



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065-

टेलीफैक्स 07926305136



DIN-20220164SW000000A583

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/702/2020-APPEAL / 5732 70 5737  
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-103/2021-22  
दिनांक Date : 11-01-2022 जारी करने की तारीख Date of Issue : 12-01-2022

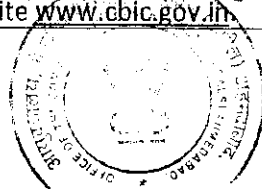
श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

Arising out of Order-in-Original No. ZY2406200185562 दिनांक: 15-06-2020 issued by  
Deputy Commissioner, CGST, Division VI, Ahmedabad South

अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Deputy Commissioner, CGST, Division-VI, Ahmedabad South

(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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a>



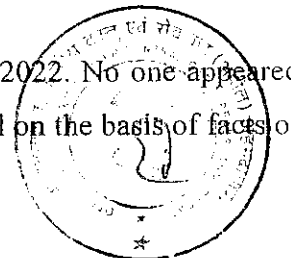
**ORDER IN APPEAL**

The Deputy Commissioner, CGST, Division VI, Ahmedabad South has filed the present appeal on dated 14-12-2020 against Order No. ZY2406200185562 dated 15-6-2020 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division VI, Ahmedabad (hereinafter referred to as the adjudicating authority) sanctioning refund of Rs.88,78,892/- to M/s.Unistar Worldwide Overseas, Ahmedabad (hereinafter referred to as the respondent)

2. Briefly stated the fact of the case is that the respondent, registered under GSTIN 24LSOPS3538L1ZT, has filed refund application for refund of ITC accumulated on export of goods and services without payment of tax amounting to Rs.88,78,892/- for the period January 2020 to March 2020 on dated 31-5-2020. After due verification the adjudicating authority vide impugned order sanctioned refund of Rs.88,78,892/- to the respondent. After sanction of refund it was observed during enquiry conducted by the Preventive Section, HQ, Ahmedabad South that the respondent was engaged in availment of illicit ITC without receipt of goods and claiming refund fraudulently and hence an Alert Notice No.1/2020 dated 7-8-2020 was issued by Commissioner, CGST, Ahmedabad South to disallow the fraudulent refund claim if any fined by the respondent in future also. During investigation it was further revealed that on the basis of GSTR2A, the respondent has availed ITC from M/s.Ganesh Traders, M/s.Shaildeep Overseas, M/s.Unishipper International, M/s.Subh Overseas and M/s.Stallion International who in turn obtained ITC from other six firms viz. M/s.Magic Overseas, M/s.Lychee Overseas, M/s.Flair International, M/s.Genuine Overseas, M/s.Glosy Enterprises and Ms.Unique Overseas. It was further observed that none of the six firms have filed their GSTR3B return or filed 1 or 1-3 returns during the period 2019-2020 and 2020-2021 thereby not discharging their GST liability but they have filed GSTR1 returns regularly which indicate the intention to pass illicit ITC without movement of goods. Further attempt to download the GSTR2A also shows the status as failed. ITC ledger of above firms indicated that there is no purchase of goods by all the firms which also indicate that the above six firms are supplying ITC without payment of tax by fraudulent means and passing on such ITC to other companies. Verification of vehicle details from the purchase invoices/e way bills obtained from the respondent also revealed that there is discrepancy in vehicles details on the invoices inasmuch as the vehicles mentioned therein was not a commercial vehicle which indicate that the goods may not have been actually transported and the entire transaction is fake. In view of above, it appeared that the ITC availed by the respondent is merely on the basis of invoices without any actual movement of goods and the respondent has procured goods for export without invoices from their buyer firms and that the firms mentioned above are engaging in passing illicit ITC thereby causing revenue loss to the Government exchequer.

3. In view of above facts, on the basis of Review Order No. 23/2020-2021 dated 11-12-2020 the appellant has filed the present appeal to set aside the impugned order and to pass order directing the adjudicating authority to recover and appropriate the amount erroneously sanctioned to the respondent with interest.

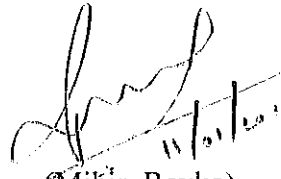
4. Personal hearing was fixed on dated 23-12-2021, 29-12-2021 and 6-1-2022. No one appeared on behalf of appellant and respondent. Therefore, I proceed to decide the appeal on the basis of facts of the case and documents available on record.



5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. In this case appeal was filed to set aside the impugned order vide which refund was sanctioned to the respondent and to pass order directing the adjudicating authority to recover the refund sanctioned to the respondent. It transpires from the grounds of appeal that the respondent has availed ITC on the basis of invoices issued by various registered persons without movement of goods and procured goods for export without invoices from their buyers, but claimed refund of accumulated ITC on export of goods without payment of Integrated Tax. Since the time of implementation of GST based tax payment such a modus operandi causing loss to Government exchequer is quite widespread in the Country. I also find that Rule 86A of CGST Rules, 2017 inserted vide Notification No. 75/2019 – Central Tax dated 26th December, 2019 also envisage non grant of refund of ITC fraudulently availed by registered persons. From the facts of the case I find that the respondent in connivance with other registered persons has availed ITC without movement of goods and without the cover of invoices and thereby fraudulently and wrongly availed ITC. Since the ITC so availed was claimed as refund which was sanctioned by the adjudicating authority, I have no hesitation to hold that refund was erroneously sanctioned to the respondent which is liable for recovery. Accordingly I set aside the impugned order sanctioning refund to the respondent and allow the appeal. I further order the original authority to recover refund of Rs.88,78,892/- erroneously sanctioned to the respondent along with interest under the provisions of CGST Act and Rules framed thereunder.

अपीलकर्ताद्वारा दर्ज की गई अपील को निपटारा उपरोक्त तरीके से किया जाता है।

6. The appeal filed by the appellant stand disposed off in above terms.



(Mihir Rayka)

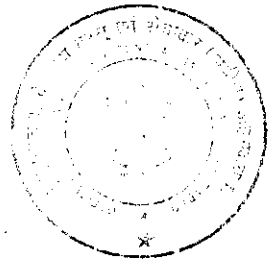
Additional Commissioner (Appeals)

Date :

Attested



(Sankara Rathan B.P.)  
Superintendent  
Central Tax (Appeals),  
Ahmedabad  
By RPAD



To,  
The Deputy Commissioner,  
CGST, Division VI,  
Ahmedabad South \

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) M/s.Unistar Worldwide Overseas, No.414, 4<sup>th</sup> Floor, Anandmilan Complex,  
Near Navrangpura Bus Stop, Navrangpura, Ahmedabad
- 6) Guard File
- 7) PA file