



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 ए.डी. द्वारा

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क फाइल संख्या : File No : GAPPL/ADC/GSTP/648/2021 / 2313 70 2318

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-016/21-22

दिनांक Date : 19-07-2021 जारी करने की तारीख Date of Issue : 23-07-2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mohit Agrawal, Additioanl Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZT2408200225831 दिनांक: 17.08.2020 issued by Assistant Commissioner, Central GST, Division-IV, Ahmedabad South

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

M/s . Sinhal Brothers, 238, Opp. Cozi Restaurant, Ranipur Narol, Ahmedabad-382405

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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

M/s. Sinhal Brothers (GSTN:24AAMFS8786M1Z6), 238, Opp. Cozi Resturant, Ranipur Narol, Ahmedabad-382405 (*hereinafter referred to as 'appellant'*) filed the present appeal against the Order No. ZT2408200225831 dated 17/08/2020 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Div-IV (Narol), Ahmedabad-South (*hereinafter referred to as 'sanctioning authority'*).

2. The facts of the case, in brief, are that the appellant filed refund amounting to Rs. 11,12,702/- under Section 54(3) of the CGST Act, 2017 on account of ITC accumulated due to Inverted Tax Structure for the month of December-2019 which was partially rejected amounting to Rs.9,28,167/- under the impugned order with the remark-*"The claimant has filed nil refund in the month of oct and nov 19 and they have claimed itc of the invoices of those months in the current claim filed for the month of Dec 19"*.

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

- a. Refund order is bad in law since it does not contained any section under which the refund application is rejected;
- b. Refund less issued by not considering the input tax credit (ITC) of the purchase invoice having the invoice date of October 2019 and November-2019;
- c. There is no specific restriction placed to avail the ITC of invoices pertaining to previous months.
- d. Section 54(3) of CGST Act, 2017 does not specifically put any restriction to claim refund for those inputs whose invoices pertaining to the previous period.
- e. Para 11 of Circular No. 79/53/2018-GST dated 31/12/2018 has covered all parts of ITC from section 16 to section 39. The said circular has also clarified the meaning of "availed". This leaves no ground to reject the ITC pertaining to the invoices previous tax periods.

4. A personal hearing in the matter was held on 18.06.2021. Shri Kunal Agrawal, CA appeared before me for personal hearing on dated 18.06.2021 on behalf of appellant through video conferencing mode in appeal no. GAPPL/ADC/GSTP/648/2020-Appeal. He re-iterated submission 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 in the present appeal is whether the impugned order partially rejecting the refund claim is correct or otherwise.

6. Prima facie, I find that the appellant had filed aforesaid refund claim under Section 54(3) of CGST Act, 2017 on account of ITC accumulated due to Inverted Tax Structure for the month of December-2019. I find that the sanctioning authority has partially rejected refund claim on the basis that the appellant has filed nil refund in the month of October & November, 2019 and they have claimed ITC of the invoices of those months in the current claim filed for the month of December,2019. Further, I find that the appellant has mentioned in grounds of appeal that the refund is admissible as per Section 54(3) of the CGST Act, 2017 and rules made there under. In this context, before moving forward, let me first reproduce the relevant Section 16 of CGST Act, 2017 and Para 11 of Circular No. 79/53/2018-GST dated 31.12.2018, which are re-produced here below.

SECTION 16. Eligibility and conditions for taking input tax credit. —

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in) clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —



(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :

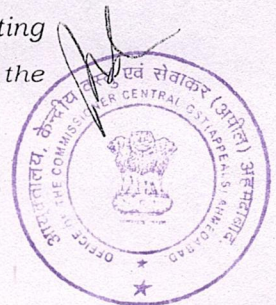
Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [* * *] debit note pertains or furnishing of the relevant annual return, whichever is earlier :

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the



financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

Para 11 of C.B.I. & C. Circular No. 79/53/2018-GST, dated 31-12-2018

*11. In this regard, it is clarified that 'Net ITC' as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been 'availed' when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in **FORM GSTR-3B**. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2017, 'availed' in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017.*

7. In view of above discussion, I find that the sanctioning authority has erred in law and facts of the cases by partial rejecting the refund application on the basis that the appellant has filed nil refund in the month of October & November, 2019 and they have claimed ITC of the invoices of those months in the current claim filed for the month of December, 2019. Further, I find that the Section 16(4) of the CGST Act, 2017 stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Further I find that, as per Section 16 of CGST Act, 2017 the registered person is entitled to claim input tax credit of GST paid on goods or services availed by him and used in the course of his business or furtherance of his business. I find that para 11 of CBIC Circular No. 79/53/2018-GST dated 31-12-2018 provides that the input tax credit can be said to have been 'availed' when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in **FORM GSTR-3B**. Further, I also find that it also provide an illustration that the input tax credit of invoices issued in August, 2017, 'availed' in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017. In this context, I find that the the conditions of availment of credit have also been satisfied by the appellant. In view of the above, I find that the appellant is admissible for refund as per Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of CGST Rules, 2017.



8. In this context, it is revealed from the impugned order and statement of facts in appeal memorandum that the refund claim was rejected without quoting the relevant provisions of law. Therefore, in view of above observation, I find force in the arguments of the appellant. I therefore, observe that the partial rejection of refund to the appellant is faulty and unlawful and hence the impugned order is not maintainable to that extent.

9. In view of the discussions above, I reject the ground of the impugned order based on which the refund claim of the appellant is partially rejected and allow the appeal filed by the appellant to the extent as discussed above, without going in to merit of all other aspects, which is required to be complied by the claimant in term of Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules,2017.

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

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

Mohit Agrawal
19/07/21

(मोहित अग्रवाल)

अपर आयुक्त(अपील्स)

दिनांक : 19-07-2021

Attested

B.S. Meena

(B.S. Meena)

Superintendent (Appeals)

CGST, Ahmedabad.

By R.P.A.D.

To,

M/s. Sinhal Brothers

(GSTN:24AAMFS8786M1Z6),

238, Opp. Cozi Resturant,

Ranipur Narol, Ahmedabad-382405

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner(Appeals), CGST, Ahmedabad
3. The Commissioner, Central Tax, Ahmedabad-South.
4. The Assistant Commissioner CGST, Div-IV (Narol), Ahmedabad-South.
5. The Assistant Commissioner, System, Central Tax, Ahmedabad-South
6. Guard File.
7. P.A.

