



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/GSTD/33/2021 -APPEAL / 7258 - 63
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-153/2021-22**
दिनांक Date : **28-03-2022** जारी करने की तारीख Date of Issue : **29-03-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZY410200329322 DT. 28.10.2020** issued by Assitant Commissioner, CGST, Division II, Ahmedabad South

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

Assistant Commissioner, CGST, Division II, Ahmedabad South

(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

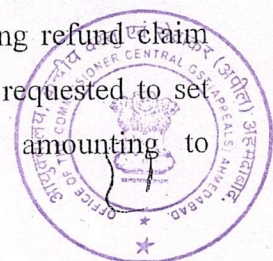
The Assistant Commissioner, CGST Division II, Ahmedabad South (hereinafter referred to as 'the appellant') has filed the present appeal on dated 25-4-2021 against Order No.ZY410200329322 dated 28-10-2020 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division II, Ahmedabad South (hereinafter referred to as 'the adjudicating authority') sanctioning refund of Rs. 1,01,01,547/- to M/s.Mangal Textile Mills (India) pvt.Ltd., 104/2, GIDC, Phase I Vatva, Ahmedabad registered under GSTIN 24AABCM0647H1ZS (hereinafter referred to as the respondent).

2. Briefly stated the fact of the case is that the respondent has filed refund application for refund of Rs.1,02,11,818/- on account of ITC accumulated due to inverted tax structure for the month of August 2020. During scrutiny of application it was observed that there was mis match of ITC and accordingly the respondent was issued show cause notice No.ZT2410200317066 dated 27-10-2019 proposing rejection of refund amounting to Rs.1,10,271/- on the ground that the respondent has claimed refund of ITC availed on input services which is not admissible as per Rule 89 (5) of CGST Rules, 2017. . After considering reply filed by the respondent the adjudicating authority vide impugned order sanctioned refund of Rs.1,01,01,547/- and rejected inadmissible refund of Rs.1,10,271/-.

3. During review it was observed that the claimant has not taken value of outward taxable supply (zero rated) of Rs.1,42,24,907/- towards adjusted turnover in calculation of refund amount. Accordingly adjusted turnover should be Rs.13,97,94,541/- instead of Rs. 12,52,69,634/-. Taking into account above, the eligible refund comes to Rs.84,89,115/- in place of Rs.1,02,11,818/- resulting in sanction of Rs.17,22,703/- in excess. In view of above the adjudicating authority has erred in sanctioning excess refund of Rs.17,22,703/- to the respondent.

In view of above, the appellant has filed the present appeal on the following grounds :

The adjudicating authority has erred by sanctioning excess refund of Rs.17,22,703/- to the respondent and the same was not eligible to the said claimant ; As per GSTR3B the total adjusted turnover for the said period was Rs.13,97,94,541/- and the claimant has taken the total adjusted turnover of Rs.12,52,69,634/- ; that the claimant has not taken the value of outward taxable supply (zero rated) of Rs.1,42,24,907/- into adjusted total turnover in calculation of refund amount ; Therefore the actual adjusted total turnover should be Rs.13,97,94,541/- instead of Rs.12,52,69,634/- and as per formula prescribed under Rule 89 (5) of CGST Rules, 2017, the maximum amount of refund to be claimed comes to Rs.84,89,115/- in place of Rs.1,02,11,818/- resulting in sanction of refund of Rs.17,22,703/- in excess which is required to be recovered with interest ; the adjudicating authority has erred in sanctioning refund claim amounting to Rs.17,22,703/- to the claimant. In view of above the appellant requested to set aside the impugned order wherein he was sanctioned excess refund amounting to

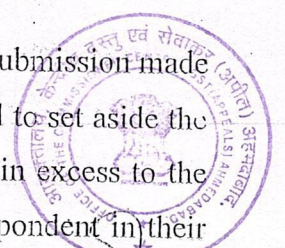


Rs.17,22,703/- and to pass an Order directing the original authority to recover and appropriate the amount erroneously refunded to the claimant with interest.

4. The respondent vide letter dated 10-8-2021 filed cross objection to above appeal wherein they interalia stated that against the refund claim filed for Rs.1,02,11,818/- the Department has paid refund of Rs.1,01,01,548/- only after deducting Rs.1,10,272/- as inadmissible ; the Department has filed appeal requesting to set aside the Order on the grounds that excess refund of Rs.17,22,703/- was sanctioned. However as Rs.1,10,272/- was not paid excess refund amount comes to Rs.17,11,247/-. They had already deposited amount of Rs.18,54,712/- (Rs.17,11,248/- excess refund plus interest of Rs.1,43,464/-) vide DRC 03 on dated 19-4-2021. That inadvertent error of excess amount of refund sanction to them also came to their notice and immediately they repaid the same along with interest on 19-4-2021 ; that they do not dispute the said voluntary payment ; that they had already repaid the amount voluntarily without waiting for any such order and hence no further actions are warranted in this appeal proceedings as nothing further is required to be done in this appeal ; the appeal filed by the Department is not maintainable in terms of Section 107 (6) of CGST Act, 2017 as the appellant has already deposited the disputed amount with interest on dated 19-4-2021 and also filed online intimation of payment made voluntarily under Form DRC 03 whereas appeal is received on 25-4-2021 ; that there is no further dispute on this factual aspect of payment of amount with interest and there was no requirement to file appeal on dated 25-4-2021 ; hence this appeal becomes infructuous on the face of it and deserve to be disposed off ; that in the appeal by Department the base taken is on assumption/presumption which are not permitted in GST law ; that the present appeal is not in accordance with GST Law and hence the proceedings may not be pursued any further and be treated as void at this stage and may be formally terminated in the interest of justice ; the interpretation of any statute should be to extend substantive benefit given by the Government and not to defeat such benefits which is intended for the class of people. Thus there is no merit in this appeal filed by the Revenue; that the revenue appeal is contrary to GST law of the land and hence the appeal deserves to be rejected; that they may be given an opportunity of personal hearing before taking any final decision in this appeal. In view of above respondent requested to dismiss the present appeal filed by the revenue.

5. Personal hearing was held on dated 14-3-2022. No one appeared on behalf of the appellant. Shri P.P.Jadeja authorized representative appeared on behalf of the respondent on virtual mode. He stated that he has nothing more to add to their written submission till date. The appellant vide letter File NO.WS02/Range III/Appeal/Mangal/2020-2021 dated 21-3-2022 informed that personal hearing may be waived and the case may be decided on merits. Therefore, I proceed to decide the appeal on merits.

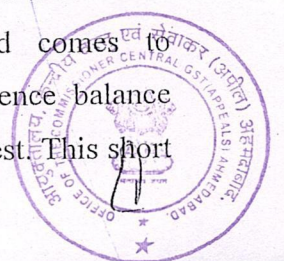
6. I have carefully gone through the facts of the case, grounds of appeal, submission made by respondent and documents available on record. The present appeal was filed to set aside the impugned order, wherein refund amounting to Rs.17,22,703/- was sanctioned in excess to the respondent and to pass order to recover the same along with interest. The respondent in their



cross objection stated that out of claim amount of Rs.1,02,11,818/- refund of Rs.1,01,01,548/- was paid to them and refund of Rs.1,10,272/- was not paid to them and accordingly excess sanctioned to them was only Rs.17,11,247/-. In this regard I have verified the impugned order and find that Central Tax amounting to Rs.55,135/- and State Tax amounting to Rs.55,135/- was mentioned as inadmissible refund due to mis match of ITC and Central Tax of Rs.50,50,773/- and State tax of Rs.50,50,774/- was mentioned as Net amount to be paid. Thus it is amply clear that refund amounting to Rs.1,10,270/- (55135 + 55135) was not sanctioned and paid to the respondent and refund amounting to Rs.1,01,01,546/- (5050774 + 5050774) was paid to the respondent. I further note that in their cross objection the respondent has stated that they had already admitted excess sanction of refund and accordingly paid the excess refund amount of Rs.17,11,248/- along with interest of Rs.1,43,464/- vide DRC 03 on dated 19-4-2021.

7. In this regard, on enquiry made with jurisdictional Division Office, the Deputy Commissioner, Division II, CGST, Ahmedabad vide letter File No.WS02/Range III/Appeal/Mangal/2020-2021 dated 21-3-2022 confirmed the payment made by the respondent. However, it was informed that out of excess sanctioned amount of Rs.17,22,703/-, the respondent had deposited Rs.17,11,248/- with interest and hence differential amount of Rs.11,455/- is yet to be recovered from the respondent with interest against the subject order.

8. In view of above, from the facts of the case, I find that excess sanction of refund of Rs.17,22,703/- was noticed as the respondent has not taken the value of outward taxable supply (zero rated) of goods valued at Rs.1,42,24,907/- for arriving total adjusted turnover in the formula prescribed under Rule 89 (5) of CGST Rules for determining the admissible refund amount. Consequently taking into account the above value of zero rated supply of goods the adjusted total turnover comes to Rs.13,97,94,541/- and admissible refund amount comes to Rs.84,89,115/- only as per formula prescribed under Rule 89 (5) of CGST Rules, 2017, which resulted in excess sanction of refund of Rs.17,22,703/- to the respondent. The adjusted total turnover value of Rs.13,97,94,541/- and excess sanction of refund taken in appeal was also accepted and admitted by the respondent. Therefore, I hold that adjudicating authority has erroneously sanctioned refund of Rs.17,22,703/- in excess to the respondent which is liable for recovery from the respondent along with interest. However, out of excess sanctioned refund of Rs.17,22,703/- the respondent has voluntarily paid Rs.17,11,248/- with interest and considering the said payment requested to reject the appeal. However I find that there is an error on the part of respondent in determining the excess refund amount at Rs.17,11,248/- inasmuch as taking into account the total adjusted turnover at Rs.13,97,94,541/- the admissible refund as per formula prescribed under Rule 89 (5) comes to Rs.84,89,115/-. Out of it refund amounting to Rs.1,10,271/- was held as inadmissible being ITC involved on input services. Thus the net admissible refund comes to Rs.83,78,844/-. Since, the adjudicating authority has sanctioned and paid refund of Rs.1,01,01,547/-, excess sanctioned and paid refund comes to Rs.17,22,703/-. Out of it the respondent has paid Rs.17,11,248/- only and hence balance amount of Rs.11,455/- is required to be recovered from the respondent with interest. This short

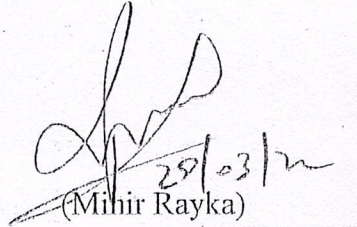


payment of excess sanctioned refund was also confirmed by the jurisdictional Division Office. Accordingly, I hereby pass the following order :

- i. I set aside the impugned order to the extent of sanction of excess refund of Rs.17,22,703/- to the respondent and allow the appeal filed by the appellant;
- ii. I order recovery of excess sanctioned refund of Rs.17,22,703/- along with interest from the respondent. However, since the respondent has already paid Rs.17,11,248/- with interest of Rs.1,43,464/- I order to appropriate the payment made by the respondent towards excess sanctioned refund and interest ;
- iii. I order recovery of excess sanctioned refund of Rs.11,455/- along with interest under relevant provisions of CGST Act, 2017 and Rules made thereunder.

अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

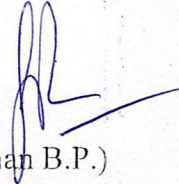
9. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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



By RPAD

To,

The Assistant Commissioner,
CGST Division II,
Ahmedabad South

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) M/s.Mangal Textile Mills (India) pvt.Ltd., 104/2, GIDC, Phase I Vatva, Ahmedabad
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

