



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/1413/2024 / ५७१५ - ३०
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-12/2024-25 and 30.04.2024
(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	01.05.2024
(ङ)	Arising out of Order-In-Original No. 202/AC/DEMAND/23-24 dated 29.08.2023 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 Global Energy Food Industries Pvt Ltd (GSTIN: 24AAECG4635L1Z1) Plot No. 173, Opp. Telephone Exchange, Phase-I, GIDC, Naroda, Ahmedabad, Gujarat-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) <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 <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-APPEALBRIEF FACTS OF THE CASE:

M/s. Global Energy Food Industries Pvt.Ltd. (GSTIN-24AAECG4635L1ZI) having principal place of business PLOT NO 173, OPP. TELEPHONE EXCHANGE, PHASE-I, GIDC NARODA, Ahmedabad, Gujarat, 382330 (hereinafter referred to as the "Appellant") has filed appeal against Refund Order-in-Original No.202/AC/DEMAND/23-24 dated 29.08.2023 (herein after referred as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division I, Ahmedabad-North Commissionerate, Ahmedabad (hereinafter referred to as *the 'adjudicating authority'*)

2. Brief facts of the case are that the Appellant are engaged in the business of manufacturing of Biscuit and confectionery falling under Chapter 19. The appellant was exporting their finished/manufactured goods out of India under payment of IGST and availing benefit of refund in terms of Rule 96 of the CGST Rules, 2017 although they were not eligible to claim such refund under the said rules. The appellant had availed full exemption of IGST at the time of import of raw materials, which have been imported for use in the manufacture of goods to be exported and thereafter, the finished/manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. Investigation was carried out by the Officers of Ahmedabad North Commissionerate and it was revealed that the appellant had imported the inputs under advance authorisation licence and availed full exemption from payment of IGST on the same. The appellant had further exported their final products on payment of IGST and claimed refund of IGST paid on shipping bills total amounting to Rs. 90,66,732/- as per their letter dated 26.04.2021 and 22.07.2021, copies submitted vide their reply dated 17.12.2022 in response to summons issued to them. Further, as per letter dated 20.03.2023 of Deputy Commissioner of Customs, Post clearance Audit, Office of the Pr.Commissioner of Customs, Mundra Kutch, total amount of IGST refund of Rs.1,11,62,907/- was taken by the appellant on exports after availing benefit of advance authorisation on the inputs procured through import.

Hence a Show-cause-notice dated 31.03.2023 was issued to the appellant as to why:

{i} *Erroneously refunded IGST amount of Rs. 1,11,62,907/- (Rs.One Crore Eleven Lacs Sixty Two Thousand Nine Hundred Seven only) should not be demanded*

and recovered from them under Section 74(1) of the CGST, 2017 read with read with corresponding section of Gujarat GST Act 2017 and Section 20 of the IGST Act, 2017;

{ii} Interest at appropriate rate should not be demanded and recovered from them on the proposed demand mentioned at (i) above under Section 50(1) of the CGST Act, 2017 read with corresponding section of Gujarat GST Act 2017 and read with Section 20 of the IGST Act, 2017;

{iii} Penalty should not be imposed upon them on the proposed demand at (i) above under Section 74(1) of the CGST Act, 2017 read with corresponding section of Gujarat GST Act 2017 and read with Section 20 of the IGST Act, 2017.

3. The adjudicating authority vide the impugned order passed the following:

{i} I confirm the IGST of Rs.1,11,62,907/- (Rs.One Crore Eleven Lacs Sixty Two Thousand Nine Hundred Seven only) under sub Section (1) of Section 74 of the CGST Act, 2017 read with read with Section 20 of the IGST Act, 2017;

{ii} I confirm demand of Interest at rate prescribed under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;

{iii} I impose Penalty of Rs.1,11,62,907/- (Rs. One Crore Eleven Lacs Sixty Two Thousand Nine Hundred Seven only) under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 for the above contraventions”


4. Being aggrieved with the impugned order, the Appellant filed the present appeal on 22.01.2024 on the grounds that:

- Appellants submit that they never directly imported any goods under advance authorization license and availed full exemption from payment of IGST. Appellants submit that they have procured goods from another manufacturer who in turn procured goods and manufactured the same and supplied to appellants with full payment of IGST for effecting the same as third party export.
- Appellants submit that on the premise of such mis-conceived facts it is alleged at Para. 5.1 of impugned SCN that Appellants have availed the double benefit, one at the time of procuring IGST Free raw material in terms of Notification No. 79/2017- Customs dated 13.10.2017 and on the other hand by claiming the refund on the exports made on payment of IGST in terms of Rule 96 of the Central Goods and Services Tax Rules, 2017 as mentioned above.
- Appellants submit that when facts itself is wrong and the SCN issued with presumed facts are in utter violation of principle of natural justice and fair play.

➤ In support of their contention, the Appellants want to draw your kind attention on the decision from erstwhile service tax and central excise regime in the case of:

(a)SBQ Steels Ltd. vs. Commissioner of Cus., C.Ex., 82 ST. Guntur 2014 (300) ELT 185 (AP) wherein it is clarified that;

*Cenvat credit - Availment of - Challenge to, vide show cause notice - Validity of, when said notice issued with premeditation - Language used by the respondent-authority in the show cause notice gave the impression that it had predetermined the issue - Use of the words 'it is clear' at various places suggested predetermination of liability of petitioner - Fact that it even quantified the amount of duty wrongly availed of by the petitioner allegedly, corroborated this view - Such show cause notice thus set aside and respondent directed to issue a fresh notice to the petitioner - Section 11A(10) of Central Excise Act, 1944.*



*Writ jurisdiction - Scope of - Challenge to show cause notice - Ordinarily a Writ Court may not exercise its discretionary jurisdiction in entertaining a Writ Petition questioning a notice to show cause, however if the same inter alia appears to have been without jurisdiction, when the notice is issued with premeditation, a writ petition would be maintainable - In the instant case, the show cause notice issued by the quasi-judicial authority was premeditated, thus, in exercise of writ jurisdiction, same set aside and directions given for issuance of fresh notice - Article 226 of Constitution of India - Section 11A(10) of Central Excise Act, 1944.*

*Show cause notice - Scope of - Show cause notice is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice - At the stage of show cause notice, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence - At that stage, the authority issuing the charge sheet/show cause notice, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt - If that is done, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony - In the instant case, the show cause notice issued by the quasi-judicial authority was premeditated, thus, same set aside and directions given for issuance of fresh notice - Section 11A(10) of Central Excise Act, 1944.*

[b] CCE vs. Shemco India Transport 2011 (24) STR 409 (Tri-Del.).....

[c] Amrit Food vs. CC 2005 (190) ELT 433 (SC)

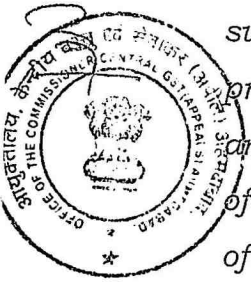


wherein it was held that no penalty is imposable where neither the show cause notice nor the order specifies which particular clause of Rule 173Q of erstwhile Central Excise Rules, 1994 had been alleged contravened by the assessee.

- Appellants submit that since the impugned SCN itself is vague, cryptic and untenable in law and hence the impugned OIO confirming such SCN deserves to be quashed in toto.
- Appellants submit that when the Rule 96(10) was inserted in the CGST Rules, 2017 from 23.10.2017 it debarred exporters from claiming IGST refund who have directly made Imports under Notification No. 78/2017-Customs dated 13.10.2017 and Notification No. 79/2017-Customs dated 13.10.2017, the said provisions of notifications thereby meant to say that if the importer has made imports under Advance Authorization then they were not entitled for refund. Appellants submit that this position of law is also clear from the impugned SCN itself and the same is also mentioned at Para. 3.4 & 7.4 of impugned SCN. Appellants submit that when the law is very clear and also narrated in SCN itself then this issuance of demand of recovery of IGST refund is absolutely in contrast with the legal provisions admitted in itself and hence deserves to be quashed.
- Appellants submit that in their case they are exporter who are not holding the Advance Authorization but procuring goods from other manufacturer who are holding the advance authorization and Appellants are buying goods from them as merchant exporter and exporting such goods. Appellants submit that from the perspective of DGFT they are considered as third party exporter and accordingly they have quoted the Advance License number of the Manufacturer exporters who have supplied goods to them for enabling them to avail the benefits under said Advance Authorization scheme of Foreign Trade Policy.
- Appellants submit that they have come to know that there are plethora of Show Cause Notices issued accepting the position of law that Advance Authorization holder who have imported goods under said scheme and exported on payment of IGST would be covered within the ambit of retrospective amendment of Rule 96(10) of CGST Rules, 2017 and hereby it implies that restrictions embedded therein would not be applicable in such cases where claiming refund of integrated tax paid on export of goods or services have received supplies on which the supplier has availed the benefit of exemption from duty under Advance Authorization.



- Appellants submit that in view of above there cannot be dual stand on same matter and hence the impugned OIO confirming such illegal SCN proposing to demand the alleged ineligible refund of IGST deserves to be quashed.
- Appellants submit that by virtue of Section 16 of the IGST Act, they as an exporter (i.e. zero rated supply) is allowed an option by the Parliament to pay integrated tax on export of goods, and claim refund of such tax paid on the exported goods. Under Clause (b) of Section 163 of the IGST Act, the Appellants have a right and an option to pay integrated tax on exported goods, and the Appellants have also a right to claim refund of such tax paid on exported goods. When this option and the right is conferred upon the Appellants as a registered person under Section 16 of the IGST Act, such right cannot be taken away by virtue of a rule, and therefore Rule 96(10) of the CGST Rules is ultra vires Section 16 of the IGST Act.
- Appellants submit that Section 54 of the CGST Act is referred to in Sub Section (3) of Section 16 of the IGST Act, and it is laid down there under that refund of integrated tax paid by the registered person on the zero rated supply (i.e. export in the present case) should be in accordance with the provisions of Section 54 of the CGST Act. However, Section 54 does not confer any power on the Central Government to frame any Rules in respect of refund of tax. No power is conferred upon the Central Government under Section 54 of the CGST Act for imposing any conditions or restrictions in respect of allowing refund of tax. Section 54 is basically an enabling provision and this provision nowhere refers to curtailing or restricting right to claim refund allowed under that provision itself (i.e. under Section 54), or any other provision like Section 16 of the IGST Act. A plain reading of Section 54 of the CGST Act shows that a right to pay integrated tax and claim its refund on exported goods conferred on a registered person by virtue of Section 16(3)(b) of the IGST Act is in no way affected or restricted under Section 54 of the CGST Act. Therefore, a provision like Sub Rule (10) of Rule 96 of the CGST Rules could not have been made by the Central Government even with reference to Section 54 of the CGST Act.
- Appellants submit that Payment of integrated tax and claim for its refund under Section 16(3)(b) of the IGST Act should be in accordance with the Rules made under the CGST Act. The power to make Rules is conferred upon the Government under Section 164 of the CGST Act but a perusal of this provision also shows that the Rules are to be made for carrying out the provisions of the Act. When Section 16 of the IGST Act is a provision allowing a registered person to pay integrated tax and claim its refund in case of exports, any Rule

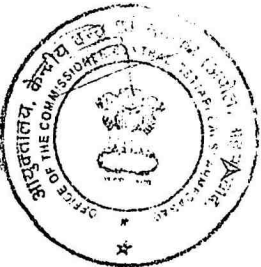


not in accordance with this provision of the Act is beyond the rule making power of the Government. The Government may have power to make Rules for laying down a procedure for claiming and paying refund, but there is no power conferred upon the Government under Section 164 of the CGST Act to make a provision to take away, curtail or even restrict a right to claim refund conferred upon a registered person under the main Act. Sub Rule (10) of Rule 96 is not a provision in the nature of a procedure for claiming or paying refund, but it takes away the right for claiming refund of integrated tax conferred upon a registered person making zero rated supply under Section 163) (b) of the IGST Act and thus such Rule is beyond the power conferred upon the Government under Section 164 of the CGST Act for making Rules to carry out the provisions of the Act.


- Appellants submit that by virtue of Sub Section (2) of Section 16 of the IGST Act, ITC is allowed even while making zero rated supplies subject to Section 17(5) of the CGST Act but the Appellants have not availed ITC of any of the supplies referred to in Section 17(5) of the CGST Act, which are in the nature of blocked credit and said is undisputed fact since even SCN nowhere alleges for same. No provision like Sub Rule (10) of Rule 96 can be validly made even with reference to Section 16(2) of the IGST Act read with Section 17(5) of the CGST Act, and therefore also the impugned Rule is ultra vires Section 16 of the IGST Act.

The Appellants therefore submit that Sub Rule (10) of Rule 96 of the CGST Rules is ultra vires Section 16 of the IGST Act, and hence it deserves to be struck down as ultra vires. Consequently, the impugned OIO deserves to be quashed and set aside in the interest of justice.

- Appellants have utilized various taxable inputs and materials and capital goods. Appellants have also utilized different input services, which are all taxable. ITC of taxes paid on all such inputs and materials as well as input services is allowed to the Appellants, but the Appellants' exports have been much more than the local supplies, and therefore the Appellants are not in a position to utilize such ITC fully for discharging their GST liability in respect of domestic supplies
- Appellants submit that thus, now, by virtue of Rule 96(10) of the CGST Rules, the registered persons like the Appellants cannot utilize legally availed credit of input transactions for paying tax on the exported goods for claiming refund of such tax, and therefore the Appellants' competitiveness in the international trade is also adversely impacted.



- Moreover, the issue involved in the present case is one of interpretation of law. Appellants submit that throughout the country similar matters are pending before various Hon'ble High courts which itself substantiate the fact that the matter suffered from legal enigma and even today as well there is no finality to subject matter.
- The Show Cause Notice has invoked Section 74 of the Act for imposition of penalty. Section 74 can be invoked only when there is fraud, collusion, wilful misstatement, suppression or contravention of any of the provisions of the CGST Act, 2017 read with IGST Act, 2017 or the rules framed there under with an intention to evade payment of tax.
- Appellants submit that in their case they have disclosed all facts truthfully in their returns i.e. ZERO Rated supply of goods with payment of IGST under claim of refund along with the corresponding Shipping Bills thereof and port of Export. Further Appellants have filed the Shipping bill for export under the scheme of Advance Authorization and also in said shipping bills the details of IGST Refund claimed by them on ZERO Rated supply of goods covered under said shipping bills are also declared truthfully.



Appellants submit that it can be apprehended from the changes in legislative provisions of Rule 96 (10) of CGST Rules, 2017 that there were great confusions and concern with respect to construction of legislation and interpretation thereof. Appellants submit that these multiple amendments in the law speaks for itself that the matter involves the complexity in interpretation of law and in such cases penalty should not be levied in cases involving bonafide mistake. Appellants submit that in such a situation, imposition of penalty on the Appellants is not justified.

- Appellants submit that in view of no legislative provision to demand the interest and GST law the proposed demand of interest for alleged IGST Refund is illegal and deserves to be set aside.
- Appellants submit that impugned SCN proposes to recovered alleged IGST Refund of Rs. 1,11,62,907/- is grossly incorrect and hence the same deserves to be quashed.

The appellant have further prayed that the impugned order be set aside.

#### **5. Personal Hearing:**

Personal Hearing in the matter was held virtually on 19.03.2024, wherein Shri Pratik Trivedi, Chartered Accountant appeared in person on behalf of the 'Appellant' as Authorized Representative before the appellate authority. He submitted that the goods have been exported as merchant exporter and



requested to file further submissions within a period of 3 weeks. The request was considered.

**Additional Submissions:**

The appellant have submitted further submissions vide their letter dated 29.04.2024.

**6 Discussion and Findings:**

6.1. I have carefully gone through the facts of the case and the submissions made by the Appellant in the memo of appeal as well as further submissions and observe that the, appellant is mainly contesting with, that they have exported their goods as merchant Exporter and that they have never directly imported any goods under advance authorisation licence and availed full exemption from payment of IGST. Therefore, the allegation that they have procured IGST free raw material in terms of Notification No.79/2017-Customs dated 13.10.2017 and also claimed the refund on the exports made on payment of IGST in terms of Rule 96 of the CGST Rules, 2017, is in violation of principle of natural justice and fair play.



So the issue to be decided in the present appeal is:  
Whether the order passed by the adjudicating authority is proper or otherwise?

6.3 At the foremost, I observe that in the instant case the "impugned order" is of dated 29.08.2023 and the same was received by the appellant on 24.09.2023 and the present appeal is filed offline on 22.01.2024. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit.

6.4 I further find it relevant to go through the relevant statutory provisions of Section 107 of the CGST Act, 2017, which is reproduced as under:

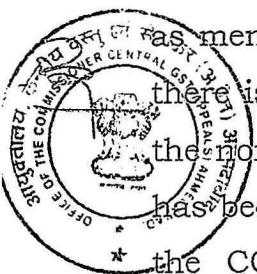
**SECTION 107. Appeals to Appellate Authority.** — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) .....

(3) .....

(4) *The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month”.*

6.5. Accordingly, I observe that the Appellant was required to file appeal within three (3) months from the receipt of *the impugned order* dated 29.08.2023 (received by the appellant on 24.09.2023) i.e on or before 23.12.2023. However, in the instant case the appellant has filed the present appeal on 22.01.2024 i.e. after a lapse of one month from the due date. Further, I also observe that in terms of provisions of Section 107(4) *ibid*, the appellate authority has powers to condone the delay of only one month in filing of appeal over and above the prescribed period of three months



as mentioned above, if sufficient cause is shown. Accordingly, I observe that there is an inordinate delay of one month in filing the appeal over and above the normal period of three months. Thus, I observe that the present appeal has been filed beyond the time limit as prescribed under the Section 107(1) of the CGST Act, 2017, however, filed within the condonation period (i.e. considering one month condonation period) as per Section 107(4) of the CGST Act, 2017. I observe that the reasons expressed by the Appellant for delay in filing appeal in their condonation of delay letter dated 19-10-2023, due to impugned OIO was issued in physical form and was received by the appellant on 24.09.2023 and that OIO was not uploaded online on GSTN Common Portal, that they requested the adjudicating authority to complete the online uploading process of the subject OIO vide letter dated 08.12.2023 and 27.12.2023, however till the date of filing of offline appeal, no response was received by them, is condonable. Therefore as per the provisions of Section 107(4) of the CGST Act, 2017, I condone the delay of one month in filing appeal by the appellant and consider the appeal as filed within the time. Accordingly, I am proceeding to decide the case.

6.6 I observe that the present appeal is filed by the Appellant for confirmation of demand of refund of IGST Rs.1,11,62,907/- which was claimed in contravention of the provisions of Rule 96(10) of CGST Rules, 2017 and

erroneously granted to them. It is observed that the appellant had claimed refund of IGST paid on exports of goods wherein benefit of Advance Authorisation Licence had already been availed at the time of import of Goods. The appellant had exported their final products on payment of IGST and claimed refund of IGST paid on shipping Bills, which resulted in erroneous refund of IGST paid on Zero rated Supplies i.e. export of goods.

6.7 The details regarding the refund of IGST paid on exports after 23.10.2017 to the appellant wherein benefit of advance authorization licence has already been availed at the time of import of Goods are as under:

Sl.No.	Advance Authorisation Licence No.	Advance Authorisation Licence date	IGST paid on Zero rated supply (Rs.)	IGST Refund Received (Rs.)
01	810140900	12.09.2017	913100	913100
02	810141369	24.11.2017	1355146	1355146
03	810142315	06.04.2018	8894661	8894661
	Total		1162907	11162907



8 I therefore, refer Rule 96(10) of CGST Rules, 2017:

15[(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272 (E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.]

<sup>16</sup>[**Explanation.** - For the purpose of this sub-rule, the benefit of the notifications 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 Basic Customs Duty (BCD) under the said notifications.]

**15. Substituted vide Notification No. 54/2018-CT dated 09.10.2018 for:**

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 or notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017."

**16. Inserted vide Notification No. 16/2020-CT dated 23.03.2020 w.e.f. 23.10.2017.**

6.9 From the above provisions substituted vide Notification No. 54/2018-CT dated 09.10.2018, it is observed that the persons claiming refund of integrated tax paid on exports of goods or services should not have availed the benefit of various notifications as mentioned therein.

6.10 However, in the present case the appellant has availed benefit of Notification No.79/2017-customs dated 13.10.2017, as the Advance authorization Licence Number has been mentioned in the shipping Bills/export documents and the appellant has submitted that they have procured the goods from the supplier who has imported the inputs/goods under Advance Authorisation Licences, and exported the goods on payment of IGST mentioning the advance authorization licences as in the table above.

6.11 Further, Vide above explanation to Rule 96 (10) made effective from 23.10.2017, the benefit of the notifications mentioned in Rule 96(10) 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 Basic Customs Duty (BCD) under the said notifications. In the instant case as the goods have been procured duty free under advance authorization, hence the benefit of notification shall be considered to have been availed by the appellant.

6.12 The contention of the appellant that Rule 96(10) was inserted in CGST Rules, 2017, from 23.10.2017 which debarred exporters from claiming IGST refund who have directly made imports under Notification No.78/2017-Customs dated 13.10.2017 and Notification No.79/2017-Customs dated 13.10.2017. The appellant further submitted that position of law is clear and the issuance of demand of recovery of IGST refund is absolutely in contrast with the legal provisions.

6.13 From the provisions of Rule 96(10)(b) substituted vide Notification No.54/2018-CT dated 09.10.2018 and the explanation inserted vide Notification No.16/2020-CT dated 23.03.2020 made effective from 23.10.2017, it is observed that "Persons claiming refund of IGST paid on export of goods or services should not have availed the benefit under Notification No. 78/2017-Customs dated 13.10.2017 and Notification No.79/2017-Customs dated 13.10.2017..." In the instant case, even if the appellant himself is not importer, however they have procured the goods from the supplier who have imported the goods under Advance Authorisation Licences. Thus as per Rule 96(10)(b), the appellant is covered under the said Rule as it is not mentioned that the importer claiming refund of IGST paid on export of goods or services should not have availed the benefit... but "the persons claiming refund..." has been mentioned.

6.14 In view of the above, the appellant is said to have availed the benefit of Advance Authorisation Licence, therefore not eligible for refund of Rs.1,11,62,907/- for the goods exported wherein the benefit of notification No. 79/2017-Customs, dated the 13.10. 2017 has been involved.

6.15 Further, in the additional submissions, the appellant have submitted that upon careful examination, it is evident that any benefits availed were by the suppliers of goods and not by the appellant themselves. Specifically in the case of Licence No.0810140900 dated 12.09.2017, wherein goods were imported via B/E No.3258189 dated 15.09.2017 neither the suppliers nor the appellant have availed any benefit of IGST exemption, hence no demand of IGST refund can be justified, particularly in relation to that specific licence. From the copies of documents submitted by the appellant, it is observed that

under the said Bill of Entry, the goods imported under Advance Licence are imported on payment of IGST. However, they have not submitted any proof that the refund of said B/E has not been availed by the Importer or otherwise. Further, the goods exported against the said Advance Authorisation Licence No.810140900 dated 12.09.2017 are after the date 23.10.2017, hence refund of the IGST paid on the said export as per the provisions explained above is not available to the appellant.

6.16 Further, it is observed that the adjudicating authority has confirmed the IGST of Rs.1,11,62,907/- under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 along with interest under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and Penalty of Rs.1,11,62,907/- under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017. I observe that as the appellant has contravened the provisions of Rule 96(10)(b) of the CGST/GGST Rules, 2017 read with Section 20 of the IGST Act, 2017 in as much as they in spite of the fact that the imported goods/inputs under Advance Authorisation vide Notification No.79/2017-Customs were involved in the final goods exported, they had willfully misstated the facts by claiming refund of IGST paid on such Zero rated supply. Further they have contravened the provisions of Section 39(9), Section 59 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 in as much as they did not rectify the Omission or incorrect particulars and also did not correctly self assessed the tax payable. Thus, the appellant have deliberately misstated the facts, thereby contravened the provisions *ibid*. As the refund claimed in contravention of the provisions has not been paid back, the appellant is liable to pay the same under Section 74(1) of the CGST/GGST Act, 2017 read with Section 20 of the IGST Act, 2017 along with interest under Section 50(1) of the CGST Act, 2017 and Penalty under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.

6.17 As regard to the judgment quoted by the appellant of erstwhile regime is not applicable in the present case, as in the SCN as well impugned OIO, the penalty has been properly specified under the provisions of law. As regards to judgment of the Hon'ble High Court of Gujarat in Special Civil Application No. 15833 of 2018, decided on 20-10-2020 it has been held that "*The Notification No. 54/2018 is therefore held to be effective w.e.f. 23rd October, 2017. Rule is made absolute to the aforesaid extent, with no order as to costs.*" The said

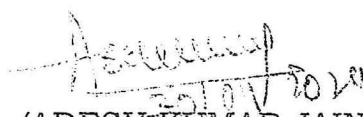
judgment has already been implemented and therefore the refund of IGST paid on exports after 23.10.2017 has been considered in the demand raised/confirmed in the SCN/impugned OIO.

6.18 In view of the above, I am of the view that the order passed by the adjudicating authority is Legal and proper.

7. In view of above discussions, the impugned order passed by the adjudicating authority is upheld and the appeal filed by the appellant is rejected.


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

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

Date: .04.2024.

Attested

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



By R.P.A.D.

To:

M/s. Global Energy Food Industries Pvt.Ltd.,  
PLOT NO 173, OPP. TELEPHONE EXCHANGE,  
PHASE-I, GIDC NARODA, Ahmedabad,  
Gujarat, 382330 (GSTIN-24AAECG4635L1ZI)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
3. The Pr./Commissioner, CGST & C.Ex, Ahmedabad-NorthCommissionerate.
4. The Additional Commissioner (System), Ahmedabad-NorthCommissionerate.
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.

