



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-20220364SW000044C8D

रजिस्टर्ड डॉक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/572/2021-APPEAL / 6559 - 64

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-133/2021-22**

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. **ZT2412200187491 DT. 17.12.2020** issued by Assistant Commissioner, CGST, Division I, (Rakhial), Ahmedabad South

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

M/s. Prag Steel, 23, Jay Jayant Estate,

Near Kewal-Kanta, Rakhial, Ahmedabad-380023

(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.Parag Steel, 23, Jay Jayant Estate, Near Kewal-Kanta, Rakhial, Ahmedabad 380 023 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 16-3-2021 against Order No.ZT2412200187491 dated 17-12-2020 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

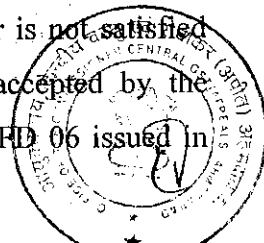
2. Briefly stated the fact of the case is that the appellant filed refund claim for refund of Rs.6,25,736/4 on account of supply of goods to SEZ Unit without payment of tax. The appellant was issued show cause notice dated 2-12-2020 proposing rejection of the refund on the ground that zero rated turnover cant' be quantified-Notification No.16/2020 dated 23-3-2020. Notification No.75/2019-CT dated 26-12-2019 was complied or not. The value in invoice No.251 is different from ST5. HSN of supplies mentioned in invoices is different from registration details. Clarify. The adjudicating authority vide impugned order held that the refund is inadmissible to the appellant on the ground that HSN of goods supplies is still not registered ; the claimant could not establish through his submission regarding supply of similar goods domestically as well as under zero rated. Accordingly the claim is not admissible and rejected under Section 54 of CGST Act, 2017.

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

As there is a new Law of GST there are so many confusion and changes happened day by day. There are lot of difference in opinion and understanding from both sides by the appellant and the assessing officer. The query regarding HSN of supplies in registration details difference because in system only 5 HSN details enter that's why this HSN is not shown in registration details; as per recent amendments in refund provisions as inserted by Notification NO.16/2020 dated 23-3-2020 the value of turnover of zero rated supply of goods in case of without payment of tax has been capped upto maximum of 1.5 times of value of like goods domestically supplied respectively. They also provide domestically supplied the same product at same rate not any over price for which they attached copy of invoice of domestic supply of same goods and SEZ supply goods. They are requested to give them one more opportunity to submit all the required documents.

4. Personal hearing was held on dated 18-2-2022. Shri Dhruvin R Shah, authorized representative appeared on behalf of the appellant on virtual mode. He has been given seven working days for submitting additional submissions on his request. Accordingly the appellant made following additional submissions:

They had mentioned that in HSN code list only 5 HSN code put in system because system limitation I cannot beyond that, but after that they had entered the HSN code in that list but for reference they had attached screenshot of HSN list from GST website; that at that time there was some confusion regarding new Notification No.16/2020-CT dated 23-3-2020 so the officer is not satisfied with their reply but after that for FY 2019-2020 all quarter refund application accepted by the Department and also refund sanctioned by the department. They attached copy of RFD 06 issued in



this regard ; once refund is rejected they have no other option except to file appeal. Referring to Circular No.147/03/2021-GST dated 12-3-2021 the appellant contended that their domestic supply rate of item and SEZ supply rate of item are equal or minor 1 or 2% difference in their supply product. They also attached copy of local supply invoices and SEZ supply invoice. As per Circular the value of turnover of zero rated supply of goods without payment of tax has been capped upto maximum 1.5 times of value of goods domestically supplied. So here no excess rate supply by them. They also attached sample copy of invoices and invoice wise supply list for local supply and SEZ supply.

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 register of HSN of goods supplied and failure on the part of the appellant to establish regarding supply of similar goods domestically as well as under zero rated. 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;"

7. 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.

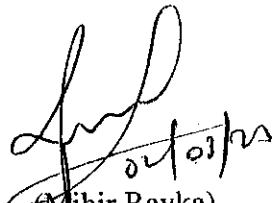
8. In the subject case the adjudicating authority has rejected the claim on the ground that the appellant has not complied with Notification No.16/2020 inasmuch as they had failed to substantiate their claim regarding supply of like goods domestically as well as under zero rated. Countering the same, the appellant stated that they are engaged in supply of similar goods in domestic market but the value of goods cleared for domestic sale and for SEZ supply are either equal or on minor difference of 1% or 2%. They had also attached sample copy of invoices issued during the claim period. On scrutiny of sample copy of invoices I find that value of goods supplied to SEZ unit was found to be equal or lesser than 1.5 times of value of like goods supplied in domestic market. Accordingly, during current proceedings on the basis of sample copy of invoices the appellant has substantiated their claim regarding supply of like goods domestically as well as under zero rated, as per which the value of zero rated supply of goods is to be taken as turnover of zero rated supply of goods in the formula. Hence, subject to verification of all invoices issued for domestic supply and SEZ supply, the turnover of zero rated supply of goods and admissible refund can be determined in terms of Rule 89 (4) of CGST Rules, 2017 read with Circular No.147/03//2021-GST dated 12-3-2021 can be determined.

9. Regarding non registration of HSN of goods supplied, the appellant has contended that they had mentioned that in HSN code list only 5 HSN code put in system because system limitation but after that they had entered the HSN code in that list. I find that so far as subject claim of refund is concerned, there is no dispute on the issue of non supply of goods or non receipt of goods by SEZ units or non payment of tax. In such a scenario, I find that the reason of non registration of HSN taken as a ground for rejection of refund cannot be considered as a cogent and sustainable reason to deny substantive benefit due to the appellant.

10. In view of above 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 allow this appeal restoring their entitlement for refund, subject to verification of invoices issued for supply made to SEZ unit and supply made in domestic market. 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।

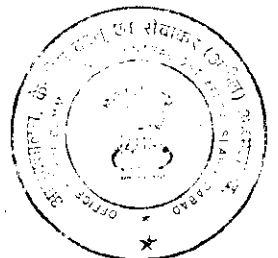
11. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :
Attested


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



By RPAD,

To,
M/s. Prag Steel,
23, Jay Jayant Estate,
Near Kewal-Kanta, Rakhial,
Ahmedabad-380023

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 Asst./Deputy Commissioner, CGST, Division-I-Rakhial, Ahmedabad South
- 6) Guard File
- 7) PA file

