



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-202203645W0000777A1D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1121/2021 -APPEAL / 3252-58

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-160/2021-22**
दिनांक Date : **30-03-2022** जारी करने की तारीख Date of Issue : **30-03-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZW2403210376959 DT. 26.03.2021** issued by
Deputy Commissioner, CGST, Division IV, Ahmedabad South

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

**Shri Iqbal Ramjanibhai Dewadiwala of M/s. Raza Textile, Real Honest Compound,
Opp Supreme Hotel, Shahvadi, Narol, Ahmedabad-382405**

(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 Iqbal Ramjanibhai Dewadiwala, of M/s. Raza Textile, Real Honest Compound, Opp Supreme Hotel, Shahvadi, Narol, Ahmedabad 382 405 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 21-6-2021 against Order No.ZW2403210376959 dated 26-3-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, Division IV (Narol), Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant registered under GSTN 24ABFPD2833A1ZI has filed refund claim for Rs.21,05,505/- for refund of ITC accumulated on account of inverted tax structure under Section 54 (3) of CGST Act, 2017 for the period June 2020 to December 2020. The appellant was issued show cause notice ref No.ZX2403210136348 dated 9-3-2021 proposing rejection of refund on the ground to clarify the inverted turnover. The appellant filed reply to show cause notice on dated 17-3-2021. The adjudicating authority vide impugned order held that refund of Rs.21,05,505/- was inadmissible on the ground that *'Description of HSN 9988 is 'services by way of job work', the refund/itc of job work/services are not allowed in Section 54 also the utilization of credit availed for the job work is not clear''*.

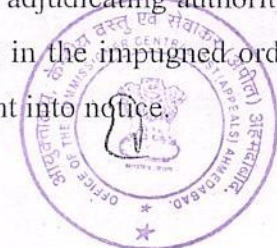
3. Being aggrieved the appellant filed the present appeal on the following grounds

In the given case the SCN itself was not issued and therefore without issuing SCN, the impugned adjudicating order has been passed which is in violation of principles of natural justice and hence the impugned adjudication order is liable to be set aside ;

The governing Section 54 (3) of CGST Act, 2017 refers 'a registered person may claim refund of any unutilized input tax credit'. By issuing Circular No.48/22/2018-GST dated 14-6-2018 clarifies that 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 CGST Act, 2017. In view of above submission the appellant pray to set aside the impugned order and allow the appeal and to grant refund with interest to them.

4. Personal hearing was held on dated 28-3-2022. Shri Binit Shah, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he has nothing more to add to their written submission.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. At the outset I find that reason mentioned in the show cause notice for rejection of refund and ground taken by the adjudicating authority for rejection of refund are entirely different. Therefore, the ground taken in the impugned order is beyond the scope of show cause notice and without putting the appellant into notice.



6. In this case it is not in dispute that the appellant is engaged in services by way of job work of textiles under which is covered under HSN 998821. The adjudicating authority has rejected the refund on the premise that the refund of ITC on job work is not allowed under Section 54 (3) of CGST Act, 2017. Countering the same, the appellant relied upon CBIC Circular No. 48/22/2018-GST dated 14-6-2018 in appeal. I have gone through the said Circular, wherein it was clarified as under:

<p>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>	<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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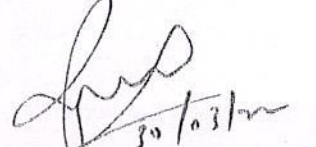
7. As per above Circular independent textile processors (job workers) are eligible for refund of unutilized ITC account of inverted duty structure. Thus the above Circular clarifies the issue in hand and allows refund of ITC for job work activities under Section 54 (3) of CGST Act, 2017. Therefore rejection of refund on the ground that refund of ITC for job work is not allowed under Section 54 is not sustainable on merit. Another reason for rejection is that utilization of credit availed for job work is not clear. This ground was not raised in show cause notice for necessary clarification from the appellant. Had it been done, the issue should have been clarified and resolved before issuing the order. However instead of doing so, the adjudicating authority on his own failure to understand the issue taken it as a ground for rejecting the refund, which I find not at all a justifiable and cogent reason for rejection. Therefore I find that rejection of refund grounds mentioned in the impugned order, without putting the appellant to notice, are against the governing principles of adjudication and hence not legally sustainable.



8. In view of above, I hold that the impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside. No other reason/ground was raised in the impugned order disputing admissibility of refund. Hence I allow this appeal with consequential benefit under Section 54 (3) of CGST Act, 2017 read with CBIC Circular No. 48/22/2018-GST dated 14-6-2018. Accordingly I set aside the impugned order and allow the appeal.

अपील कर्थाद्वारा 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.


30/03/21
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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



To,

Shri Iqbal Ramjanibhai Dewadiwala,
of M/s. Raza Textile,
Real Honest Compound,
Opp Supreme Hotel,
Shahvadi, Narol,
Ahmedabad 382 405

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

