



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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टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

(DIN:-) 20210764-SW000000AA164

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1244/2021/2319 To 2324

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-017/21-22  
दिनांक Date : 23-07-2021 जारी करने की तारीख Date of Issue 26-07-2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित  
Passed by Shri. Mohit Agrawal, Additioanl Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZQ2412200130391 दिनांक: 11.12.2020 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.

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



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. ZQ2412200130391 dated 11.12.2020 [hereinafter referred to as 'impugned order'] passed by the Assistant Commissioner of CGST, Division-I-Rakhial, 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.7,46,586/- dated 21.10.2020 for the period from January 2020 to February 2020 under Section 54(3) of the CGST Act. The appellant was issued a Show Cause Notice dated 02.12.2020, wherein the adjudicating authority has:

- i. Asked whether notification 75/2019-Central Tax dated 26.12.2019 has been complied with or not;
- ii. Informed that turnover of zero rated supplies can not be quantified as per Notification 16/2020-CT dated 23.03.2020;

The reply to the above mentioned Show Cause Notice was submitted by the appellant on 10.12.2020. Vide the impugned order, the Adjudicating Authority rejected the refund claim amounting to Rs. 7,46,586/- of the appellant on the grounds that "*The claimant's contention is not in accordance with conditions specified in Notification 16/2020 dated 23.03.2020 i.e. failed to produce any proof regarding supply made by similarly placed supplier. Accordingly, claim is rejected under section 54 of CGST Act, 2017*".

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 rejected;
- b. The Adjudicating Authority has rejected the entire refund by wrongly calculating the turnover of zero rated supplies as per Notification 16/2020-Central Tax dated 23.03.2020 ;

4. Personal Hearing in the matter was held on 20.07.2021 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 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 Export of Goods and 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.7,46,586/-. The said amount of Rs.7,46,586/- was rejected by observing that Turnover of zero rated supplies cannot be quantified as per Notification 16/2020-Central Tax dated 23.03.2020. 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.1,47,50,086/-. It is observed that in response to the SCN issued by the adjudicating authority stating that zero rated turnover can't be quantified as per Notification 16/2020CT dated 23.3.2020 and whether Notification 75/19-CT dated 26.12.2019 was compiled or not, the appellant had submitted to the adjudicating authority that in order to justify that their export value was less than 1.5 times of value of goods supplied in domestic market, sample copy of invoice of both sales and purchase transaction was being attached by them along with the reply showcasing that export value was just 1.06 times the value of goods supplied in the domestic market; that those domestically purchased goods were exported by adding markup of around 6% resulting in 1.06 times of the value of domestic market value. They also stated that they were also attaching a declaration in



that regard. 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. 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. In terms of Rule 89(4) (C) of the Central Goods & Services Tax Rules, 2017, "*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". Adjudicating authority has not provided any evidence that value of zero-rated supply of goods made during the relevant period is less than 1.5 times the value of like goods domestically supplied by the appellant or similarly placed supplier. 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.

10. Further, the contention of the appellant is that all the goods that are exported were purchased from domestic market only and no further substantial value addition was made after such procurement. They also submitted sample copy invoice of both sale and purchase transaction, which depicted that these domestically purchased goods are exported by adding markup of around 3.27% only in comparison to the value of domestic market value. The appellant has substantiated their claim by submitting the sample copy of purchase invoices and export sales invoices. The adjudicating authority has not recorded any reason in writing for rejecting the turnover declared by the appellant which clearly violates the principal of natural justice.

11. It is also observed that the present appeal filed by the appellant is delayed and the application for condonation of delay is also not made with the initial appeal documents. However, the appellant has vide additional submissions dated July 19, 2021 requested this



appellate authority to condone the delay in filing the appeal while considering the judgement of the Hon'ble Supreme Court of India. The Apex Court vide the said Sua Moto Writ Petition (C) No. 3/2020 has pronounced that the period(s) of limitation shall stand extended till further orders. Further I observed that Circular No. 157/13/2021-GST dated 20.07.2021 issued by CBIC also clarify the same as under;

*4(c) Appeals by taxpayers/ tax authorities against any quasi- judicial order:-  
Wherever any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.*

12. In view thereof, it is held that the adjudicating authority has wrongly rejected the refund claim amounting to. Rs.7,46,586/- 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.

13. 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.

14. अपीलकर्ताद्वारा 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*  
23/7/21

(MOHITAGRAWAL)  
Additional Commissioner,  
CGST (Appeals), Ahmedabad.

Date: .07.2021.

Attested

*Bom*

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.

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- 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

