



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : V2(GST)111 to 116/North/Appeals/2018-19 / 8048 to 8052

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-002-APP-132 to 137-18-19

दिनांक Date : 28-Dec-18 जारी करने की तारीख Date of Issue: 08/01/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग _____ आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनांक : से सृजित

Arising out of Order-in-Original: MP/62 to 67/RFD-01A/ITC Ref/18-19, Date: 29&31-May-18 Issued by: Assistant Commissioner, CGST, Div: II, Ahmedabad North.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Shayona Charitable Trust

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

\भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।



One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

Six appeals have been filed before the Appellate Authority, under section 107 of the Central Goods and Services Act, 2017, by M/s. Shayona Chatirable Trust, 3rd floor, Dharm Sadan Building, Inside Shri Swaminarayan Mandir, Shahibaug Road, Shahibaug, Ahmedabad 380016 [for short –‘appellant’], holding GSTIN No. 24AAATS6243B1ZW, against six impugned original orders, passed in Form GST RFD 06, the details of which are as follows:

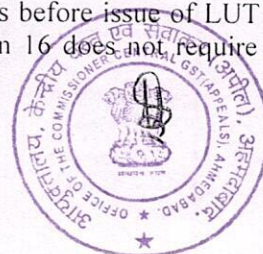
Sr. No.	Appeal No.	Order no. and Date of Form GST RFD 06	Period of dispute	Refund amount rejected		
				Central	State	Integrated
1	V2(GST)111/North/Appeals/18-19	MP/62/RFD-1A/ITC Ref/18-19 dtd 29.5.2018	July 2017	158224	158224	230640
2	V2(GST)112/North/Appeals/18-19	MP/63/RFD-1A/ITC Ref/18-19 dtd 29.5.2018	August 2017	181445	181445	486
3	V2(GST)113/North/Appeals/18-19	MP/64/RFD-1A/ITC Ref/18-19 dtd 31.5.2018	September 2017	38539	38539	0
4	V2(GST)114/North/Appeals/18-19	MP/65/RFD-1A/ITC Ref/18-19 dtd 31.5.2018	October 2017	179530	179530	
5	V2(GST)115/North/Appeals/18-19	MP/66/RFD-1A/ITC Ref/18-19 dtd 31.5.2018	November 2017	141853	141853	349
6	V2(GST)116/North/Appeals/18-19	MP/67/RFD-1A/ITC Ref/18-19 dtd 31.5.2018	December 2017	197894	197894	

2. The facts briefly are that the appellant, is engaged in supplying articles of plastics and other materials, granite, porphyry, basalt sandstone and other monumental or building stonewood marquetry and inlaid wood, caskets and cases for jewellery or cutlery and similar articles of wood, statues and other ornaments, etc.. The appellant, filed the aforementioned refund claims, in respect of unutilized input tax credit in case of zero rated supply in terms of section 54 of the CGST Act, 2017 read with 97A of the CGST Rules, 2017. The Assistant Commissioner, CGST Division II (Naroda Road), Ahmedabad North Commissionerate, [*in short* – ‘*adjudicating authority*’] decided the said refund orders by rejecting the aforementioned amount on the following grounds:

- [a] that the exports were made by the appellant before issue of LUT acceptance memo dated 4.8.2017 by the proper officer and therefore the refund could not be sanctioned since the appellant had exported the goods neither under bond or under LUT and hence the exports cannot be claimed to be non zero rated supply;
- [b] that they had availed ineligible ITC credit in respect of motor vehicle parts;
- [c] that the goods were not received at their registered premises and therefore the appellant had failed to provide any proof that the goods were received by them and exported;
- [d] that certain invoices on which credit was availed, the services were for export made prior to the implementation of GST i.e. 1.7.2017;
- [e] ITC credit is availed on goods whose original invoices were not available;
- [f] that there is a variation between the amount of refund mentioned in refund ARN which is more than the purchase documents produced by the appellant.

3. Feeling aggrieved, the appellant has filed the appeal against the aforementioned impugned OIOs, raising the following averments:

- that as far as the objection regarding export of goods before issue of LUT is concerned, they had received the LUT on 4.8.2017; that section 16 does not require that a supply



must be done under LUT or with payment of tax to fall under the definition of zero rated supply; that section 16 prescribes that person shall be eligible for refund of unutilized input tax credit if he has made supply without payment of integrated tax under bond or LUT; that they wish to rely on circular no. 37/11/2018 dtd 15.3.2018;

- that they have already reversed the credit of input tax taken on motor vehicle parts;
- that in respect of rejection of refund on the grounds that the input goods used for making zero rated supply received at premise other than registered premises, they wish to state that section 16(2) specifies that receipt of goods or services or both that it does not mention the word registered premises; that they have included the address mentioned in the invoice as additional place of business on 19.4.2018; that this was only a procedural lapse;
- that in respect of input tax credit on services procured for export made prior to July 2017, they wish to state that the supplier had charged GST in his invoices which was issued post implementation of GST and accordingly they have availed credit;
- that in respect of input tax credit availed wherein invoices original are missing, they wish to state that there is no clarification as to whether the invoice should be an original or a photo copy; that the appellant has already reversed the input tax credit in this regard;
- that in respect of the rejection regarding variation in amount claimed as refund as per ARN which is more than the purchase document, they wish to state that they have produced all the documents.

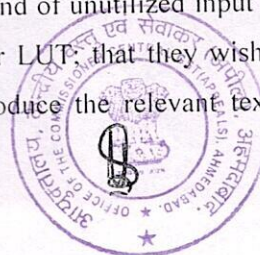
4. Personal hearing in the case was held on 26.10.2018 wherein Shri Dharmang Mehta, CA and Shri Ajit Boricha, CA, appeared on behalf of the appellant and reiterated the grounds of appeal. They also submitted additional submissions reiterating the grounds and produced a copy of circular no. 37/11/2018-GST dated 15.3.2018.

5. I have gone through the facts of the case, the grounds of appeal and the oral averments and additional submissions made by the appellant. The question to be decided in this appeal is whether the adjudicating authority was correct in rejecting the refund on the grounds, which are briefly mentioned *supra*.

6. Before moving to the grounds raised, I will first of all deal with two issues wherein the appellant states that they have reversed the input tax credit (ITC) availed viz. [a] in respect of ITC credit availed on motor vehicle parts; and [b] ITC credit on goods whose original invoices were not available. Since these amounts stand reversed, it is safely assumed that the appellant is not contesting the rejection of refund on these grounds.

7. Now I will take up those issues wherein the appellant has contested the rejection of refund:

[a] Rejection of refund on the ground that the exports were made by the appellant before issue of LUT acceptance memo dated 4.8.2017 by the proper officer. The adjudicating authority has held that the refund could not be sanctioned since the appellant had exported the goods neither under bond or under LUT and the supply cannot be claimed to be non zero rated supply. The appellant in this regard has stated that that as far as the objection regarding export of goods before issue of LUT is concerned, they had received the LUT on 4.8.2017; that section 16 of the IGST Act, 2017, does not require that a supply must be done under LUT or with payment of tax to fall under the definition of zero rated supply; that section 16 prescribes that person shall be eligible for refund of unutilized input tax credit if he has made supply without payment of integrated tax under bond or LUT; that they wish to rely on circular no. 37/11/2018 dtd 15.3.2018. In this regard I would reproduce the relevant text of the aforementioned circular, viz.



4. **Exports without LUT** : Export of goods or services can be made without payment of integrated tax under the provisions of rule 96A of the Central Goods and Services Tax Rules, 2017 (the CGST Rules). Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the jurisdictional Commissioner before effecting zero rated supplies. A detailed procedure for filing of LUT has already been specified vide Circular No. 8/8/2017-GST, dated 4th October, 2017 [2017 (5) G.S.T.L. C24]. It has been brought to the notice of the Board that in some cases, such zero rated supplies have been made before filing the LUT and refund claims for unutilized input tax credit have been filed.

4.1. In this regard, it is emphasised that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

In view of the clarification, it is evident that the rejection of refund filed is legally not tenable. The rejection on this ground of the refund is therefore set aside, in view of the aforementioned clarification.

[b] Rejection of refund on the ground that the goods were not received at their registered premises and therefore the appellant had failed to provide any proof that the goods were received by them and exported. The appellant has however, contested that section 16(2) of the CGST Act, 2017, does not mention the word registered premises; that they have included the said address mentioned in the invoice as additional place of business on 19.4.2018; that this was only a procedural lapse. The appellant's claim was examined as they had attached the registration certificate dated 19.4.2018, which contains the details of additional place of business. However, the address mentioned of their premises at GIDC Gandhinagar does not find a mention as additional place of business even in the certificate dated 19.4.2018. The address pertaining to Aslali finds a mention in the amended registration certificate. The premises at C-1/39/17, Behind Mazda Control Phase III, GIDC Naroda, is also not the one for which they have included as additional premises of business because on going through the registration certificate I find that the additional premises included is C1/93/17. However, after having said so, I would also like to examine the claim of the appellant wherein he states that section 16, ibid, puts no compulsion that the goods should have been received in the registered premises. Section 16 of the CGST Act, 2017, states as follows:

SECTION 16. Eligibility and conditions for taking input tax credit. —

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- (b) he has received the goods or services or both.

[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —



- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]
- (c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

What the appellant contends therefore is correct. The Act, does not speak that the credit can be availed only if the goods are received at the registered premises. Hence, the rejection of t refund by the adjudicating authority on this ground, is set aside.

[c] Rejection of refund on the ground that certain invoices on which credit was availed, the services were for export made prior to the implementation of GST i.e. 1.7.2017. The appellant contends that in respect of input tax credit on services procured for export made prior to July 2017, the supplier had charged GST in his invoices which was issued post implementation of GST and accordingly they have availed credit. Now, I find that the transitional provisions of Section 142 of the CGST Act, 2017 would come into play.

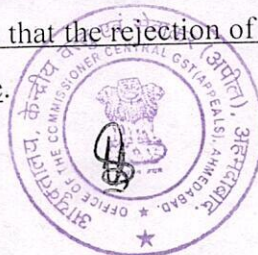
Section 142(10)

Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

Section 142(11)

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994

Hence in this case, ideally GST is not payable since supply did not originate under the GST Act. However, time and again the Courts and the Tribunals have held that once tax is paid which is not challenged in assessment, the refund of the said tax cannot be rejected on the grounds that the tax was not payable/correctly paid. There is nothing on record that payment of the supplier stands challenged. Owing to this I find that the rejection of the refund is not correct and therefore the rejection on this ground is set aside.



[d] Rejection of refund on the ground that there is a variation between the amount of refund mentioned in refund ARN which is more than the purchase documents produced with the claim. The Appellant in the grounds has claimed that they have enclosed all the documents, which are marked as exhibit 8. However, on going through the appeal papers of appeal no. V2(GST)113/North/Appeals/2018-19, I find that the same is not enclosed with the appeal papers. Further, the adjudicating authority has clearly recorded in the impugned OIO that the appellant had agreed to reverse the differential amount of Rs. 262/- each for CGST and SGST. Once the appellant has before the adjudicating authority agreed to reverse the amount, implying that they are therefore not eligible for the refund, their challenging the same before the appellant authority is not correct/tenable. Therefore, this rejection by the adjudicating authority is upheld. I am also aware of the fact that consequent to rejection of refund the adjudicating authority has re-credited the inadmissible refund by way of PMT-03.

8. In view of the foregoing, the appeal is partly allowed and partly rejected.

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.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date : 28.12.2018

Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.



By RPAD.

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Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad- 380 009.
3. The Commissioner, Central Tax, Ahmedabad North Commissionerate.
4. The Assistant Commissioner, Central Tax Division- II, Ahmedabad North Commissionerate.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad North Commissionerate.
6. Guard File.
7. P.A.

