



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलिफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)1,41,91,125/Ahd-South/2019-20/13526 70/3530

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-JC-035 to 038-2019-20
 दिनांक Date : 09-01-2020 जारी करने की तारीख Date of Issue 10/01/2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित
 Passed by Shri. Mukesh Rathore, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No V/Refund/Div-IV/17-029/Gopi/19-20 दिनांक: 23.07.2019 ,
 V/Refund/Div-IV/17-029/Gopi/19-20 दिनांक: 23.07.2019, V/Refund/Div-IV/17-029/Gopi/19-20
 दिनांक: 23.07.2019, V/Refund/Div-IV/17-029/Gopi/19-20 दिनांक: 23.07.2019 issued by Assistant
 Commissioner, Div-IV, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
 M/s Gopi Synthetics Pvt Ltd
 Ahmedabad

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।

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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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 प्रकिया 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.

(1)



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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 हों।

(c) 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.

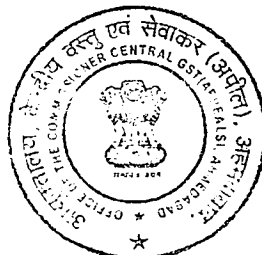
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गत:-

Under Section 112 of CGST act 2017 an appeal lies to :-

(क) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 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 अनुसूचि-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 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 और 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

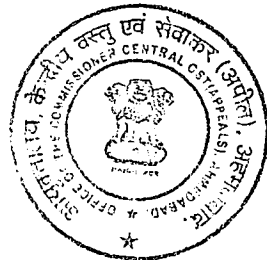
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

इस 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(l) 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

This order arises on account of four (4) appeals filed by M/s Gopi Synthetics Pvt. Ltd., Survey No.302, Narol-Vatva Road, Ahmedabad-382405 (in short 'appellant') against the following Orders-in-Original (in short 'impugned orders') passed by the Assistant Commissioner, CGST, Division-IV (Narol), Ahmedabad South (in short 'adjudicating authority') in respect of four refund claims filed by the appellant under the provisions of Section 54(3)(ii) of the CGST Act, 2017 (in short 'the Act') read with Rule 89(5) of the Central Goods & Services Tax Rules, 2017(in short 'the Rules'):

Sr. No.	OIO No. & Date	Period for which refund claimed	Amount of refund claimed (Rs.)	Amount of refund sanctioned (Rs.)	Appeal No.
1	V/Refund/Div-IV/17-288/ Gopi/18-19 dated 29.01.2019	July-August 2017	1584596	207574	V2(GST)1/ Ahd- South/ 2019-20
2	V/Refund/Div-IV/17-496/ Gopi/18-19 dated 29.03.2019	November 2017 to March 2018	4175365	1289256	V2(GST)41/ Ahd- South/ 2019-20
3	V/Refund/Div-IV/17-029/ Gopi/19-20 dated 23.07.2019	April 2018 to May 2018	1500815	230211	V2(GST) 91/ Ahd- South/ 2019-20
4	V/Refund/Div-IV/17-201/ Gopi/18-19 dated 23.07.2019	June 2018 to July 2018	2019116	1410186	V2(GST)125/ Ahd- South/ 2019-20

2. Brief facts of the case are that the appellant having GSTIN 24AAACG7683G1ZJ had filed refund claims under form RFD-01A for the period as mentioned above in respect of unutilized Input Tax Credit (ITC) accumulated on account of rate of tax on input being higher than the rate of tax on output supplies. The appellant is engaged in processing of Cotton Fabrics falling under HSN 5208 to 5212 and fabrics of man-made textile materials under HSN 5407-5408). They also undertake the processing of fabrics on job work basis. Though the supply of goods in the case of appellant was covered under inverted duty structure, the refund of unutilized ITC accumulated on account of the same as provided under Section 54(3) of the Act was not allowed in respect of output supplies of woven fabrics in terms of Notification No.5/2017-Central Tax (Rate) dated 28.06.2017. However, such refund was allowed in respect of processing carried out on job work basis as such job work activity is covered as services in GST Act which was not restricted under Notification No.5/2017-Central Tax (Rate). The refund claims referred above were filed in respect of such job work activity done under the provisions of Section 54(3) of the Act read with Rule 89(5) of the Rules and Notification No.5/2017-Central Tax (Rate) dated 28.06.2017. During the course of scrutiny of the said refund claims, it was noticed that the amount of refund claimed was in excess as the claimant has wrongly taken into account the turnover of his own supply along with turnover of supply under jobwork in the formula prescribed for computation of



admissible refund under Rule 89(5) of the Rules. Since the refund in the case was admissible only in respect of job work activity, the turnover pertaining to such activity only have to be considered as "turnover of inverted rated supply of goods and services" in the formula prescribed for computing admissible refund. Therefore, the appellant was issued with a notice proposing rejection of refund amount found to have been claimed in excess for the above reason. The refund claims were decided by the adjudicating authority vide the impugned orders wherein he has sanctioned partly the refund of the ITC credit as detailed in the above table which was found admissible as per the law and rejected the remaining amount of refund found as claimed in excess.

3. The appellant, being aggrieved with the rejection part of the refund claimed, has preferred the present appeals against the impugned orders mainly on following grounds:

(i) In their case since they are eligible for refund of ITC accumulated in respect of job work activity only, they have calculated the admissible refund amount after they have ascertained the ITC credit attributable to fabrics processed under job work which they have done on the basis of quantity of fabrics processed for supply (sale) to their customers and that of job work as they are maintaining common account of input tax credit and inputs for both kind of process, own as well as of job work and that this quantification can not be done value wise since the job work billing is towards job charges only while supply/sale of their own fabrics includes total consideration;

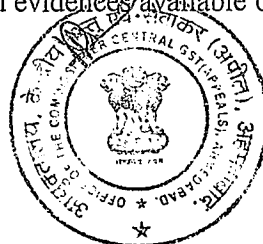
(ii) The very intent of legislation is to refund the input tax accumulated due to inverted tax structure relating to eligible goods and services and in their case the same is service namely Job work on fabrics. In absence of specific and clear method, the appellant adopted a method in line with the intent of law ;

(iii) Without prejudice to their above contention, it is submitted that there has been ambiguity in formula with regards to "turn over of inverted rated supply of goods or services". It is submitted that in their case the fabrics processed for their own and that under job work both fall under inverted duty structure. The procedure did not prescribe that in formula turnover of only job work is to be inserted. Thus, it is a matter of ambiguity in provision itself. The same has been interpreted by them in judicious manner; and

(iv) They rely upon the case laws of Advani Oerlikon Ltd. Vs. ACCE, Bangalore [1993 (63) ELT 427 (Mad.)] and Commissioner of IT Vs. Ecom Gill Coffee Trading P. Ltd. [2014 (305) ELT 328 (Kar.)] in support of their contention.

4. A hearing in the matter was held on 04.11.2019. Shri M.K. Kothari and Shri Anuj Aggarwal, Authorised Representatives appeared and reiterated the submissions of appeal memo and submitted a written submission dated 04.11.2019.

5. I have carefully gone through the facts of the case, appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find

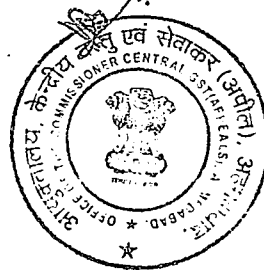


that the refund of unutilized ITC accumulated due to inverted duty/tax structure is granted as per the provisions of Section 54(3) of the Act read with Rule 89(5) of the Rules and the refund of ITC is to be granted as per the following formula prescribed under Rule 89(5) *ibid*:

$$\text{Maximum Refund Amount} = \{(\text{Turnover of inverted rated supply of goods and Services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} \\ - \text{tax payable on such inverted rated supply of goods and services.}$$

Though Section 54(3) of the Act provides for refund of unutilized ITC on account of rate of tax on input being higher than the rate of tax on output supplies viz. inverted duty structure, such refunds are not allowed in respect of certain goods specified vide Notification No.5/2017-Central Tax (Rate) dated 28.06.2017.

6. In the case on hand, it is so that the appellant was engaged in supply of both the goods and the services as the fabrics processed for supply to customers directly by them qualifies as supply of goods whereas the fabrics processed under job work qualifies as supply of service under GST law and in both the supplies their case falls under inverted duty structure. But, the refund of unutilized ITC on account of inverted duty structure in respect of fabrics processed for supply to customers directly by them is not allowable in terms of Notification No.5/2017 referred above as the specified goods for which refund is not allowed as per the said Notification included processed fabrics. However, such refund is admissible in respect of fabrics processed by them under jobwork as the said supply is treated as supply of services for job work of processing of fabric being services under GST law and the Notification No.5/2017 does not disallow refund in cases of output supplies of services. It is not in dispute that the eligible refund in the case of appellant is the refund of unutilized ITC accumulated on account of inverted duty structure in respect of their job work activity only. It is the case of appellant that since they are maintaining account of inputs and input tax credit in respect of inputs used by them for processing of fabrics commonly for both their own production and for job work activity, for claiming refund of ITC as stated above in their case the input tax credit attributable to job work activity is to be determined first. It is their view that for deriving the ITC attributable to job work activity, the method of calculation based on ratio of turn over of job work activity to the total turn over is not feasible in their case as the job work billing is towards job charges only while supply/sale of their own fabrics includes total consideration and hence they derived the ITC attributable to job work activity on the basis of ratio of quantity of fabrics processed under jobwork to the total quantity of fabrics processed which will reflect their correct eligibility of ITC in respect of job work. I find that the method of calculation of ITC in the case by the appellant as stated above is not acceptable as the provisions governing the refund in the case does not permit such calculation based on quantity of goods supplied. As can be seen from the formula prescribed under Rule 89(5) of the Rules for computing the refund, the Net ITC in case of inverted rated supply of goods and services is mandated to be on the ratio of turnover of inverted rated supply of goods and services to the Adjustable Turnover. Therefore, it is clear that net ITC




attributable in respect of job work activity in the case is to be calculated on the basis of value of goods and services and can not be on the basis of quantity of processing done. That being so, the appellant's contention and logic in the matter as discussed above does not sustain before law for being not in consonance with the provisions of law in this regard. The other contention of the appellant is that there has been ambiguity in formula with regards to "turn over of inverted rated supply of goods or services" and that in their case the fabrics processed for their own and that under job work both fall under inverted duty structure and that the procedure did not prescribe that in formula turnover of only job work is to be inserted. In this regard, it is to observe that when the formula prescribed is for the purpose of computing refund of unutilized ITC accumulated on account of inverted duty structure, it is clear that "turnover of inverted rated supply of goods or services" specified in the formula refers to the turnover of inverted rated supply for which the refund is claimed and when that is so, the turnover to be taken into account in the case of appellant's refund in the present case would be the turnover pertaining to job work activity, in respect of which the refund is claimed by them. Therefore, there does not appear to be any ambiguity in the provisions of law as argued by the appellant. In view thereof, I do not find any legal infirmity in the impugned orders passed by the adjudicating authority.

7. Accordingly, the appeals of the appellant are rejected being devoid of merits and the impugned orders are upheld as legal and proper.

8. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.

Attested:

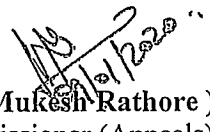

(Anilkumar P.)
09/01/2020
Superintendent(Appeals),
CGST, Ahmedabad.

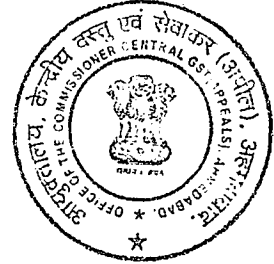
BY SPEED POST TO:

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Copy to:-

1. The Principal Chief Commissioner, Central Tax , Ahmedabad Zone..
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner, CGST Division-IV (Narol), Ahmedabad South.
4. The Asstt. Commissioner, CGST (System), HQ, Ahmedabad South.
(for uploading OIA on website)
5. Guard file.
6. P.A. File


(Mukesh Rathore)
Joint Commissioner (Appeals)
Date: 09.01.2020.



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