



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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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/1984/2024 / ५७३१ - ५७३४
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-13/2024-25 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. ZG2412230092750 dated 07.12.2023 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 Prince Spinners Pvt Ltd (GSTIN: 24AADCP9493J1ZW) Survey No. 1634/1637, Bagodra Dholka Highway Gangad, Ahmedabad, Gujarat-382240

(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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE:

M/s. Prince Spinners Pvt. Ltd. (GSTIN-24AADCP9493J1ZW) having principal place of business at SURVEY NO 1634/1637, BAGODRA DHOLKA HIGHWAY, GANGAD, Ahmedabad, Gujarat, 382240 (hereinafter referred to as the "Appellant") have filed appeal against Refund Order No.ZG412230092750 dated 07.12.2023 (herein after referred as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division V, 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 COTTON YARN falling under Chapter 52. The appellant had filed Refund application vide AR No.AA241023064233U dated 18.10.2023 for the tax period 01.05.2022 to 31.08.2023 for an amount of Rs.1,76,85,319/- on the ground of "On account of Refund by Recipient of Deemed Export". During the verification of refund claim, it was found that a refund claim for the same period in the same category had also been filed previously vide AR No.AA24102330823T dated 11.10.2023 but deficiency memo in form RFD-03 was issued to the Appellant.

It was further observed that the appellant had claimed refund in respect of procurement of goods under EPCG Licence and the supply made under EPCG licence falls under the Deemed Export as per Notification No.48/2017-CT dated 18.10.2017. Further, it was also found that the appellant had already availed and utilized the credit of Capital Goods procured through EPCG Licence, therefore they were not eligible to claim refund of credit.

Hence a Show-cause-notice dated 06.11.2023 was issued to the appellant as to why:

*"you have already availed and utilised the credit of capital goods which were procured through EPCG License, Further please clarify why you have claimed excess ITC in the GSTR-3B of August-2023 than available".*

3. The adjudicating authority vide the impugned order passed the following:  
*"5.....there was no balance sufficient credit of IGST for filing refund application because the claimant has already availed and utilised the credit of capital goods procured through EPCG licence, so he is not eligible to claim credit.*

*6. Since the refund claim filed by the claimant seems contrary to CGST ACT, hence I reject the claim of refund amount of Rs. 1,76,85,319/".*

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

*“12.1. The Appellant emphatically do not accept and denies all the findings given in the impugned order against the Appellant as they are factually and legally incorrect. The appellant is submitting following grounds.*

*The Refund Application is filed as per Sec 54 read with Rule 89.*

*12.2. The Appellant has procured Capital Goods under EPCG License during the period “May 2022 to May 2023” from the supplier M/s. Lakshmi Machine Works Limited bearing GSTIN 33AAACL5244NIZF.*

*12.3. The refund is filed under section 54 read with rule 89(1) of CGST Rules, 2017.*

*The 3rd proviso to Rule 89(1) of CGST Rules, 2017 allows for refund of tax paid in case of a deemed export supply to the recipient or the supplier of deemed export supplies. The said proviso is reproduced as under:*

*“Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -*

- (a) the recipient of deemed export supplies; or*
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund”*

*12.4. From the above, it can be seen that there is no restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies when the recipient files for refund claim.*

*12.5. The Appellant is referring Circular No. 147/03//2021-GST dated 12.03,2021 with respect to the Clarification in respect of refund claim by recipient of Deemed Export Supply.*

## *2. Clarification in respect of refund claim by recipient of Deemed Export Supply*

*2.1 Representations have been received in respect of difficulties being faced by the recipients of the deemed export supplies in claiming refund of tax paid in respect of such supplies since the system is not allowing them to file refund claim under the aforesaid category unless the claimed amount is debited in the electronic credit ledger.*

*2.2 Para 41 of Circular No. 125/44/2019 – GST dated 18/1:1/2019 has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.*

*2.3 The 3rd proviso to Rule 89(1) of CGST Rules, 2017 allows for refund of tax paid in case of a deemed export supply to the recipient or the supplier of deemed export supplies. The said proviso is reproduced as under:*



"Provided also that in respect of supplies regarded as deemed exports, the application may filed by,

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund"

From the above, it can be seen that there is no restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies when the recipient files for refund claim. The said restriction has been placed by the Circular No. 125/44/2019-GST dated 18.11.2019.

2.4 in this regard, it is submitted that in order to ensure that there is no dual benefit to the claimant, the portal allows refund of only Input Tax Credit (ITC) to the recipients which is required to be debited by the claimant while filing application for refund claim. Therefore, whenever the recipient of deemed export supplies files an application for refund, the portal requires debit of the equivalent amount from the electronic credit ledger of the claimant.

2.5 As stated above, there is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019-GST dated 18.11.2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient. The amended para 41

of Circular no. 125/44/2019-GST dated 18.11.2019 would read as under:

41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/20:17-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017- Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies.

Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented' Unit (EDU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio- Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/20:17-GST dated Q6.II.20:17 needs to be complied with."

12.6. Based on the rule 89(1) and Circular No. 147/03//2021-GST dated 12.03.2021 a refund can be filed by the recipient of deemed export supplies of capital goods.

12.7. It is submitted to your good self that the refund has been rejected on the ground that the ITC availed for Capital Goods purchased under EPCG have already been utilized against the outward supplies.

12.8. For the said purpose, it is submitted that the Appellant have availed the ITC through filing GSTR 3B pertaining to Capital Goods as and when the purchases of respective capital goods were made and capitalized in the books of account in the respective tax period.

12.9. Here, the Appellant would like to refer Rule 88A - Order of utilization of input tax credit of CGST Rules, 2017. The said rule clarifies the order of utilization of input tax credit against the tax liability of a respective tax period.

12.10. According to the above mentioned Rule, Input tax credit on account of integrated tax shall be utilized towards payment of integrated tax, the amount remains, if any, may be utilized towards the payment of Central Tax and State tax or Union Territory tax, as the case may be, in any order.

12.11. Before the introduction of Rule 88A, the utilization of ITC pattern was as under:

- i. the input tax credit of CGST and SGST should be first set off against CGST and SGST liabilities,
- ii. then IGST input should be set off against IGST liability and

iii. then remaining portion of IGST input should be set off against CGST and SGST liability. So, Input credit tax left to the extent of IGST only.

12.12. After introduction of Rule 88A , At the present the utilization of ITC scenario is as follows:

- i. ITC in respect of IGST should be first set off against IGST liability, then with CGST liability and remaining if any with SGST.
- ii. After set off of IGST liability, CGST input should be set off against CGST liability and SGST input should be set off against SGST liability.

12.13. As per the above mentioned rule 88A, ITC on account of Central Tax, State tax shall be utilized towards the payment of IGST, CGST and SGST/UGST, only when total Credit of IGST has been first utilized.

12.14. Therefore, after the insertion of Rule 88A, at the time of utilization of input tax credit, the ITC of IGST needs to be utilized first against the outward taxable supply. Due to which in the given case of the appellant the ITC availed in IGST has been utilized at the end of the respective tax period of the capital goods received by the Appellant. Therefore, at the time of refund order there was no IGST balance available in the Electronic Credit Ledger.

12.15. in addition to the above, the Appellant is submitting herewith Circular No.59/33/2018-GST dated 04.09.2018 wherein the clarification is given for calculation of the maximum refund amount. Para 3 of the said circular is reproduced hereunder:

**3. System validations in calculating refund amount**

3.1. Currently, in case of refund of unutilized input tax credit ( ITC for short), the common portal calculates the refundable amount as the least of the following amounts:

a) The maximum refund amount as per the formula in rule 89(4) or rule89(5) of the Central Goods and Services Tax Rules, 2017

b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and

c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

3.2. After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:

a) Integrated tax, to the extent of balance available;

b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

16. The above mentioned circular clearly clarifies that once the maximum amount of refund is determined as per rule 89 of CGST Rules, 2017, the equivalent amount shall be debit from IGST first. But if the IGST amount falls short of the maximum eligible refund amount then the same should be debited equally from CGST and SGST. In the given case if the IGST balance is utilized against the output tax liability, the refund should be debited from CGST/SGST equally as there was sufficient credit balance available in the CGST/SGST credit ledger.

The appellant have further prayed to consider the factual and legal submissions and based on the same grant the refund amount claimed.

**5. Personal Hearing:**

Personal Hearing in the matter was held on 18.04.2024, wherein S/Shri Aashal Patel and Arjun Akruwala, Chartered Accountant appeared in person on behalf of the 'Appellant' as Authorized Representative before the appellate authority. It has been submitted that Refund Claim is rejected solely on the ground that IGST paid on the Capital Goods purchased as deemed export is utilized. But as per rule 88A IGST has to be utilized first and this is done by Portal itself and no option to change the sequence of utilization of ITC. Further they are eligible

for refund in view of Circular No.59/33/2018-GST dated 04.09.2018. They further reiterated the written submissions and requested to allow appeal.

**6 Discussion and Findings:**

6.1. I have carefully gone through the facts of the case and the submissions made by the Appellant and observe that the, appellant are mainly contesting with, that refund of the IGST paid on Capital Goods purchased as deemed export is eligible to be allowed as per Circular No. 59/33/2018-GST dated 04.09.2018 and as per Rue 88A of the CGST Rules, 2017, IGST has to be utilized first and the same is done by the portal itself.

6.2 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 07.12.2023 and the present appeal is filed online on 07.02.2024. 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.

6.4 I observe that the present appeal is filed by the Appellant for rejection of refund of IGST Rs.1,76,85,319/- as there was no sufficient balance of credit of IGST for filing refund application because the appellant had already availed and utilized the credit of Capital Goods procured through EPCG Licence.

6.5 The appellant had claimed IGST refunds under Rule 89(1) of the CGST Rules, 2017 for the period May-2022 to August-2023 on account of Refund by Recipient of deemed export and the supply made under EPCG licence falls under the Deemed Export as per Notification No.48/2017-CT dated 18.10.2017

6.8 I therefore, refer Rule 89(1) of CGST Rules, 2017 and the Circular No. No.125/44/2019-GST dated 18.11.2019 wherein guidelines for fully electronic refund process through FORM GST RFD-01 and single disbursement has been provided:

***"Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-***

*(1) Any person, except the persons covered under notification issued under section 55 claiming refund of <sup>13</sup>any balance in the electronic cash ledger in accordance with the*

provisions of sub-section (6) of section 49 or] any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or <sup>10</sup>[subject to the provisions of rule 10B,] an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

<sup>14</sup>[\*\*\*\*]

<sup>15</sup>[**Provided** that] in respect of supplies to a Special Economic Zone .....

<sup>1</sup>[<sup>16</sup>[**Provided** further that] in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund]"

16. Substituted (w.e.f. 01.10.2022) vide Notification No. 19/2022 - CT dated 28.09.2022 for "Provided also that".

Relevant portion of Circular No.125/44/2019-GST dated 18.11.2019, is as under:

*"Guidelines for refund of tax paid on deemed exports*

41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017- Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with."

6.9 Further, the amendment made in the above para, vide Circular No.147/3/2021 dated 12.03.2021 is as under:

**"2. Clarification in respect of refund claim by recipient of Deemed Export Supply**

2.1 Representations have been received in respect of difficulties being faced by the recipients of the deemed export supplies in claiming refund of tax paid in respect of such supplies since the system is not allowing them to file refund claim under the aforesaid category unless the claimed amount is debited in the electronic credit ledger.





2.2 Para 41 of Circular No. 125/44/2019 – GST dated 18/11/2019 has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.

2.3 The 3rd proviso to Rule 89(1) of CGST Rules, 2017 allows for refund of tax paid in case of a deemed export supply to the recipient or the supplier of deemed export supplies. The said proviso is reproduced as under:

“Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund”

From the above, it can be seen that there is no restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies when the recipient files for refund claim. The said restriction has been placed by the Circular No. 125/44/2019-GST dated 18.11.2019.

2.4 In this regard, it is submitted that in order to ensure that there is no dual benefit to the claimant, the portal allows refund of only Input Tax Credit (ITC) to the recipients which is required to be debited by the claimant while filing application for refund claim. Therefore, whenever the recipient of deemed export supplies files an application for refund, the portal requires debit of the equivalent amount from the electronic credit ledger of the claimant.

2.5 As stated above, there is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019-GST dated 18.11.2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient. The amended para 41 of Circular no. 25/44/2.019-GST dated 18.11.2019 would read as under:

“41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017- Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and the amount does not exceed the amount of input tax credit availed in the

*valid return filed for the said tax period. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with."*

6.10 The adjudicating authority has found that the appellant has already availed and utilized the credit of Capital Goods procured through EPCG Licence, so they are not eligible to claim refund of Credit. In this regard, it is observed that, there is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply. Therefore the dispute is not for filing of refund "on account of Refund by Recipient of deemed export" for the supply under EPCG licence falls under the Deemed Export as per Notification No.48/2017-CT dated 18.10.2017. However, for filing refund, there should be balance of IGST credit in the electronic Credit ledger, which is required to be debited. As regards to utilization of the input tax credit, I refer Rule 88 A of the CGST Rules, 2017 and Circular No.98/17/2019 dated 23.04.2019, relevant portion of the same is reproduced hereunder:

**<sup>1</sup>[Rule 88A. Order of utilization of input tax credit.-**

*Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:*

**Provided** that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.]

1 . Inserted vide Notification No. 16/2019-CT dated 29.03.2019.

**Circular No. 98/17/2019-GST** dated 23.04.2019

*"4.The newly inserted rule 88A in the CGST Rules allows utilization of input tax credit of Integrated tax towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in any order subject to the condition that the entire input tax credit on account of Integrated tax is completely exhausted first before the input tax credit on account of Central tax or State / Union territory tax can be utilized."*

6.11 From the provisions of Rule 88A of CGST Rules, 2017 and Circular No. 98/17/2019-GST dated 23.04.2019, it is amply clear that the entire input tax credit on account of Integrated tax is completely exhausted first before the

input tax credit on account of Central tax or State/ Union territory tax can be utilized. The same is not applicable for reversal of IGST on account of the refund claimed by the appellant. The observation of the adjudicating authority that there was no balance sufficient credit of IGST for filing refund application because the claimant has already availed and utilised the credit of Capital Goods procured through EPCG Licence and hence they are not eligible to claim refund of such credit and therefore rejected the claim of refund of Rs.1,76,85,319/- is in my view, proper and in accordance with the legal provisions .

6.12 As regards the contention of the appellant that para 3.1 and 3.2 of Circular No.59/33/2018 dated 04.09.2018, that once the maximum amount of refund is determined as per Rule 89 [which is actually 89(4)or 89(5)] of the CGST Rules, 2017, the equivalent amount shall be debited from IGST first, but if the IGST amount falls short of the maximum eligible refund amount then the same should be debited equally from CGST and SGST, Relevant text of Circular No.59/33/2018 dated 04.09.2018 is reproduced hereunder:

***“3.System validations in calculating refund amount***

3.1. Currently, in case of refund of unutilized input tax credit (ITC for short), the common portal calculates the refundable amount as the least of the following amounts:

a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”) [formula is applied on the consolidated amount of ITC, i.e. Central tax+ State tax/Union Territory tax+Integrated tax+ Cess(whenever applicable)];

b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and

c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

3.2. After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the claimant in the following order:

a) Integrated tax, to the extent of balance available;

b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).”

6.13 On perusal of the above Circular, I observe that the same is applicable only in respect of refund filed under Rule 89(4) and 89(5) of the CGST Rules,

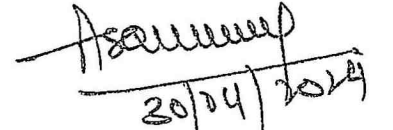
2017 which is derived as per the formula. However, in the present case refund is filed under 2<sup>nd</sup> proviso to Rule 89(1) of the CGST Rules, 2017. Hence the same cannot be made applicable in the present case.

6.14 In view of the above, I do not find any infirmity in the order passed by the adjudicating authority and the same is found to be Legal and proper.

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

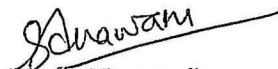
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeal filed by the appellant stands disposed of in above terms.

  
20/04/2024  
(ADESH KUMAR JAIN)  
JOINT COMMISSIONER(APPEALS)  
CGST & C.EX., AHMEDABAD.

Date: .04.2024.

Attested

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



By R.P.A.D.

To:

M/s. Prince Spinners Pvt. Ltd.,  
SURVEY NO 1634/1637, BAGODRA DHOLKA HIGHWAY,  
GANGAD, Ahmedabad, Gujarat, 382240  
(GSTIN-24AADCP9493J1ZW)

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-V, Ahmedabad North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
- ✓ 7. Guard File/ P.A. File.