



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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रजिस्टर्ड डाक ए.डी. द्वारा

DIN-20201264SW000000D5A7

क फाइल संख्या : File No : V2(GST)38/EA-2/Ahd-South/19-20

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001/APP-JC-023/20-21

दिनांक Date : 27-11-2020 जारी करने की तारीख Date of Issue : _____

श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No CGST/WS07/Ref-142/MK/AC/2019-20 दिनांक: 12.09.2019 issued by Assistant Commissioner, CGST, Division-VII, Ahmedabad-South

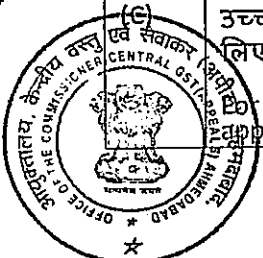
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Claris Lifesciences Limited,

Claris Corporate Hq., Ellisbridge,

Near Parimal Railway Crossing, Ahmedabad-380006

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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

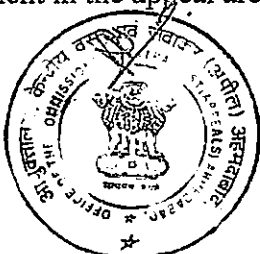
This appeal has been filed by the Assistant Commissioner of CGST, Division-VII, Ahmedabad South [hereinafter referred to as '*department*'] in pursuance of Review Order No. 32/2019-20 dated 19.03.2020 passed by the Principal Commissioner, CGST, Ahmedabad South against Order-in-Original No. CGST/WS07/Ref-142/MK/AC/2019-20 dated 12.09.2019 [hereinafter referred to as '*impugned order*'] passed by the Assistant commissioner of CGST, Division-VII, Ahmedabad South [hereinafter referred to as '*adjudicating authority*'] in the case of M/s. Claris Lifesciences Limited, Claris Corporate Headquarters, Ellisbridge, Nr. Parimal Railway Crossing, Ahmedabad-380006. [hereinafter referred to as '*respondent*'].

2. Facts of the case, in brief, are that the respondent is registered with the department and holding GSTIN 24AAACC6366Q1Z8 and filed refund claim as per Circular No. 17/17/2017-GST dated November 15, 2017 claiming refund amount of Rs. 12,45,540/- paid as excess IGST. The refund claim was filed on 06.05.2019.

2.1 The respondent has raised invoices for the supply of Renewable Energy Certificate (REC) @ 18% IGST. Meanwhile, Ministry of Finance has issued Circular No. 46/20/2018-GST dated June 06, 2018 clarifying that "various certificates like RECs, PSLCs, etc. are classified under heading 4907 and will attract GST @ 12%. Pursuant to the said Circular, the respondent has amended REC sales invoices earlier issued, wherein they have revised IGST rate from 18% to 12% in the month of September, 2018. Accordingly, the respondent had filed GSTR-1 for the month of September, 2018 wherein they have reported the details of the amended invoices which were originally raised in the month of March, 2018. The respondent has claimed the refund amount on the basis that they have paid the tax of Rs.37,36,620/- on taxable value of Rs.2,07,59,000/- @18% IGST on above said invoices issued in March 2018, however they have revised the same invoices in the month of September 2018 and levied tax of Rs.24,91,080/- on taxable value of Rs.2,07,59,000/- @12% IGST from goods/service receiver and has filed for a refund claim amounting to Rs. 12,45,540/- being charged as excess by 6%. The adjudicating authority has sanctioned the refund of the excess IGST paid amounting to Rs.12,45,540/- to the respondent vide the impugned order.

2.2 The Principal Commissioner, CGST, Ahmedabad-South has reviewed the impugned order vide Review Order No. 32/2019-20 and directed to file an appeal under Section 84(1) of Service Tax Act, 1994. He authorized Assistant Commissioner of CGST, Division-VII, Ahmedabad South to file an appeal.

2.3 Accordingly, the department has filed the present appeal. The main grounds raised by the department in the appeal are as under:



- As per Section 34(1) & (2) of the CGST Act, 2017, credit note to the recipient has to be issued by the supplier in case of change in tax charged. Though vide discrepancy memo dated 16.07.2019, the adjudicating authority has pointed this fact to the respondent and asked them to submit the credit note, documentary evidence for tax amount received and audited balance sheet for the financial year 2018-19, the respondent vide their letter dated 24.07.2019 failed to submit copy of credit note, proof of tax amount received and audited balance sheet. In spite of non-submission of the above documents called for, the adjudicating authority has sanctioned the refund relying on the CA certificate.;
- There is no provision for revising invoices as per Section 31 to 34 of the CGST Act, 2017 whereas Section 34 of the Act *ibid* provides for issuing credit note in case of change in tax charged;
- When credit notes are issued, provisions of the Section 43(1) of the CGST Act, 2017 provides about showing the details of every credit note relating to outward supply furnished by a registered person (supplier) for a tax period shall, in such manner and within such time as may be prescribed, be matched – (a) *with the corresponding reduction in the claim for input tax credit by the corresponding registered person (recipient) in his valid return for the same tax period or any subsequent tax period;* and (b) *for duplication of claims for reduction in output tax liability.* Therefore, Section 43 of the CGST Act, 2017 provides for reduction in output tax liability on account of issuance of such credit notes, such adjustment has to be done in case of change in tax charged and issuance of credit note and no refund claim arise in Section 54 of the CGST Act, 2017;
- Section 34(2) of the CGST Act, 2017 states that “*no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.*” Adjudicating authority has not verified the receivable of IGST in books of accounts of the respondent due to reduction in tax rate. In case of indirect tax regime, incidence of tax always shift to final customer and has to be borne by the customer, therefore it is necessary for the refund claim to pass the test of unjust enrichment before sanctioning to tax payer, however adjudicating authority has not verified the relevant documents in this case whether incidence of tax and interest on such supply has been passed on to any other person and has merely relied on the Chartered Account Certificate, which states that “ the claimant has collected 12% IGST and incidence of tax has not been passed” and has erred in sanctioning the refund amount to the respondent; and
- Further, Section 54 and sub-section 8 of the CGST Act 2017 read with Rule 89(2) of the CGST Rules, 2017 do not provide about the refund on account of revised invoice or change in tax and the adjudicating authority thus not followed the provisions of Section 54(8) and Rule 89(2) of the Act/Rules *ibid* while sanctioning refund to the respondent.



3. The respondent vide their letter dated nil received on 08.09.2020 has submitted their Cross-Objections on the appeal filed by the department.

4. Personal Hearing through virtual mode in the case was held on 22.10.2020. Shri Amol Dave, Advocate and Shri Sudhanshu Bissa, Advocate attended hearing on behalf of the respondent. He reiterated submissions made in cross objection. No one attended the hearing from the appellant's side.

5. I find that the respondent has filed for the refund of the excess paid tax amounting to Rs. 12,54,540/- vide refund claim dated 06.05.2019. The tax came to be paid in excess for the reason that he respondent has, for the month of March, 2018, raised invoices for the supply of Renewable Energy Certificate (REC) @ 18% IGST which were subsequently revised by them in the month of September 2018 revising the tax rate charged as @12% in view of the Circular No. 46/20/2018-GST dated June 06, 2018 issued by the Ministry of Finance clarifying that various certificated including REC's be classified under heading 4907 and shall attract GST @ 12%. The issue to be decided in this case is as to whether the respondent is eligible for the refund of the excess tax paid under Section 54(8) of the CGST Act, 2017 or not.

6. It is observed that after scrutiny of the refund claim, the adjudicating authority has issued a deficiency memo dated 16.07.2019 to the respondent asking for submission of Credit Note issued, documentary evidence of received tax amount and audited balance sheet for the F.Y. 2018-19. The respondent vide reply dated 24.07.2019 has submitted that no Credit/debit Note was issued in the matter, however, they have amended the invoices @ 18% to 12% IGST and that the balance sheet for the said FY has not been finalized and hence the same was not submitted.

7. Section 34 of the CGST Act, 2017 provides that:

(1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:



Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

(3) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation.- For the purposes of this Act, the expression "debit note" shall include a supplementary invoice.

It is found that the above section specifically provides with the provisions in case wherein the tax charged in the invoice is at a higher rate, then the supplier may issue a Credit Note to the recipient containing such particulars as may be prescribed. However, the respondent did not issue any Credit Note rather revised the invoice, for which there is no provision in the Act.

8. Further, Section 43(1) of the CGST Act, 2017 provides that:

(1) The details of every credit note relating to outward supply furnished by a registered person (hereafter in this section referred to as the "supplier") for a tax period shall, in such manner and within such time as may be prescribed, be matched —

(a) with the corresponding reduction in the claim for input tax credit by the corresponding registered person (hereafter in this section referred to as the "recipient") in his valid return for the same tax period or any subsequent tax period; and

(b) for duplication of claims for reduction in output tax liability.

A conjoint reading of the provisions of Section 34 and 43(1) of the CGST Act, 2017 makes it amply clear that in cases where there is a change in tax charged, then the supplier has to issue credit notes and by showing the details of such credit notes in the relevant returns may claim for reduction in their output tax liability on account of issuance of such credit notes and therefore there does not arise any situation of refund in such cases. In view thereof, I find force in the departmental contention no refund arise in such cases.

9. It is observed that proviso to Section 34(2) of the CGST Act, 2017 provides that *no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.* It is the contention of the department that this crucial aspect of unjust enrichment has not been properly examined by the adjudicating authority, before sanctioning the refund in question. I find that the adjudicating authority in this regard has solely relied on the Chartered Accountant Certificate submitted by the respondent. He has not verified whether the amount of excess tax paid for which the refund



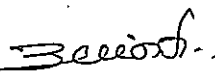
is claimed is reflecting as "Receivables" in their audited balance sheet for the relevant year as the respondent has not submitted the audited Balance Sheet for the financial year 2018-19 on the ground that the same was not yet finalized. Further, the CA certificate produced by the respondent does not seem to have certify that the excess IGST paid is reflected/shown as receivable in the audited balance sheet of the respondent for the relevant year. For that matter, the CA certificate produced by the respondent should not have been accepted by the adjudicating authority without support of the audited balance sheet for the relevant year. Therefore, his decision in this regard lacks merit.

10. In view of the above discussion, it is observed that the impugned order passed by the adjudicating authority is not sustainable both on facts and merits and is liable to set aside. The cross-objections filed by the respondent in the matter are also not sustainable in view of the statutory provisions discussed in the foregoing paras and the same are rejected being devoid of merits.

11. Accordingly, the impugned order is set aside for being not legal and proper and the appeal of the appellant department is allowed.

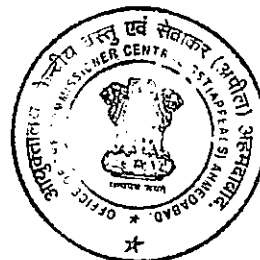
12. The appeal stands disposed off in above terms.

Attested



(M.P. Sisodiya)
Superintendent (Appeals)
Central GST, Ahmedabad

(Mukesh Rathore)
Commissioner (Appeals)



By Regd. Post A. D/Speed Post

To

The Assistant Commissioner,
Central GST, Division-VII,
Ahmedabad-South.

Appellant

M/s. Claris Lifesciences Limited,
Claris Corporate Headquarters,
Ellisbridge, Nr. Parimal Railway Crossing,
Ahmedabad-380006.

Respondent

Copy to :

1. The Chief Commissioner, CGST, Ahmedabad Zone.
2. The Principal Commissioner CGST, Ahmedabad-South.
3. The Deputy/Asstt. Commissioner (Systems), CGST, Ahmedabad-South.
4. Guard file
5. PA File