



सत्यमेव जयते

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)146/Ahd-South/2019-20 / 14791 to 14796
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-JC-057-2019-20
दिनांक Date : 27-03-2020 जारी करने की तारीख Date of Issue 10/06/2020
- श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mukesh Rathor, Joint. Commissioner (Appeals)
- ग Arising out of Order-in-Original NoV/Div-I/REF-GST/389/Dhakkanjiwala/18-19 दिनांक:
23.07.2019 issued by Assistant Commissioner, Div-I, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Z.K Textile
Ahmedabad

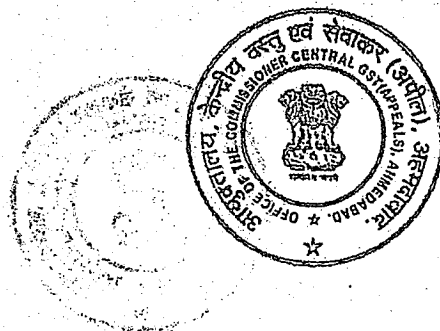
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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 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.
- (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।



(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.

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.

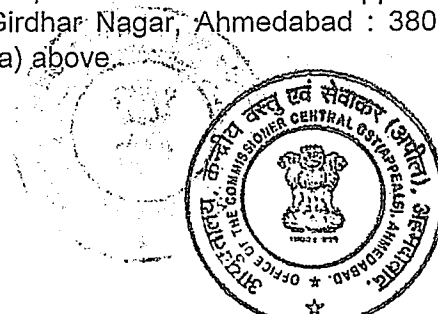
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय 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 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 Appellate 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 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 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।

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."

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 Act,2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

M/s. Z.K. Textiles Proprietor Mohd. Shehzad Ysufbhai Dhakkanwala, Survey No. 170, 178,186, Plot No. 135/1 to 135/6, Gulabnagar, Gujarat Nursery Opp. Suez Farm Pirana Road, Behrampura, Ahmedabad -380023 (*hereinafter referred to as 'appellant'*) has filed the present appeal against Order-In-Original No. V/DIV-I/REF-GST/389/Dhakkanjiwala/18-19 dated 23.07.2019: (*hereinafter referred to as 'impugned orders'*) passed by the Deputy Commissioner, CGST & C.Ex., Division-I, Ahmedabad South (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant, having G.S.T.I.N 24AJCPD6559L2Z1, has filed a claim for refund of Rs. 2,96,460/- for accumulated Input Tax Credit due to inverted tax structure for the month of November-2018 on GSTN portal on 15.02.2019 under section 54(3) of the CGST Act, 2017. On scrutiny of the claim the adjudicating authority has issued two deficiencies memos 26.02.2019 and 15.03.2019 to the appellant. As per documents submitted by the appellant the adjudicating authority find that, as per formula given under section-54(3)(iii) read with rule 89(5) of CGST rules 2017, the refund claim of Rs. 1,53,326/- is admissible out of refund amount of Rs. 2,96,460/- debited from Electronic credit ledger and Rs. 1,43,134/- (Rs. 2,96,460-Rs. 1,53,326/-) is liable to rejection. As the appellant failed to submit the complete claim up to the satisfaction of the adjudication authority, notice for rejection of the subject claim (Rs. 1,43,134/-) was issued in Form GST-RFD-08 (under Rule 92(3) of CGST Act, 2017 vide SCN No. V/DIV-I/REF-GST/389/Dhakarjiwala/18-19 dated 24.06.2019 to the appellant. The adjudicating authority vide impugned order has rejected an amount of Rs. 1,43,134/- out of total claim Rs. 2,96,460/- under the provision of sub section 8 of Section 54 of the CGST Act, 2017.

3. Being aggrieved, the appellant has filed the present appeal before me on the following grounds:

- The order passed by the Ld. Proper officer is against the law, equity and justice.
- The Ld. Proper officer has erred in law and on facts in disallowing the refund of Rs. 1,43,134/-.
- The appellant craves liberty to add., amend, alter or modify all or any grounds of appeal before final appeal.

4. A personal hearing in the matter was held on 02.03.2020. Shri M.S. Chhajed, CA, appeared before me on behalf of the appellant and reiterated the grounds of appeal.

5. I have gone through the facts of the case and submissions made in the appeal memorandum. The limited point to be decided is whether the appellant is eligible for the Refund claim which was rejected by the adjudicating authority in the impugned order on



the ground to non-submission of documents as specified in Rule 89(5) of the CGST Rules, 2017 read with Notification No. 26/2018-Central Tax dated 13.06.2018.

6. Before going to decide the case, I want to produce the relevant part of, Rule 89(5) of the CGST Rules, 2017 for accumulated input tax Credit due to inverted tax structure for relevant period, for the ease of the case:

[(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula :-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation :- For the purposes of this sub-rule, the expressions -

- (a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
- (b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4).]

Further the relevant part of Notification No. 26/2018-Central Tax dated 24.06.2019 (In the case of refund on account of inverted duty structure):

(iii) with effect from 01st July, 2017, in rule 89, for sub-rule (5), the following shall be substituted, namely:-

"(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:- Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services. Explanation:- For the purposes of this sub-rule, the expressions - (a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and (b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4)."

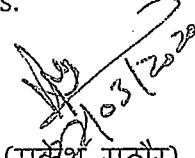
7. From the above, it is very crystal clear that, without submission of correct & proper documents of refund claim by the appellant, adjudicating authority cannot be quantified the correct amount of refund. I find that before rejection of Refund claim, two deficiency memos letter dated 15.02.2019 and 15.03.2019, and notice for rejection of claim in form GST-RFD 08 dated 24.06.2019 were issued to the appellant. Apart from above, personal hearing in the matter was fixed on 09.07.2019, 11.07.2019 and 15.07.2019 in the matter. All these clearly indicate that adequate steps/opportunities were taken/provided by the adjudicating authority before deciding the case. However, it is observed that the on scrutiny of documents provided by the appellant, the adjudicating authority has sanctioned the admissible amount of refund as per verification details mentioned at para 5 of the impugned order. Further, I find that the appellant has not disclosed the contention to the adjudicating authority or submitted any documents in their favor. Therefore, I do not find any reason to interfere in the impugned order.



8. In view of above discussions, I uphold the impugned order passed by the adjudicating authority and reject the appeal filed by the appellant.

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

9. The appeals filed by the appellants stand disposed of in above terms.


(मुकेश राठौर)

संयुक्त आयुक्त (अपील्स)



Date : 27-03-2020

Attested


(V.V. Mohnan)

Superintendent(Appeals),
Central Tax, Ahmedabad

To,

M/s. Z.K. Textiles

Proprietor Mohd. Shehzad Ysufbhai Dhakkanwala,

Survey No. 170, 178,186, Plot No. 135/1 to 135/6,

Gulabnagar, Gujarat Nursery

Opp. Suez Farm Pirana Road, Behrampura,

Ahmedabad -380023.

Copy to:

- (1) The Chief Commissioner, Central GST, Ahmedabad Zone.
- (2) The Pr. Commissioner, Central GST, Ahmedabad South.
- (3) The Deputy Commissioner, Central GST, Division-I, Ahmedabad South.
- (4) The Assistant Commissioner(RRA), Central GST, Ahmedabad South.
- (5) The Asstt. Commissioner(System), Central GST HQ, Ahmedabad.

(for uploading the OIA on website)

~~(6)~~ Guard file

(7) P.A. file.