

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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DIN-20220264SW0000948929

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/111/2021-APPEAL / 6072 706077
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-118/2021-22
दिनांक Date : 09-02-2022 जारी करने की तारीख Date of Issue : 09-02-2022

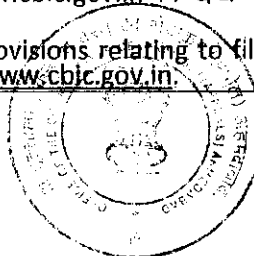
श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

Arising out of Order-in-Original No. ZO2412200130224 दिनांक: 11-12-2020 issued by
Assitant Commissioner, Division I, Rakhial, Ahmedabad South

अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Maganmai Parasmal, 44, New Cloth Market, Raipur, 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.Maganmal Parasmal, 44, New Cloth market, Ahmedabad 380 002 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 21-1-2021 against Order No.ZO2412200130224 dated 11-12-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Division I (Rakhial), Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24ABIPJ9432E1ZS, has filed refund claim for refund of ITC of Rs.387471/- on account of export without payment of tax under LUT for the period September 2018 to March 2019. The appellant was issued show cause notice dated 27-11-2020 proposing rejection of claim on the ground that zero rated turnover can't be quantified as per Notification No.16/2020-CT dated 23-3-2020 and to clarify the difference in adjusted total turnover GSTR1, GSTR3B and RFD 01. The adjudicating authority vide impugned order rejected the claim on the ground that the claimant's contention is without actual working for which SCN was issued to them and hence the same is not acceptable. Further they failed to appear for PH also. Accordingly claim is rejected under section 54 of the CGST Act, 2017.

3. Being aggrieved the appellant filed the present appeal on the ground of improper and unreasonable rejection of the whole refund amount without considering reply to the show cause notice and working file attached.

4. Personal hearing was held on dated 8-12-2021. Shri Harsh Rashmikant Shah, Authorized Representative appeared on behalf of the appellant on virtual mode. He submitted additional documents and submissions wherein he stated that the value of domestic supply of goods was Rs.1,19,14,201/- and hence value of zero rated supply of goods ie Rs.74,93,653/- is less than 1.5 times of value of domestic supply of goods ie Rs.1,78,71,301/- (1.5 x 11914201/-) and hence they had taken less value of Rs.74,93,653/-. He also submitted copy of all invoices issued for zero rated supply and sample copy of invoices issued for domestic supply during the claim period.

5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. I find that in this case show cause notice was issued on twin grounds 1) For quantification of zero rated supply in terms of Notification No.16/2020-CT and 2) Difference in adjusted turn over in returns and refund application. The claim was rejected on the reason of not providing actual working as per SCN.

6. I find that as per Notification No.16/2020, amendment was made under Rule 89 (4) of CGST Rules, 2017 as under :

8. In the said rules, (Central Goods and Services Tax Rules, 2017) in rule 89, in sub-rule (4), for clause (C), the following clause shall be substituted, namely:- „(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like

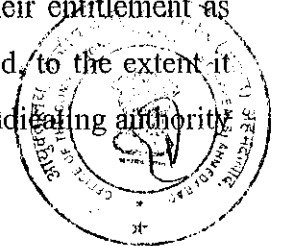
goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;".

7. As per Rule 89 (4) of CGST Rules, 2017 in case of zero rated supply of goods the maximum amount of refund is to be determined by applying the following formula :

$$\frac{\text{Turnover of zero rated supply of goods} + \text{Turnover of zero rated supply of service} \times \text{Net ITC}}{\text{Adjusted total turnover}}$$

Thus, consequent to amendment made vide Notification No.16/2020, for the purpose of determining the admissible refund in case of zero rate supply of goods, the turnover of zero rated supply of goods in the formula is to be taken as lesser of value of zero rate supply of goods or 1.5 time of value of like goods domestically supplied by the same or similarly placed supplier as declared by the suppliers. Therefore submission of details as per Notification No.16/2020 is statutorily required to arrive the turnover of zero rated supply of goods in terms of amended Rule 89 (4) of CGST Rules, 2017 and to determine admissible refund amount. However in the subject case it transpire that in compliance to above Notification the appellant has not furnished the above details to arrive the turnover of zero rated supply of goods along with their refund claim. Therefore I do not find any fault in the impugned order passed by the adjudicating authority rejecting their refund claim on the ground of non compliance of Notification No.16/2020.

8. However, during the current proceedings in compliance to Rule 89 (4) and Notification No.16/2020, the appellant has furnished details of domestic sale of goods along with copy of all invoices issued for zero rated supply and some of invoices issued for domestic supply in the same period. On scrutiny I find that the appellant has supplied handkerchiefs, fabrics and cloths under zero rated supply. As against the same, the appellant has submitted only invoices issued for supply of handkerchiefs in domestic market and not furnished any invoices for supply of fabrics and cloths in domestic market. On further scrutiny I find that the rate per pcs/dozen of handkerchiefs cleared for export was Rs.72/- whereas rate per pcs/dozen of handkerchiefs cleared in domestic market was Rs.125/-. Thus the value of handkerchief cleared for export found to be lesser than value of like goods supplied in domestic market. Therefore, I find that by co-relating each invoices issued for zero rated supply of goods with the invoices issued for domestic supply for the claim period turnover of zero rate supply of handkerchiefs in terms of Notification No.16/2020 can be determined. Regarding fabrics and cloths the appellant has not submitted copy of invoices issued by them for supply of said goods in domestic market or copy of invoices issued by the similarly placed suppliers, so as to determine the turnover value of zero rated supply of goods and admissible refund amount in terms of Rule 89 (4) of CGST Rules, 2017 read with Notification No.16/2020 and thereby failed to substantiate their entitlement as per Rule 89 (4) of CGST Rules, 2017. Therefore, so far as rejection of refund, to the extent it pertains to refund of fabrics and cloths is concerned, I find the decision of adjudicating authority is legally sustainable.

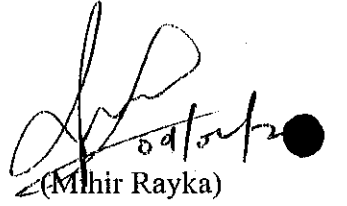


9. Regarding difference in adjusted turn over in returns and refund application, I find that the appellant has given clarification for the same in their reply filed for show cause notice alongwith reconciliation statement as per which some adjustment for prior period was made in GSTR3B returns and due to said reason there was difference in adjusted turn over in returns and refund application.

10. In view of above facts and discussion, I find that since the appellant is engaged in supply of handkerchiefs under zero rated supply and also supply like goods in domestic market, I do not find any impediment in determining turnover of zero rated supply of handkerchiefs and to determine the admissible refund in terms of Rule 89 (4) of CGST Rules, 2017 read with CBIC Circular No. 147/03//2021-GST dated 12-3-2021 on the basis of records and invoices issued by the appellant. I further find that, except the ground of non-quantification of turnover of zero rated supply of goods and clarification on difference in turnover no other reason or ground was raised on inadmissibility of refund. As per documents and submissions made before me I hold that in respect of zero rated supply of handkerchiefs, the appellant has complied with the grounds raised in the impugned order. Therefore, I find it just and fair to allow the appeal restoring their entitlement for refund on zero rated supply of handkerchiefs. I further hold that so far as refund for zero rated supply fabrics and cloths are concerned since the appellant could not brought on record any evidence or submissions in compliance to Rule 89 (4) of CGST Rules, 2017 I do not find any infirmity in the impugned order passed by the adjudicating authority rejecting the claim and hence upheld the impugned order to such extent. Accordingly I partially set aside the impugned order and partially allow the appeal filed by the appellant.

11. अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad

By RPAD

To,

M/s.Maganmal Parasmal,
44, New Cloth market,
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-Rakhial, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South

26) Guard File / PA FILE

