



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 ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/589/2021 -APPEAL

6565-70

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-132/2021-22**

दिनांक Date : **02-03-2022** जारी करने की तारीख Date of Issue : **03-03-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZR24122000239313 DT. 22.12.2020** issued by Assistant Commissioner, CGST, Division I, (Rakhial), Ahmedabad South

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

Shri Museb Yusufbhai Sojatwala of M/s. M.S. Print, 36/1/2,

Opp Apsara Process, Suez Farm road, Baherampura, Ahmedabad

(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 Museb Yusufbhai Sojatwala of M/s.M.S.Print, 36/1/2, Opp Apsara Process, Suez Farm road, Baherampura, Ahmedabad (hereinafter referred to as 'the appellant') has filed the present appeal on dated 18-3-2021 against Order No.ZR24122000239313 dated 22-12-2020 passed by the Assistant Commissioner, CGST Division I (Rakhial), Ahmedabad South (hereinafter referred to as the adjudicating authority)

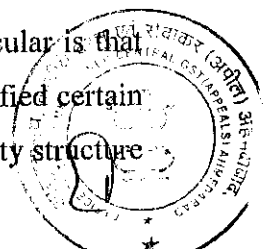
2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24ASLPS2183B1ZT has filed refund claim for refund of Rs.3,22,144/- on account of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice proposing rejection of refund on the ground that GSTR1 for QE September 2020 not filed; clarify tax paid/payable difference in GSTR3B and GSTR1, neither credit lapse calculation sheet is uploaded nor credit is lapsed-Circular No.56/30/2018-GST dated 24-8-2018 upload month wise sample invoices. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that the claimant neither clarified about ITC to be lapsed nor uploaded any supporting documents in this regard. Accordingly, claim is rejected under section 54 of the CGST Act, 2017.

3. Being aggrieved the appellant filed the present appeal on the ground that they are engaged in the activity of textile job work falling under HSN 9988 ; that as per Circular NO.56/30/1028-GST, they are not liable to lapse any credit. Assistant Commissioner rejected their refund application on the basis of the claimant neither clarified about ITC to be lapsed or uploaded any supporting documents in this regard. But in reply to show cause notice it was mentioned that they are not liable to lapse any credit and that they have not bought any HSN goods for which they have to lapse the credit.

4. Personal hearing was held on dated 18-2-2022. Shri Mohammed Asfaq Pipadwala, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he has nothing more to add to their written submission till date.

5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. In this case the refund was rejected on the sole ground of non furnishing of clarification about ITC to be lapsed in terms of Circular No.56/30/2018-GST dated 24-8-2018 and non submission of any supporting documents in this regard. Countering the same, the appellant contended they are engaged in activity of textile job work falling under HSN 9988 ; that they are not required to lapse any credit and that they had not brought any HSN goods for which they have to lapse the credit.

6. In this regard I find that 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."

7. 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.

8. 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 earlier placed under Notification No.5/2017 but removed vide Notification No.20/2018, 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 claim was rejected due to non compliance of above Circular.

9. The appellant contended that they are engaged in activity of textile job work falling under HSN 9988 and not required to lapse credit as per above Circular. In this regard, I refer to Circular No. 48/22/2018-GST dated 14-6-2018, wherein it was clarified as under:

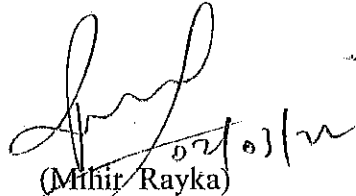
3	Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017?	<p>3.1 Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).</p> <p>3.2 Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.</p>
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10. As per above Circular independent textile processors (job workers) are eligible for refund of unutilized ITC account of inverted duty structure even if goods supplied to them are covered under Notification No.5/2017-CT (Rate) dated 28-6-2017. Since job workers are kept out of purview of Notification No.5/2017, apparently, the requirement to lapse credit in terms of Notification No.20/2018 read with CBIC Circular No.56/30/2018 dated 24-8-2018 is also not applicable for job workers engaged in job work services. During appeal proceedings the appellant has submitted sample copy of invoices issued for outward supply of goods during the claim period which are shown in Statement 1A submitted with refund claim. On scrutiny of the same I find that the appellant is engaged in the activity of dyeing and printing of textile fabrics and supplying such goods on payment of tax @ 5%. I further find that the activity of manufacturing services on physical inputs (goods) owned by others are covered under HSN 9988 and in respect of such activities on textile and textile fabrics rate of tax is prescribed @ 5%. On the basis of above facts, I find that the activity undertaken by the appellant undoubtedly fall within the scope of job work services. Therefore, I find force in the submission of the appellant that they are not required to lapse any credit as they are engaged in the activity of textile job work falling under HSN 9988. In view of above I am of the considered view that there is no requirement on the part of appellant to lapse ITC in terms of Notification No.20/2018- read with Circular No.56/30/2018 dated 24-8-2018. Hence I find that the impugned order passed by the

adjudicating authority rejecting refund on the ground of non submission of lapse credit and supporting documents is legally untenable and unsustainable on merit. Therefore, I allow appeal filed by the appellant restoring their entitlement for refund subject to verification of all outward supply of invoices issued during the claim period. Accordingly I set aside the impugned order and allow the appeal filed by the appellant.

अपील कर्ताद्वारा 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)

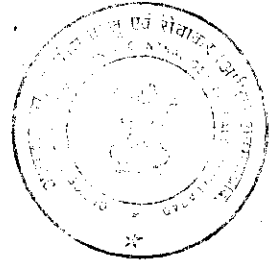
Additional Commissioner (Appeals)

Date :

Attested



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



To,
Shri Musesb Yusufbhai Sojatwala
of M/s.M.S.Print, 36/1/2, Opp Apsara Process,
Suez Farm road, Baherampura, Ahmedabad

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

