



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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क फाइल संख्या : File No : GAPPL/ADC/GSTP/2633/2021-APPEAL V2(GST)24/Ahd-South/2020-21

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-110/2021-22**

दिनांक Date : **19-01-2022** जारी करने की तारीख Date of Issue : **19-01-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZQ2405200003427** दिनांक: **01-05-2020** issued by Deputy Commissioner, CGST, Division I, Ahmedabad South

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

**M/s. Mohata Textile Mill Pvt. Ltd. 129, New Cloth Market,
Outside Raipur Gate, Ahmedabad-380002**

(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

M/s.Mohata Textile Mill Pvt.Ltd 129, New Cloth Market, Outside Raipur Gate, Ahmedabad 380 002 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 30-6-2020 against Order No.ZQ2405200003427 dated 1-5-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, CGST, Division I, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant, registered under GSTIN 24AAACM7992C1ZH, has filed refund claim for refund of Rs.19,24,708/- in respect of ITC accumulated on account of inverted tax structure under Section 54 (3) of CGST Act, 2017. The appellant was issued show cause notice bearing number ZZ404200147371 dated 8-4-2020 proposing rejection of refund claim on the reason that the till the date of filing the ITC has not been lapsed and proof of the same has not been uploaded as per Circular No.56/30/2018-GST dated 24-4-2018. The adjudicating authority vide impugned order rejected the refund claim on the reason that the appellant has not followed the procedure as per Circular No.56/33/2018-GST dated 24-8-2018.

3. Being aggrieved the appellant filed the present appeal on the following grounds :

- i. That linking of instant refund having not followed the procedure of reversal of credit as per Circular NO.56/33/2018-GST dated 24-9-2018 was misplaced and bad in law and there has been no connection between the two.
- ii. That the lapsing of accumulated credit was prescribed in the said Circular. The same was challenged by certain tax payers before Hon'ble High Court of Gujarat at Ahmedabad as the same was claimed to be ultra vires by the appellant therein. The matter came to be decided by the Hon'ble High Court of Gujarat and the reversal of credit as per above Circular was held to be illegal. In the case of M/s.Shabnam Petrofiles Pvt.ltd Vs UOI, Hon'ble Gujarat High Court struck down the second clause of Notification No.20/2018 due to which now the textile units are not required to reverse the accumulated ITC. The Order of Hon'ble High Court is in force unless a stay has been obtained or the same is decided otherwise by Hon'ble Supreme Court of India. As on date there has been no stay and it is now known if the Department has preferred any appeal or not. That they had not lapsed the credit in the light of judgment of Hon'ble High Court of Gujarat ;
- iii. That they had also tendered an undertaking that if the matter is ultimately decided in favor of revenue they would lapse the credit together with applicable interest thereon;
- iv. That the present application of refund and reversal of credit as per above Circular are two different independent issues and not related to each other;
- v. That such denial of refund is all together different case is illegal, unjust and bad in law ;
- vi. That if the Department is aggrieved having not lapsed the credit, to safeguard the interest of revenue, there was a need to issue show cause notice/demand notice to them ;
- vii. That in no case refund can be rejected in such arbitrary manner ;
- viii. That the impugned order deserves to be set aside with consequential relief to the appellant ;



- ix. That in the same jurisdiction of Ahmedabad South Commissionerate by the other Divisions refund are being sanctioned to the similarly placed tax payers and hence there cannot be divergent practice in the same jurisdiction.
- x. In view of above submissions the appellant requested to set aside the impugned order with consequential relief.

4. Thereafter the appellant vide their letter dated 9-2-2021 and letter dated 2-6-2021 intimated that they had preferred another refund application before the jurisdictional Division Office and were issued another notice on the same issue. Hence they were left with no alternative but to lapse the credit. Accordingly in order to have refund granted they had lapsed ITC of Rs.2,56,089/- by way of debiting their ITC account as on 5-2-2021. In view of above, the appellant requested to take out this appeal from call book for decision.

5. Personal hearing was held on dated 11-1-2022. Shri M.K.Kothari appeared on behalf of the appellant on virtual mode. He stated that he have nothing more to add to their written submission till date.

6. I have carefully gone through the facts of the case, ground of appeal, submissions made by the appellant and documents available on record. In this case the refund claim was rejected on sole ground of non-following the procedure prescribed under Circular No.56/30/2018-GST dated 24-8-2018. I have gone through the said Circular and find that vide said Circular clarification was issued on removal of restrictions of refund of accumulated ITC on fabrics.

7. The background which leads to issuance of said Circular is that vide Notification No.5/2017-Central tax (Rate) dated 28-6-2017 Government has notified certain items, mostly fabrics, for which refund of accumulated ITC on account of inverted duty structure was not allowed. The said Notification was amended vide Notification No.20/2018-Central Tax (Rate) dated 26-7-2018, wherein the said restriction was removed with effect from 1st August 2018 by inserting following proviso to Notification No.5/2017 :

"Provided that,- (i) nothing contained in this notification shall apply to the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of goods mentioned at serial numbers 1, 2, 3, 4, 5, 6, 6A, 6B, 6C and 7 of the Table below; and

(ii) in respect of said goods, the accumulated input tax credit lying unutilised in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse."

8. In pursuance to above two Notifications, CBIC has issued Circular No.56/30/2018-GST dated 24-8-2018 providing guidelines and clarification in the matter. A gist of clarification is given as under



- i. The proviso has to be read with the principal part of the Notification. A comprehensive reading of amended Notification with Circular makes it clear that the proviso seeks to lapse such ITC which is the subject matter of principal notification No.5/2017 ie. accumulated credit on account of inverted duty structure in respect of specified fabrics.
- ii. ITC on account of inverted duty structure lying in balance after payment of GST for the month of July (on purchase made on or before 31st July 2018) shall lapse.
- iii. The ITC amount accumulated on account of inverted duty structure on inputs that would lapse on account of above stated change should be determined as per formula prescribed under Rule 89 (5) of CGST Rules;
- iv. Such amount shall be determined for the month of July 2017 to July 2018 (or for the relevant period for such fabrics on which refund was blocked subsequently by inserting entries in Notification No.5/2017)
- v. This amount shall upon self assessment be furnished by such person in Column 4B (2) of GSTR 3B return for the month of August 2018, as ITC amount to be reversed for any reason (others).
- vi. Verification of accumulated ITC amount so lapsed may be done at the time of filing of first refund (on account of inverted duty structure on fabrics) by such person. Therefore, a detailed calculation sheet in respect of accumulated ITC lapsed shall be prepared by the taxable person and furnished at the time of filing of first refund claim on account of inverted duty structure.

9. Subsequently vide Circular No. 94/13/2019-GST dated 28-3-2019 it was also clarified that the lapsed credit should be reversed in GSTR3B return or through Form GST DRC -03 for the month of August 2018 and in case of reversal of credit subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018, interest under sub-section (1) of section 50 of the CGST Act on the amount which has been reversed belatedly is to be paid.

10. In view of above Notifications and Circulars it is clear that the registered persons engaged in supply of notified goods, on which restriction for refund of ITC accumulated on account of inverted tax structure was removed, need to determine the credit that would lapse as on 31-7-2018 and pay the same in the month of August 2018 itself for being eligible to claim refund from August 2018 onwards. In the subject case, it is not disputed that the appellant is engaged in supply of notified goods on which entitlement of refund under Section 54 (3) was removed vide Notification NO.20/2018 ; it is also not disputed that the appellant has not determined the credit lapsed as on 31-7-2018 and not paid the same. The contention of the appellant for not doing so is that Hon'ble High Court of Gujarat in its judgment in the case of M/s.Shabnam Petrofils Pvt.Ltd Vs UOI has struck down the second clause of Notification No.20/2018 and hence they were not required to reverse the accumulated ITC. I have also gone through the above case law and find that in the said case, Hon'ble High Court vide its Order dated 17-7-2019 held that *proviso (ii) of the opening paragraph of the Notification NO.5/2017-CT (Rate) dated 28-6-2017 inserted vide Notification No.20/2018-CT (Rate) dated 26-7-2018 is ex-facie invalid and liable to be strike down as being without any authority of Law.*

11. Apparently, as per above order, the proviso (ii) which provide for lapse of ITC as on 31-7-2018 has been made inoperative and hence I find that the contention of the appellant that they are not required to reverse the ITC in terms of above Circular is factually correct at the material time. However, it is observed that Government has filed SLP (C) No.028621/2019 on dated 3-12-2019 before Hon'ble Supreme Court against the decision of Honb'le High Court, and Hon'ble Supreme Court has also granted stay from operation of Hon'ble High Court of Gujarat.

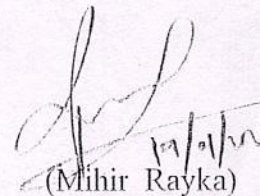
12. I further notice that since the issue involved in the appeal is sub judice before Hon'ble Supreme Court, in terms of CBIC Circular No.162/73/95-CX dated 14-12-1995 read with CBIC Circular No.1053/2/2017-CX dated 10-3-2017, the subject appeal was transferred to call book on 30-9-2020 till final disposal of appeals by Hon'ble Supreme Court.

13. However, in view of appellant's their letter dated 9-2-2021 and 2-6-2021 intimating reversal of lapsed ITC and their request to take this appeal from call book for decision, a report was called for from adjudicating authority, who vide letter File No. V/16-04/Reb-Ref/Div I/Misc/2019 dated 13-8-2021 intimated that the appellant has lapsed the ITC unconditionally; that the appellant has fully complied the conditions of Circular No.56/30/2018-GST dated 24-8-2018 as well as Circular No.94/13/2019-GST dated 28-3-2019; that the issue of lapse of ITC is sorted out and settled for this particular claim. On the basis of above report this appeal was retrieved from call book on dated 7-10-2021 for decision.

14. In view of above course of events, I find that at this stage of proceedings the sole ground for rejection of refund claim stand complied and fulfilled by the appellant and no other issue against admissibility of refund is prevalent in this case. Under the above circumstances I hold that the appellant is entitled for refund claimed by them. Accordingly I allow the appeal and set aside the impugned order.

अपील कर्थाद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

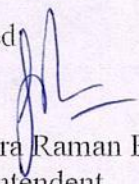
15. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


(Sankar Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad
By-RPAD

To,
M/s.Mohata Textile Mill Pvt.Ltd
129, New Cloth Market,
Outside Raipur Gate,
Ahmedabad 380 002



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 Assistant Commissioner, CGST, Division I, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

