

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

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टेलीफैक्स 07926305136

रजिस्टर्ड डाक ए.डी. द्वारा

DIN - 20201164 SW 0000 675 BFF

क फाइल संख्या File No : V2(GST)/EA-2/Ahd-South/2020-21/16218 70 16222

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-JC-019/20-21

दिनांक Date : 21-10-2020 जारी करने की तारीख Date of Issue : 02/11/2020

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No AC/SKL/61/Div-II/19-20 दिनांक: 01.10.2019 issued by Assistant Commissioner, Central GST, Division-II, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s Cadmach Machinery Private Limited, Plot No.3604/3605, GIDC, Phase-IV,
Vatva, Ahmedabad-382445..

(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 www.cbic.gov.in 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 www.cbic.gov.in.



ORDER-IN-APPEAL

The Assistant Commissioner of Central GST, Division-II, Commissionerate:Ahmedabad-South (hereinafter referred to as the 'Department'), in pursuance of the Review Order No. 01/2020-21 dated 12.05.2020 passed by the Principal Commissioner of Central GST, Ahmedabad-South has filed this appeal against the Order-in-Original No. AC/SKL/61/DIV-II/2019-20 dated 01.10.2019 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner of Central GST, Division-II, Commissionerate:Ahmedabad- South (hereinafter referred to as the "adjudicating authority") in case of M/s. Cadmach Machinery Co. Pvt. Ltd., Plot No. 3604/3605, GIDC, Phase-IV, Vatva, Ahmedabad-382445 holding GSTIN 24AAACC6242R1ZF (hereinafter referred to as the "respondent").

2. The facts of the case, in brief, are that the respondent has issued invoice no. SIN/1920/0657 dated 29.06.2019 to M/s. La Renon Healthcare Pvt. Ltd. (GSTIN 24AABCL3413G1ZZ), 207-208, Iscon Elegance Circle-P, S.G.Highway, Ahmedabad-380015 in respect of the goods valued at total Rs. 1,76,00,000/- involving CGST of Rs. 15,84,000/- and SGST of Rs. 15,84,000/- as a deemed export supplies against EPCG Licence No. 0830011079 dated 19.03.2019 holding by the said party. Thereafter, the said respondent has filed manually refund claim for an amount of total Rs. 31,68,000/- on 17.09.2019 in respect of the said supply covered under the category of deemed export. The adjudicating authority vide OIO No. AC/SKL/61/DIV-II/2019-20 dated 01.10.2019 sanctioned an amount of Rs. 31,68,000/- (CGST of Rs. 15,84,000/- and SGST of Rs. 15,84,000/-) to the said respondent under sub-section (5) of Section 54 of CGST Act, 2017, on the basis of the following facts revealed from the verification of the documents submitted by the respondent:-

(i) M/s. La Renon Healthcare Pvt. Ltd. is holding the valid EPCG Authorisation No. 0830011079 dated 19.03.2019 along with invalidation certificate and accordingly, they have procured goods against said authorization from the respondent.

(ii) The said buyer has also given an undertaking in favour of supplier of goods (i.e. the respondent) for claiming the refund of tax paid on such goods cleared against the said authorization.



(iii) The respondent have supplied the goods under Invoice no. SIN/1920/0657 dated 29.06.2019 against EPCG Authorisation No. 0830011079 dated 19.03.2019, for taxable value of Rs. 1,76,00,000/- having value of CGST & SGST amounting to Rs. 15,84,000/- each. Further as per the declaration submitted by the respondent, the buyer M/s. M/s. La Renon Healthcare Pvt. Ltd. has not availed ITC of CGST Rs. 15,84,000/- and SGST Rs. 15,84,000/- in respect of the said procurement against EPCG authorization.

3. Being aggrieved with the impugned order, the Department preferred the appeal on the grounds reproduced as herebelow:

3.1 In terms of the Notification No. 49/2017-Central Tax dated 18.10.2017, the following evidences are required to be produced by the supplier of deemed export supplies for claiming refund.

- (i) *Acknowledgement by the jurisdictional Tax Officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.*
- (ii) *An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.*
- (iii) *An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.*

The Jurisdiction Tax Officer (Superintendent, Range-II, Division VII, CGST, Ahmedabad-South) has certified that they have verified the details of Invoice No. SIN/1920/0657 dated 29.06.2019 from AIO in case of M/s. La Renon Healthcare Pvt. Ltd. having office at 207-208, Iscon Elegance Circle-P, S.G.Highway, Ahmedabad-380015 and found no discrepancies. However physical verification of the goods cannot be conducted.

3.2 As per the Invoice No. SIN/1920/0657 dated 29.06.2019 issued by the respondent, the recipient of the invoice is M/s. La Renon Healthcare Pvt. Ltd. (GSTIN 24AABCL3413G1ZZ), 207-208, Iscon Elegance Circle-P, S.G.Highway, Ahmedabad-380015 whereas the goods is delivered to M/s. Standford Laboratories Pvt. Ltd., 8, Industrial Area, Mehatpur, Una, Himachal Pradesh. The Jurisdictional Tax Officer has not verified whether the goods are received by the said EPCG Authorization holder.



3.3 In OIO adjudicating authority has not verified the condition of Notification No. 49/2017 dated 18.10.2017 while sanctioning the refund claim. Further it is also not mentioned in findings of the adjudicating authority-

(a) Whether supplies of machines supplied are manufactured in India.

(b) Whether the goods are duly received by the EPCG Authorisation holder as required under Notification No. 49/2017 dated 18.10.2017.

3.4 The adjudicating authority has merely relied upon the undertaking submitted by the respondent and has not verified the evidences as prescribed under the said Notification No. 49/2017 dated 18.10.2017. Hence, the refund sanctioned by the adjudicating authority of an amount of Rs. 31,68,000/- is not proper and legal. Accordingly, it has been requested to set aside the impugned order passed by the adjudicating authority vide which refund amounting to Rs. 31,68,000/- has been erroneously sanctioned to the said respondent and also to pass an order directing the adjudicating authority to recover and appropriate the amount erroneously refunded with interest.

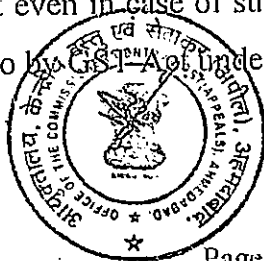
4. The respondent in their cross-objection dated 14.07.2020 in appeal, has submitted as herebelow:

4.1 Whether the office of Joint Commissioner, Appeals at Ahmedabad is "Appellate Authority" within the meaning of Section 107 of CGST Act, read with Rule 109A?

4.2 It is correct to say that the goods were consigned to the supporting manufacturer. However the supply was on behalf of the advance authorization holder and as per the advance authorization. The advance authorization clearly mentioned supporting manufacturer and it is permissible to manufacture by the supporting manufacturer under the Import Export Policy. All the action by the supporting manufacturer would have the effect as if the same is by the advance authorization holder.

In terms of the Para-5.02 (a) of the Import Export Policy, the supporting manufacturer can receive the capital goods for the licence/authorization holder and hence when the goods were consigned to supporting manufacturer there is no violation of the Import Export Policy.

Further, the para-5.07 of the policy also provides for domestic procurement as well as grant of benefit of deemed export benefit. Thus the policy provides for deemed export benefit even in case of supporting manufacturer and it is this policy which is given effect to by CGST Act under the said notification.



4.3 However under GST law, the requirement would be to ensure that the capital goods actually reach the intended person, which can be supporting manufacturer and to ensure this aspect the condition is provided in Notification No. 49/2017. Thus the requirement of the notification must be seen from this perspective.

When the goods are consigned to supporting manufacturer, it is on behalf of the advance authorization holder. Thus the delivery to the supporting manufacturer is always delivery to the advance authorization holder and in such case only the place of delivery is different.

Even under the Section 33 of Sale of Goods Act, delivery made to supporting manufacturer is delivery under the contract of sale to the Advance authorization holder. Moreover, as per Section 149 of the Contract Act, the delivery to bailee is by putting the goods and the possession of the intended bailee or of any person authorized to hold them on his behalf.

The notification requirement is NOT that the goods must be physically received by the Advance authorization holder. The receipt on his behalf is also sufficient, particularly so when the policy permits such receipt by supporting manufacturer.

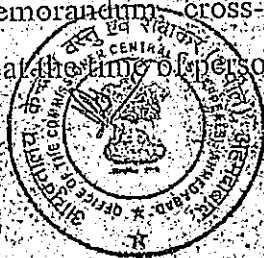
The GST Notification is only to implement the policy of Government as is declared in Import Export Policy. As policy permits the supply and manufacture by the supporting manufacturer, the receipt by the supporting manufacturer is receipt by the Advance authorization holder.

5. Personal Hearing in this Appeal was held on 22.09.2020 through video conferencing. Shri S.J.Vyas, Advocate appeared on behalf of the respondent. He reiterated the written submissions dated 14.07.2020 in cross objection filed by them and requested to consider the same. During said personal hearing, he also requested that he will submit additional submission through e-mail.

5.1 Again on 22.09.2020, Shri S.J.Vyas, Advocate also made further submission reproduced as herebelow:

"The appeal is barred by limitation. The date of communication, as per memo of appeal, is 4-10-19. The appeal is required to be filled within 6 months i.e. upto 4-4-2020. The appeal is signed on 18-05-2020."

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum, cross-objection made by the Respondent and the submissions made at the time of personal hearing.



6.1 As regards to the preliminary objection raised by the respondent, as mentioned at para-4.1 above, I find that the present appeal has been filed by the department as per the authorization issued in terms of sub-section (2) of Section 107 of the CGST Act, 2017 against Order-in-Original No. AC/SKL/61/DIV-II/2019-20 dated 01.10.2019 passed by the Assistant Commissioner of Central GST, Division-II, Ahmedabad-South Commissionerate.

As per the provisions of Section 2 of CGST Act, 2017, Appellate Authority is defined at Sr. No. (8) as "*Appellate Authority*// means an authority appointed or authorised to hear appeals as referred to in section 107;"

Now, the provisions of Rule 109A (2) of CGST Rules, 2017 [Inserted by Noti. No. 55/2017-C.T dated 15-11-2017, read with Noti. No. 60/2018-C.T dated 30-10-2018] are also reproduced herebelow:

"An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) [any officer not below the rank of Joint Commissioner (Appeals)] where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent,

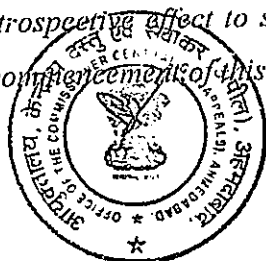
within six months from the date of communication of the said decision or order.]"

Accordingly, in the present case, the Joint Commissioner, Appeals is a proper Appellate Authority in terms of the provisions of CGST Act, as mentioned above.

6.2 Further, as regards to the submission by the respondent that "*The appeal is barred by limitation.*" as mentioned at para-5.1 above, I find that Section 168A CGST Act, 2017 [inserted as per Chapter-VII of the Taxation and other laws (Relaxation of Certain Provisions) Ordinance, 2020 (No. 2 of 2020) dated 31.03.2020] provides as under:

"(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act."



Further, as per the Notification No. 35/2020-Central Tax dated 03.04.2020, in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government, on the recommendations of the Council, notifies that:

"(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of June, 2020, including for the purposes of—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above";

In the present case, I find that the date of communication, as per memo of appeal, is 4-10-19. In normal course, the appeal is required to be filled within 6 months i.e. upto 4-4-2020. However, I find that since the time limit is extended upto the 30th day of June, 2020 vide Notification No. 35/2020-Central Tax dated 03.04.2020, the appeal has been filed by the department is within prescribed time limit and the contention of the respondent that *"The appeal is barred by limitation"* is not correct.

6.3.1 Now, I find that vide Notification No. 49/2017-Central Tax dated 18.10.2017, the Central Government notified the following evidences which are required to be produced by the supplier of deemed export supplies for claiming refund, namely:-

- (1) *Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.*



- (2) *An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.*
- (3) *An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.*

Whereas, I find that the Jurisdiction Tax Officer (Superintendent, Range-II, Division VII, CGST, Ahmedabad-South) has issued a certificate dated 30.09.2019 vide which it is certified that they have verified the details of Invoice No. SIN/1920/0657 dated 29.06.2019 from AIO in case of M/s. La Renon Healthcare Pvt. Ltd. having office at 207-208, Iscon Elegance Circle-P, S.G.Highway, Ahmedabad-380015 and found no discrepancies. However physical verification of the goods cannot be conducted.

6.3.2 Further, I also find that the adjudicating authority in the impugned order has not verified the condition of Notification No. 49/2017 dated 18.10.2017 that "whether the goods supplied under deemed exports are duly received by the EPCG Authorisation holder."

6.4.1 As regards the contention of the respondent as mentioned in para-4.2 above, I find that in the present case there is no dispute regarding the status of supporting manufacturer and entitlement of deemed export benefit in respect of supply to the EPCG authorization holder having supporting manufacturer in term of the provisions of Import Export Policy.


6.4.2 Further, I find that the respondent as mentioned in above para-4.3 submitted contention that the receipt by the supporting manufacturer is on behalf of the EPCG authorization holder and the same will be receipt by the EPCG authorization holder in terms of the Section 33 of Sale of Goods Act and Section 149 of the Contract Act. However, I find that the respondent has not submitted any such verification report or acknowledgement from the Jurisdictional Tax Officer that the deemed export supplies by the respondent have been received by the Export Promotion Capital Goods Authorisation holder, even considering the said aspect. Further, the adjudicating authority has also not verified the condition that "whether the goods are duly received by the EPCG Authorisation holder", while sanctioning the refund claim.



7. In view of the above, I find that the adjudicating authority, while sanctioning the refund amount of Rs. 31,68,000/- (CGST Rs. 15,84,000/- + SGST Rs. 15,84,000/-) has not verified the evidences as required under the Notification No. 49/2017-Central Tax dated 18.10.2017 and hence, the refund is erroneously allowed.

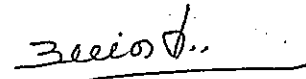
8. In view of the foregoing discussion, the appeal of the Department is allowed and the impugned order [OIO No. AC/SKL/61/DIV-II/2019-20 dated 01.10.2019 passed by the adjudicating authority] is set aside. The prayer of the department for the recovery of the erroneously sanctioned refund alongwith interest is also allowed.

9. The appeal filed by the appellant stands disposed off in above terms.


(Mukesh Rathore)
Joint Commissioner (Appeals)

Date: .10.2020

Attested


(M.P.Sisodiya)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED-POST TO :

- M/s. Cadmach Machinery Co. Pvt. Ltd.,
Plot No. 3604/3605,
GIDC, Phase-IV, Vatva,
Ahmedabad-382445.

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Pr. Commissioner, Central GST, Ahmedabad South Commissionerate.
3. The Commissioner, CGST, Appeals, Ahmedabad.
4. The Assistant Commissioner, CGST, Division-II, Ahmedabad South Comm'rate.
5. The Asstt. Commissioner, System, CGST, Ahmedabad South Comm'rate.
6. Guard File.
7. P.A. File.

