



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

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2497/2021, 2499/2021 & 2500/2021-APPEAL /8108-13

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-122/2021-22**

दिनांक Date : **10-02-2022** जारी करने की तारीख Date of Issue : **11-02-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZU2412200295257 DT. 02.12.2020,**
ZY2412200295235 DT. 02.12.2020 & ZP2412200295213 DT. 02.12.2020 issued by
Deputy Commissioner, Division V (Odhav), Ahmedabad South

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

Shri Viveksamuel I Nadar of M/s. VIP's Industries, 175, Vijay Estate,
Behind Bhikshuk Gruh, Odhav, Ahmedabad-382415

(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

Shri Viveksamuel I Nadar of M/s.VIP'S Industries, 175, Vijay Estate, Behind Bhikshuk Gruh, Odhav, Ahmedabad 382 415 (hereinafter referred to as 'the appellant') has filed the following appeals against Orders passed by the Deputy Commissioner, Division V, Odhav, Ahmedabad South (hereinafter referred to the adjudicating authority) rejecting refund claim filed by the appellant.

Sl No.	Appeal File No.	Date of filing appeal	Impugned Number and date	Or Amount refund	Claim period
1	GAPPL/ADC/GSTP/2497/2021	22-4-2021	ZU2412200295257/2 12-2020	158774/-	January 2020 to Ma 2020
2	GAPPL/ADC/GSTP/2499/2021	22-4-2021	ZY2412200295235/2 12-2020	8500/-	October 2019 December 2019
3	GAPPL/ADC/GSTP/2500/2021	22-4-2021	ZP2412200295213/2 12-2020	7119/-	July 2019 September 2019

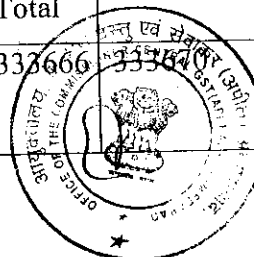
2. Briefly stated the fact of the case in all the above appeals is that the appellant, registered under GSTIN 24AHWPN6237D1Z3, has filed refund claim for refund of ITC under inverted tax structure. The appellant was issued show cause notice proposing rejection of claim on the ground of mis match of ITC in GSTR2A and Annexure B. The appellant filed reply to the show cause notice but the adjudicating authority vide impugned orders held that refund is inadmissible due to mis match in ITC and unsatisfactory reply to the show cause notice.

3. Being aggrieved the appellant filed the present appeal on the ground that they had already prepared reconciliation statement along with proper reason to claim refund of GST ; that due to current pandemic situations of COVID 19, they were unable to prepared and submit complete details of all invoices for which refund is claimed.

4. Personal hearing was held on dated 17-1-2022. Shri Nirav Santoki, Authorized representative appeared on behalf of the appellant on virtual mode. He asked for five working days for additional submissions. Accordingly, Shri Nirav Santoki via email dated 17-1-2022 he submitted reconciliation between GSTR2A and Annexure B.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. In these cases the refund claims were rejected mainly on the sole ground of mis match of ITC in GSTR2A and Annexure B. I further notice that there is not dispute with regard to amount of adjusted turnover, turnover of inverted supply of goods and tax payable on such inverted rated supply of goods taken for determining admissible refund amount. During appeal the appellant has submitted copy of GSTR2A, Annexure B and ITC taken for arriving refund amount which is as under :

Period	Claim amount	ITC as per GSTR2A			ITC as per Annexure			ITC taken arriving re amount
		CGST	SGST	Total	CGST	SGST	Total	
July 2019 to September 2019	7119/-	183557	183557	367114	166833	166833	333666	



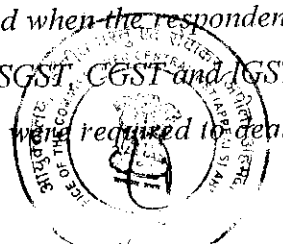
October 2019	8500/-	94682	94684	189368	94682	94682	189364	190020
December 2019								
January 2020 to March 2020	158774/-	418649	418649	837298	436339	436339	872678	661236

6. Thus, on the basis of documents made available to me in the current proceeding, I find that even though there is mismatch in ITC as per GSTR2A and Annexure B, the appellant has taken lesser amount of ITC for arriving the refund amount for the period July-September 2019 and January-March 2020. For the period October 2019-December 2019, there is marginal excess in ITC taken for determining refund amount. In this regard I refer to CBIC Circular No. 135/05/2020 – GST dated 31-3-2020 wherein it was clarified that *the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.* Accordingly, even if there is mismatch in ITC in GSTR2A and Annexure B, the ITC reflected in GSTR2A, if it is on lower side, only need to be taken for determining the admissible refund. Therefore proper course of action need to be taken in these claims is to consider the ITC reflected in the GSTR2A returns or eligible ITC claimed in Annexure B whichever is less for determining admissible refund amount. However, instead of taking ITC as per above documents and determining the admissible refund amount, the adjudicating authority outrightly rejected the entire claim on the ground of mis match of ITC which I find is not a justifiable and cogent reason for rejection of refund.

7. I further observe that the adjudicating authority has rejected the claim on the ground of unsatisfactory reply filed by the appellant. No reason whatsoever was recorded as why the reply was unsatisfactory. As per provisions of sub rule (3) of Rule 92 of CGST Rules, it is a mandatory requirement to record the reasons in writing for issuance of show cause notice as well as for passing Order rejecting the refund claim. In the Master Circular No.1053/02/2017 – CX dated 10th March, 2017 issued by the Central Board of Excise and Customs, during erstwhile Central Excise and Service Tax regime, at Paragraph 14.5 it was laid down that *the adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reasons at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.*”

8. I further notice that in the case Law of M/s.Jay Jay Mills (India) Pvt.ltd Vs State Tax Officer, Tirupur, involving the issue of rejection of refund claim filed under Section 54 of CGST Act, 2017, Hon'ble High Court of Madras has also held that ;

It is a settled proportion of Law that whenever an application of this nature is made, the statutory authority are bound to consider the claim made and pass a reasoned order. In the present case, the petitioner had made an application for refund under Section 54 of the Act and when the respondent had issued notice to them for rejection of the ineligible goods and services of SGST, CGST and IGST they have given a detailed reply, objecting to the notices. All these objections were required to dealt



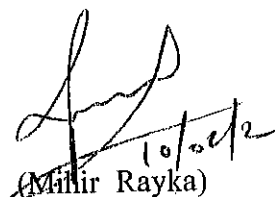
with by the authority, before taking a final call, which is conspicuously absent. As such, the order itself can be termed to be a non speaking order and therefore are liable to be set aside.

10. The above referred Circular and case law mandate the view that an order passed by adjudicating authority should be a well reasoned and speaking order and should be able to stand test of legality, fairness and reasons at higher appellate authorities forums. However, in the subject cases, the adjudicating authority passed impugned order with a simple remark of unsatisfactory reply and thereby out-rightly rejected the entire refund claim. Apparently, neither discussion on reply filed by the appellant was recorded nor the reason for non acceptance of the contention was spelt out in the order. Therefore, I hold that the impugned order passed by the adjudicating authority is against the guiding principles of adjudication and not a well reasoned and speaking order and hence deserve to be set aside.

11. In view of above, I hold that the ground taken in impugned order and show cause notice for rejection of refund is not legal and proper for denying substantive benefit due to the appellant. Therefore, I set aside the impugned order and allow this appeal restoring the appellant's entitlement for refund taking into account ITC availed on invoices which are reflected in the GSTR2A returns or eligible ITC claimed in Annexure B. Accordingly, I set aside the impugned order and allow the appeals filed by the appellant.

12. अपीलकर्ताद्वारा दर्ज की गई अपील को कानिपटाराउपरोक्त तरीके से किया जाता है।


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


(Mihir Rayka)

Additional Commissioner (Appeals)

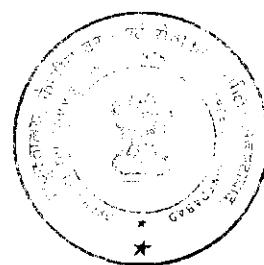
Date :

Attested


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

To,

Shri Viveksamuel I Nadar of M/s.VIPs Industries,
175, Vijay Estate, Behind Bhikshuk Gruh,
Odhav,
Ahmedabad 382 415



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) The Assistant Commissioner, Division V (Odhav), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file