



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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टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:- 20210764SW000051515A)

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/723/2020 / 2235 TO 2240
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-14/21-22
दिनांक Date : 16-07-2021 जारी करने की तारीख Date of Issue : 16-07-2021
- श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mohit Agrawal, Additionl Commissioner (Appeals)
- ग Arising out of Order-in-Original No. ZS2409200073254 दिनांक: 04.09.2020 issued by Assistant Commissioner, Central GST, Division-I, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s . Welcome Prints, 169, New Cloth Market, O/S Raipur Gate. Ahmedabad-380022.

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| (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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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

This appeal has been filed by M/s Welcome Prints, 169, New Cloth Market, O/s Raipur Gate, Ahmedabad-380022 [hereinafter referred to as 'the appellant'] against Order No. ZS2409200073254 dated 04.09.2020 [hereinafter referred to as 'impugned order'] passed by the Deputy Commissioner of CGST, Division-I, Ahmedabad South [hereinafter referred to as 'adjudicating authority'].

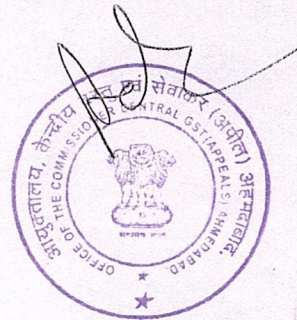
2. Facts of the case, in brief, are that the appellant is registered under the Central Goods and Service Tax Act, 2017 vide GST registration number 24ACUPA4877F1ZE. The appellant is a merchant exporter of textile fabric having outward supply under HSN 5208 and 5209. The appellant has applied for refund amounting to Rs.7,07,152/- dated 08.07.2020 for the period from October 2019 to December 2019 under Section 54(3) of the CGST Act. The appellant was issued a Show Cause Notice dated 18.09.2020, wherein the adjudicating authority has:

- i. Asked whether notification 49/2019-Central Tax dated 09.10.2019 has been complied with or not;
- ii. Informed that turnover of zero rated supplies worked out to be Rs. 1,77,785/- as per Notification No. 16/2020-Central Tax dated 23.03.2020. Accordingly, the eligible refund worked out to be Rs. 8603/- as per formula prescribed under Rule 89(4) of CGST Rules, 2017.

The reply to the above mentioned Show Cause Notice was submitted by the appellant on 28.08.2020. Vide the impugned order, the Adjudicating Authority sanctioned refund claim amounting to Rs.8,603/- and rejected the remaining refund claim amounting to Rs. 6,98,549/- of the appellant on the grounds that "*Turnover of Zero rated supplies works out to Rs. 1,77,785/- as per Notification No. 16/2020-Central Tax dated 23.03.2020. Accordingly, eligible refund work out to Rs. 8603/- as per formula under Rule 89(4) of CGST Rules, 2017 & Rs.6,98,549/- rejected*".

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the following grounds:

- a. The Adjudicating Authority has erred in law and facts while disallowing their refund without specifying any relevant section under which the refund application is being partially rejected;
- b. The Adjudicating Authority did not follow the principal of natural justice as they did not mention any reason for rejection of partial refund;
- c. The Adjudicating Authority did not provide the basis of calculation of revised turnover of zero rated supplies. Further, the adjudicating authority has arrived at 1.5 times of the value of like goods domestically supplied by considering their two invoices of other products and wastage sales made in domestic market as "like goods"; and
- d. The appellant was not provided the interest on delayed payment of the refund amounting to Rs. 8603/-;



4. Personal Hearing in the matter was held on 18.06.2021 through virtual mode. Shri Kunal Agarwal, Chartered Accountant attended hearing on behalf of the appellant. He reiterated the submissions made in appeal memorandum and requested to consider their appeal.

5. I have carefully gone through the facts of the case on record, grounds of appeal and the submissions made by the appellant. The issue to be decided here is whether in the facts and circumstances of the case, the adjudicating authority's decision of rejecting part of refund claimed by the appellant is legally correct and sustainable or not and the appellant is eligible for refund of the said amount of claim rejected.

6. I find that in the present case, the appellant has filed the refund claim in respect of the refund of unutilized Input Tax Credit (ITC) on input services or goods used in making zero rated supply of services viz. export of services without payment of Integrated Tax. The said claims were filed under the provisions of Section 54(3) of the CGST Act, 2017 read with Section 16 of the Integrated Goods and Service Tax Act, 2017 and Rule 89(4) of the Central Goods & Services Tax Rules, 2017. The refund of ITC is to be granted as per the following formula prescribed under Rule 89(4) *ibid*:

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

7. The term 'Turnover of zero-rated supply of goods' mentioned in the above formula was amended vide Notification No. 16/2020-Central Tax dated 23.03.2020, which reads as under:

(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; "

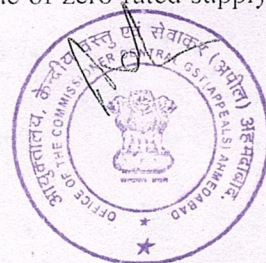
Thus, the turnover of zero rated supplies of goods to be considered for calculating the refund in the case has to be value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less.

8. It is observed that in the present case, the appellant has filed the refund claim for an amount of Rs.7,07,152/- against which the amount of refund sanctioned by the adjudicating authority was only to the tune of Rs.8,603/-. The remaining amount of Rs.6,98,549/- was rejected by observing that Turnover of zero rated supplies works out to Rs.1,77,785/- as per Notification No.16/2020-Central Tax dated 23.03.2020 and accordingly the eligible refund works out to Rs.8,603/-. It is seen that the appellant in their refund application in Form-GST-RFD-01 has declared the turnover of zero rated supply of goods and services as Rs.1,46,14,275/-. The adjudicating authority in his



impugned order has not provided as to on what basis and how he has worked out the relevant turnover as Rs.1,77,785/-. The adjudicating authority has not given any reason or made any discussion for rejecting the turnover declared by the appellant, in spite of there being a reply submitted by the appellant in this regard. The impugned order of the adjudicating authority, therefore, prima facie suffers from legal infirmity for being non-speaking in nature and for violation of principles of natural justice. Adjudicating authority ought to have considered the submissions made by the appellant and decided the case as per provisions of law giving a cogent reasoning for his decision.

9. It appears that the adjudicating authority might have worked out the turnover of zero rated supply of goods in the case by considering the value of the invoices issued by the appellant for other products and wastage sales made in domestic market as 'like goods domestically supplied by the appellant' and taking 1.5 times of the said value of goods. It is the contention of the appellant that only less than 1% of turnover is sold in domestic market for the reason that the said products were not fit to meet the standards of export quality and in no case such waste sales can be considered as 'like goods' for export quality product. I find considerable force in the said argument of the appellant. It is a quite evident fact that the goods supplied as of substandard quality as waste are not at par with the goods being exported in quality and hence are not comparable with such goods and they can, in no way, be considered as 'like goods supplied by the appellant' for the purpose of Rule 89(4) of the CGST Rules, 2017. Therefore, the act of the adjudicating authority of considering both the products as same is not legally and logically sustainable. Further, it also appears from the impugned order that adjudicating authority has merely multiplied the domestic turnover by 1.5 times in order to arrive at the value of sales of like goods domestically supplied instead of comparing per unit prices. Such a comparison is not logical and reasonable by any stretch of imagination. In the present case, the appellant is a merchant exporter and he purchases fabric from domestic market and exports the same without any further process at their end. Therefore, logically the value of fabrics purchased by the appellant for the export purpose from various vendors in the domestic market is comparable and can be considered as value of like goods of similarly placed supplier, when there is no domestic supply of like goods by the appellant in the case. The appellant has stated that the domestically purchased goods are exported by adding markup of around 2.97% resulting in 1.09 times of the value of domestic market value. Further, more than 99% of their total turnover is attributable to export only and only less than 1% goes to domestic market as second quality/waste. The appellant, in their appeal, has submitted copies of export sales invoices and copies of all the purchase invoices relevant to the export and claimed that the value of exported fabrics is around 1.09 times of the value of purchase of the said fabrics exported, which is below the limit of 1.5 times the value of like goods specified in the definition of 'Turnover of zero-rated supply of goods' in the formula prescribed under Rule 89(4) of the CGST Rules, 2017. Therefore, I find merit in the contention of the appellant in this regard. Since the value of zero-rated supply of goods made by the appellant during the relevant period without payment of IGST under letter of undertaking is less than the value which is 1.5 times the value of like goods domestically supplied by the similarly placed supplier, the value of zero-rated supply



of goods made by the appellant during the relevant period without payment of IGST under letter of undertaking would be considered 'Turnover of zero-rated supply of goods' for calculating the refund of ITC admissible in the present case. Consequently, the correct value of 'Turnover of zero-rated supplies' to be applied for the purpose of calculating refund in the present case would be Rs.1,46,14,275/-, as declared by the appellant in their application and not Rs.1,77,785/- as worked out by the adjudicating authority, without even specifying any reasoning for the same. Therefore, the refund admissible in the case has to be worked out on the basis of 'Turnover of zero-rated supplies' declared by the appellant viz. Rs.1,46,14,275/-, according to which the admissible refund would be Rs.7,07,152/- as claimed by the appellant.

10. In view thereof, it is held that the adjudicating authority has wrongly rejected the part refund claim amounting to. Rs.6,98,549/- of the appellant. Hence, the impugned order passed by him is not legally sustainable both on facts and merits and is liable to be set aside.

11. Accordingly, I set aside the impugned order passed by the adjudicating authority for being not legal and proper and the appeal of the appellant is allowed with consequential relief.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Mohit Agrawal
16/7/21

(MOHIT AGRAWAL)
Additional Commissioner,
CGST (Appeals), Ahmedabad.

Date: .07.2021.

Attested

[Signature]

Superintendent (Appeals)
Central GST, Ahmedabad

By Regd. Post A. D/Speed Post

To

M/s Welcome Prints
169, New Cloth Market, O/s Raipur Gate,
Ahmedabad-380022.

Copy to:

- 1 The Chief Commissioner, CGST, Ahmedabad.
- 2 The Principal Commissioner CGST, Ahmedabad-South.
- 3 The Commissioner, CGST (Appeals), Ahmedabad.
3. The Deputy /Asstt. Commissioner, CGST, Division-I, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
5. Guard file
6. PA File

