



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-20220264SW000000C400

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/633/2021-APPEAL/6060-65  
 ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-119/2021-22**  
 दिनांक Date : **09-02-2022** जारी करने की तारीख Date of Issue : **09-02-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

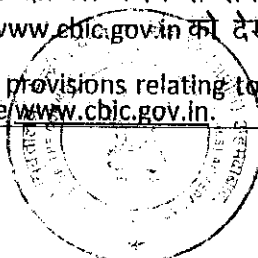
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZN2412200254213** दिनांक: **23-12-2020** issued by  
 Assistant Commissioner, Division I, Rakhial, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**M/s. R Beriwalla Texfab Pvt. Ltd. 168, New Cloth Market,**  
**Outside Sarangpur Gate, Sarangpur, 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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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> .

CA CHIRAG JAIN  
 11.02.2022



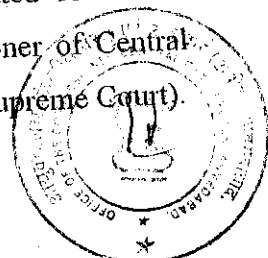
**ORDER IN APPEAL**

M/s.R Beriwalla Texfab Pvt.Ltd 168, New Cloth Market, Outside Sarangpur Gate, Sarangpur, Ahmedabad 380 002 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 22-3-2021 against Order No.ZN2412200254213 dated 23-12-2020 (hereinafter referred to as 'the impugned order') passed by the Assistant 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 24AAJCR3091G1ZD, has filed refund claim for refund of ITC on zero rated supplies made without payment of tax under Section 54 (3) (i) of CGST Act, 2017 for the period from 1-4-2019 to 31-3-2020 for Rs.15,51,122/-. The appellant was issued show cause notice No.ZR241220061980 dated 5-12-2020 proposing rejection of the claim on the ground that zero rate turnover can't be quantified-Notification NO.16/2020CT dated 23-3-2020; clarify whether Notification No.49/2019 CT dated 9-10-2019 and Notification No.75/2019-CT dated 26-12-2019 are complied or otherwise. The adjudicating authority vide impugned order held that the claim was inadmissible on the ground that the claimant could not establish through his submission regarding supply of similar goods-domestically and under zero rated. This result in non compliance of the show cause notice. Accordingly the claim is not admissible and rejected under Section 54 of the CGST Act, 2017.

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

- i) The adjudicating authority in complete disregard to the facts and the submissions made before him has passed the impugned order and it needs to be set aside forthwith ;
- ii) The Notification No.16/2020-CT dated 23-3-2020 was made effective from 23-3-2020 whereas the claim for refund was made prior to 23-3-2020 ;
- iii) The person who had applied for same kind of refund and for the same period prior to 23-3-2020 were not liable to comply with the above mentioned Notification. Law must be same for all and hence the refund condition cannot be different on the basis of at what time it was applied;
- iv) The conditions laid down in Notification cannot be applied retrospectively;
- v) The appellant has relied upon the decision rendered in the case of Commissioner of Income Tax (Central) I New Delhi Vs Vatika Township Private Ltd dated 15-9-2014 (Supreme Court) ; M/s.L.R.Brothers Indo Flora Ltd Vs The Commissioner of Central Excise 2020 (Supreme Court) and M/s.Star India Pvt.Ltd Vs CCE 2005 (Supreme Court).

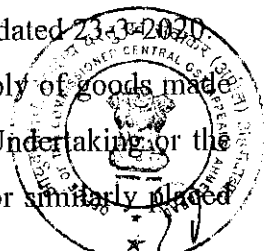


- vi) The Notification No.16/2020 does not put any condition that one has to provide any additional information or annexure wherein the working of turnover of zero rated supply of goods has to be shown;
- vii) The turnover of zero rated supply of goods has to be self declared by the appellant. Moreover the aforesaid Notification does not provide any annexure or format which needs to be submitted online while filing refund application to prove that the value of Zero rated supply of goods is not more than 1.5 times the value of like goods domestically supplied by the same or similarly place supplier and hence the adjudicating authority has not legal right to ask for any additional information or documents than the documents prescribed under the Law.
- viii) In the SCN it has not been provided any specific format or annexure or list of documents that needs to be provided so as to satisfy himself regarding the turnover of zero rated supply of goods is not more than 1.5 times of like goods domestically supplied by the same or similarly placed supplier then also the appellant has submitted 1) self declaration cum undertaking that in case if there is any decrease in refund amount due to the difference in value of zero rated supply of goods as per Notification No.16/2020-CT dated 23-3-2020 then the appellant would be liable to pay back the ineligible refund amount ; 2) The appellant along with voluntary declaration has also submitted some invoice copies of the zero rate as well as domestic supplies for perusal of adjudicating authority.
- ix) The appellant also in personal hearing as well as in reply to SCN informed the adjudicating authority that he can provide physical copies of all local as well as zero rated supplies if they require the same. However the adjudicating authority seems to have completely ignored all the submissions made by them.
- x) In view of above submissions the appellant requested to set aside the impugned order and grant them refund.

4. Personal hearing was held on dated 12-1-2022. Shri Chirag Jain, Authorized representative appeared on behalf of the appellant on virtual mode. He made following additional submissions :

That they have submitted invoices of zero rated supply without payment of tax along with invoices of similar or like goods supplied domestically for the period from 1-4-2019 to 31-3-2020 by which it can be verified that the value of zero rated supply of goods without payment of tax is not more than 1.5 times of value of like goods domestically supplied. Further they are also ready to submit all other invoices or any additional document or explanation that may be required to satisfy the condition laid down under Notification NO.16/2020-CT dated 23-3-2020.

The turnover of zero rated supply of goods meant 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 of value of like 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.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. In the subject case refund claimed by the appellant for refund on account of zero rated supply made without payment of tax was rejected by the adjudicating authority due to non compliance of Notification NO.16/2020-CT dated 23-3-2020. 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;".*

6. I find that 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 :

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

Consequent to amendment made vide Notification No.16/2020, the turnover of zero rated supply of goods is defined as *"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;".* Thus as per amendment made under Rule 89 (4) 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.

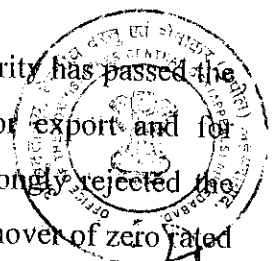
7. In the subject case the adjudicating authority has rejected the claim on the ground that the appellant has not complied with Notification No.16/2020 inasmuch as they had failed to substantiate their claim regarding supply of like goods domestically as well as under zero rated. Countering the same, the appellant stated that the Notification NO.16/2020 itself is not applicable to their claim as the Notification was made effective from 23-3-2020 whereas claim was made for the period prior to 23-3-2020. I find that claim in this case was filed on 26-10-2020 for the period April 2019 to March 2020. Though the claim pertains to the period prior to 23-3-

2020 the provisions of CGST Rules which exist on the date of filing of claim will be applicable. Hence I find that this submission made by the appellant that Notification No.16/2020 is not applicable to them is not well reasoned and not well founded.

8. However during current proceedings the appellant submitted copy of invoices issued for zero rated supply (export) and tax invoices for domestic supply issued for the claim period. On scrutiny of sample copy of invoices I find that the appellant has supplied textile goods viz. Ladies dress materials and cloths for export as well as in domestic market. The rate per piece of dress materials was in the range of Rs.300-350 ; for Kora Cloth it was in the range of Rs.30 to 35/- and for printed Cotton it was in the range of Rs.52 to Rs.60 for supply for export as well as in domestic market. I further notice that in the invoices submitted before me, the value of goods cleared for export was found to be lesser than 1.5 times of value of like goods supplied in domestic market. I also find that in some invoices the value of goods cleared for export was also less than the value of like goods domestically supplied by the appellant. I further notice that the appellant in their reply to SCN has also given willingness to produce all such invoices for verification. As per Rule 92 of CGST Rules, 2017, for deciding the admissibility of refund claim, the proper officer need to call for and verify the required documents before passing sanction/rejection order. However, it transpires that neither the required invoices were called for from the appellant nor the appellant was given an opportunity for submission of invoices for determining the turnover of zero rated supply in terms of Notification No.16/2020. On the other hand the claim was outrightly rejected on the ground of failure on the part of the appellant to establish the turnover value of zero rated supply of goods in terms of Notification No.16/2020 and unfeasibility to determine the same, which I find is not a justifiable reason and also against the provisions of Rule 92 of CGST Rules, 2017. Therefore, I do not find any justification in rejecting their refund claim on the ground mentioned in the impugned order.

9. Regarding compliance to Notification No. 49/2019-CT dated 19-10-2019 the appellant submitted that refund is claimed of only in respect of those invoices which are reflected in GSTR2A. Regarding compliance to Notification No.75/2019-CT dated 26-12-2019 the appellant has not made any submission. However, I find that vide Notification No.75/2019-CT dated 26-12-2019 amendment was made to Rule 36, Rule 86 and Rule 138E of CGST Rules, 2017 and none of it pertains to Rules governing refund claims. However, as per amendment made to Rule 86 the Commissioner or any authorized officer not below the rank of Assistant Commissioner was empowered to disallow ITC fraudulently availed or found eligible on situations specified therein. Presumably amendment made vide above Notification No.75/2019 relate to action on the part of the Departmental officer and does not need any compliance on the part of the appellant so as to reject the refund claim.

10. In view of above facts and discussion I find that the adjudicating authority has passed the impugned order without verifying the invoices issued by the appellant for export and for domestic supply, which are at the disposal of the appellant, and thereby wrongly rejected the refund claim. I further find that, except the ground of non-quantification of turnover of zero rated



supply like goods in domestic market, I do not find any impediment in determining turnover of zero rated supply of goods and admissible refund in terms of Rule 89 (4) of CGST Rules, 2017 read with 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 non compliance of Notification No.49/2019 and 75/2019 no other reason or ground for inadmissibility of refund is raised in this case. As per documents and submissions made before me I hold that the appellant has complied with the grounds raised in the impugned order. Therefore, I set aside the impugned order and allow this appeal restoring their entitlement for refund, subject to verification of relevant invoices and records. Accordingly I set aside the impugned order and allow the appeal filed by the appellant.

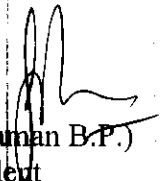
अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(Mihir Rayka)

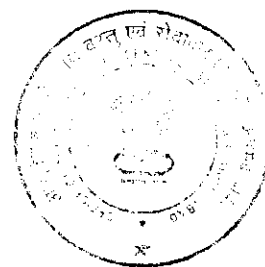
Additional Commissioner (Appeals)

Date :  
Attested

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

To,

M/s.R Beriwalla Texfab Pvt.Ltd  
168, New Cloth Market,  
Outside Sarangpur Gate,  
Sarangpur, 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 Deputy Commissioner, CGST, Division I (Rakhial) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

