



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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रजिस्टर्ड डाक एड्रेस द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/2492/2021-APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-123/2021-22**

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)

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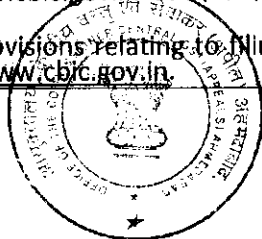
Arising out of Order-in-Original No. **ZY2412200295180** DT. **29.12.2020**, issued by Deputy Commissioner, Division V (Odhav), Ahmedabad South

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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) <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> .



**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 present appeal on dated 22-4-2021 against Order No.ZY2412200295180 dated 29-12-2020 passed by the Deputy Commissioner, Division V, Odhav, Ahmedabad South (hereinafter referred to the adjudicating authority) rejecting refund claim filed by the appellant.

2. Briefly stated the fact of the case is that the appellant, registered under GSTIN 24AHWPN6237D1Z3, has filed refund claim for refund of ITC under inverted tax structure for Rs.6056/-. 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 on the ground that ITC available in GSTR2A is only Rs.90450/- as per this no refund is admissible.

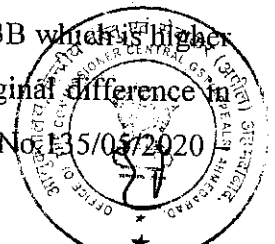
3. Being aggrieved the appellant filed the present appeal on the ground that they had already prepared reconciliation statement along with proper reason to claim refund of GST ; that due to current pandemic situations of COVID 19, they were unable to prepared and submit complete details of all invoices 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 GSTR3B return filed for the claim period, GSTR2A, Annexure B as per which the ITC availed by them is as under :

Period	ITC as per GSTR3B	ITC as per GSTR2A	ITC as per Annexure B	ITC as per refund application
April 2019 to June 2019	364462	359728	359639	364462

6. Thus, on the basis of documents made available to me in the current proceeding, I find that the appellant has claimed refund taking into account the ITC as per GSTR3B which is higher than the ITC as per GSTR2A and Annexure B. Similarly there is only a marginal difference in ITC as per GSTR2A and Annexure B. I further find that CBIC Vide Circular No.135/05/2020



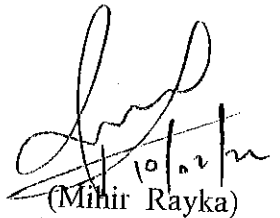
GST dated 31-3-2020 has clarified that *the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.* Accordingly, in this case the even if there is mismatch 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.

7. In this case, the adjudicating authority rejected the claim on the ground that ITC as per GSTR2A is only 90450/-. Apparently by taking ITC of Rs.90450/- the admissible refund amount determined as per formula prescribed under Rule 89 (5) of CGST Rules, 2017 comes to less than zero and hence the entire claim was held inadmissible. However, the aforesaid documents brought before me show ITC of nearly equal amount with a marginal difference and very much higher than Rs.90450/-. On further scrutiny of GSTR3B returns, GSTR2A and Annexure B I find that during the month of April 2019 the appellant has availed ITC of Rs.90450/-. Thus, it is clear that, for the subject claim filed for the period of April 2019 to June 2019, the adjudicating authority has considered ITC for the month of April 2019 only and ignored the ITC availed for the remaining two months and accordingly arrived the admissible refund amount to less than zero. Hence, I find there is factual error and lapse on the part of adjudicating authority in calculating the admissible refund amount taking into consideration the ITC of Rs.90450/- for the month of April 2019 only. I further notice that the ground taken in the impugned order for rejection of refund is also contradictory to the charges levelled in the show cause notice. In the show cause notice it was alleged that there is mis match in ITC in GSTR2A and Annexure B for which the appellant has also filed reply and clarification. However, the adjudicating authority rejected the claim on the ground that ITC available in GSTR2A is only Rs.90450/-.

11. In view of above, I hold that the ground taken in impugned order for rejection of refund is not legal and proper 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 for the claim period. Accordingly, I set aside the impugned order and allow the appeals filed by the appellant.

12. अपीलकर्ता द्वारा दर्ज की गई अपील को कानिपटारा उपरोक्त तरीके से किया जाता है।

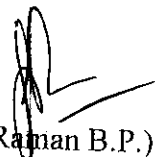
The appeals filed by the appellant stand disposed off in above terms.

  
(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. VIP's Industries,  
175, Vijay Estate, Behind Bhikshuk Gruh,  
Odhav, Ahmedabad-382415

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 V(Odhav), Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

