cattle feed. Rice bran is one of the ingredient to manufacture cattle feed. Further due to confusion in the trade, CBIC has already clarified vide Circular No. 179/11/2022 dated 30-08-2022. They also furnished additional submissions during the P.H. They further reiterated the written submissions and requested to set aside the OIO.



Discussion & findings:

7.1 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 submissions made during personal hearing and find that the appellant is mainly contesting the applicability of GST on "Rice Bran".

7.2 So the question to be answered in the present appeal is:

(a) Whether the impugned order passed by the adjudicating authority directing the appellant to pay the wrongly availed ITC amounting to Rs.01,32,96,372/- under Section 74 (1) of the CGST Act, 2017 and corresponding Section in Gujarat GST 'Act, 2017 read with Section 20 of IGST Act, 2017, along with interest under Section 50 and Penalty under Section 74(1) of the CGST Act' 2017 read with Section 122 of the CGST Act' 2017 and the corresponding Section of the Gujarat GST Act 2017 read with Section 20 of IGST Act' 2017 is proper or otherwise?

7.3. At the foremost, I observed that in the instant case the "impugned order" is of dated 24-02-2023 and the present appeal is filed on 15.05.2023. 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 appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

7.4 In the instant case, I find that the appellant is a proprietary firm and registered as Trader – Whole-seller/Distributor engaged in supply of goods namely “Rice Bran & Cattle Feed”. The contention of the Appellant that Rice Bran if supplied as Cattle feed directly, attracts Nil rate of GST, it is only when it is used otherwise would attract 5% GST. I find that the Appellant has supplied “RICE BRAN FOR CATTLE FEED” having HSN Code 2302 for cattle feed purpose only, which as per the adjudicating authority, attracts Nil rate of GST as per Notification No.02/2017 CT (Rate) dated 28.06.2017. I find that the appellant has supplied Rice Bran with “Cattle Feed Use Only” charging 5% GST from their Customers during the period July-2017 to March-2019 and contesting that they have rightly availed ITC on inward supply of Rice Bran and rightly collected and paid GST on Rice Bran supplied to their Customers.

7.5 I therefore proceed to decide the case and therefore, refer relevant portion (entries) of Notification No. 2/2017- CT (Rate) which exempts intra-State supplies of goods as per Schedule therein, with further amendments as below:

Sl.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
	2302, 2304, 2305, 2306, 2308, 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake

7.6 Subsequently, the following entry was substituted and further entries were inserted vide Notification No.7/2018-Central Tax (Rate) dated 25.01.2018.

Sl.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
102	2302, 2304, 2305, 2306, 2308, 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice-bran]”,

Sl.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Good
102A	2302	De-oiled rice bran
102B	2306	Cotton seed oil cake

7.7 Further the following was substituted vide Notification No. 19/2018-Central Tax (Rate) dated 26.07.2018 which came into force on the 27th July, 2018.

Sl.No.	Chapter /Heading / Sub-heading/Tariff item	Description of Good

June, 2017	cake[other than rice bran]	
S. No. 103A of Schedule I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
S. No. 103B of Schedule of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Rice bran (other than de-oiled rice bran)	5%

8.4. The dispute in applicable GST rate revolves around the central argument as to whether the above-mentioned by-products are meant for direct consumption as cattle feed and therefore attract exemption under S. No. 102 of notification No. 2/2017-Central Tax (Rate) dated 28th June, 2017 or are otherwise not meant for direct consumption and thus covered under S. No. 103A of notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 attracting a GST rate of 5%.

8.5. While milling of pulses/dal, a wide range of by-products such as chilka, khanda, churi, among others, are obtained which are preferred as cattle feed by dairy industry for better palatability and higher nutritive value. The mentioned by-products are required to go through varying degrees of processing in order to customize the color, size, aroma, nutrition, purity, etc., of the cattle feed so produced, depending upon the dietary and nutritional requirement of the cattle and the budget availability of the customer(s). Further, as per the Indian Standards 2052:2009 -Compounded Feeds for Cattle — Specification, issued by the Bureau of Indian Standards, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, grain by-products have been categorized as one of the ingredients of the compounded cattle feed.

8.6. The GST Council examined the issue and recommended that a clarification be issued in this regard. It also recommended that in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis.

8.7. Accordingly, it is hereby clarified that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% vide S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis as mentioned in para 8.6.”

7.11 From the above Notifications and Circular, I find that vide corrigendum dated 12/07/2017 to the Notification No.1/2017-CT(Rate) dated 28-06-2017 which notifies the rate of the central tax of 2.5% vide the entry 103A, Chapter 2302 under the description Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants[other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake attracts 5% GST. Further vide Notification No.06/2018

-CT(rate) dated 25-01-2018, a new entry 103B Chapter 2302 under the description "Rice bran (other than de-oiled rice bran)" was inserted.

7.12 From the above, It is understood that Bran derived from the sifting, milling or other working of cereals other than cattle feed with Chapter Heading 2302 as per entry 103 A and Rice Bran (other than de-oiled rice bran with Chapter Heading 2302 as per entry 103B of Notifications No.01/2017 dated 28-06-2017, as amended, attracts 5% GST.

7.13 As regards Notification No.02/2017 (Exemption Notification) vide entry No.102 (Chapter 2302 among others), description of goods "Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake" were exempted. Further, vide Notification No.7/2018-CT(Rate) dated 25-01-2018 an entry 102A chapter head 2302 "De-oiled rice bran" was inserted. The said entry 102A was substituted, vide Notification No.19/2018-Central Tax (Rate) dated 26.07.2018 as 102A, Chapter Head 2306 "De-oiled rice bran" with Explanation: "The exemption applies to de-oiled rice bran falling under heading 2306 with effect from 25th January,



From the above, it is understood that goodscattle feed including grass, hay & straw, supplement & husk of pulses, concentrates & additives..... vide entry No.102 under Chapter Heading 2302 as per Notification No.02/2017 were exempted and "De-oiled rice bran" inserted vide entry 102A chapter head 2302 as per Notification No. 7/2018-CT(Rate) dated 25-01-2018 were exempted, the said entry 102A was still further amended vide Notification No. 19/2018 dated 26-07-2018 and shown under Chapter Head 2306 "De-oiled rice bran" with explanation that exemption applies to it w.e.f. 25-01-2018.

To summarize, it is clear from the above, that Rice Bran (other than de-oiled rice bran) Ch.H.2302 attracts 5% GST and De-oiled rice bran Ch.H.2306, is exempted as per the entries of the Notifications ibid.

7.15 I also find that CBIC vide Circular No. 179/11/2022-GST dated 03-08-2022 has clarified that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% vide S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis.

7.16 I find that the Appellant is registered as trader and engaged in supply of goods under chapter 2302. They procure "Cattle Feed Powder etc. from various traders wherein 5%GST was charged as the Traders were under impression

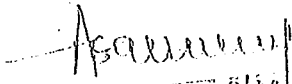
that they were not supplying the cattle feed powder directly for cattle feed. Thus the appellant availed the credit of GST paid by them to their supplier and after value addition they supplied the same goods "Cattle Feed only" under Tax invoice and charged 5% GST.

7.17 I find that since the CBIC has clarified that subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% vide S. No. 103A of Schedule-I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis, vide Circular No.179/11/2022-GST dated 03-08-2022. Therefore, in the instant case, the requirement of reversal of Input Tax Credit would not arise as for the past, the matter is to be regularized on as is basis. Therefore, I am of the view that the impugned order passed by the adjudicating authority is not proper and legal as this clarification is not considered by the adjudicating authority.

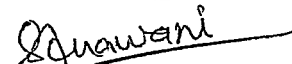
8 In view of the above, I set aside the impugned order and allow the appeal of the appellant, to the above extent.

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.

M/s Akash Enterprise (Prop.Bharat Talakshibhai Thakkar) NEAR UMESH MAMRA PAUVA FACTORY, BAVLA, Ahmedabad, Gujarat, 382220 (GSTIN 24AAHPT8438L1Z2).

Copy to:

1. The Principal Chief Commissioner of CGST & C.EX., Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Additional Commissioner, CGST & C.Ex., Ahmedabad-North
5. The Dy/Asstt. Commissioner, CGST & C. Ex, Division-V Ahmedabad
6. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
7. Guard File/ P.A. File.



