



सत्यमेव जयते

## आयुक्त(अपील)काकार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 07926305065- टेलिफैक्स 07926305136



DIN NO. : 20210764SW0000222B92

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1118&1119/2021-Appeal / 2358 70 2363

ख अपीलआदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-18 & 19/21-22  
दिनांक Date : 26-07-2021 जारी करने की तारीख Date of Issue : 29-07-2021

श्री मोहित अग्रवाल अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mohit Agrawal, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No ZR2403210379648 dated 26/03/2021 and Order No. ZR2403210429093 dated 30/03/2021 both issued by Deputy Commissioner, Central GST, Division-IV-Narol, Ahmedabad-South Commissionerate

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

**M/s. Venus Denim**

(GSTN:24AAMFV4350N1ZP),

181, Shahwadi, B/h MG Mill,

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) <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.





**ORDER IN APPEAL**

M/s. Venus Denim (GSTN:24AAMFV4350N1ZP), 181, Shahwadi, B/h MG Mill, Narol, Ahmedabad-382405 (*hereinafter referred to as 'appellant'*) filed the present appeal against the Order No. ZR2403210379648 dated 26/03/2021 and Order No. ZR2403210429093 dated 30/03/2021 (*hereinafter referred to as 'impugned orders'*) passed by the Deputy Commissioner, Central GST, Div-IV-Narol, Ahmedabad-South (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellant filed refund claims amounting to Rs. 10,16,376/- & Rs. 9,16,179/- for the month of November-2020 & December-2020 respectively under Section 54 of the CGST Act, 2017 on account of ITC on Export of Goods & Services without payment of tax. On scrutiny of refund application submitted by the appellant, the adjudicating authority has issued a notice for rejection of application of refund in FORM-GST-RFD-08 both dated 17/03/2021 reason being "Miss Match of ITC" with remark "ITC availed is more than ITC available in GSTR 2A" and directed to the appellant to furnish a reply to notice *ibid* within fifteen days from the date of service of this notices. Further, the adjudicating authority has rejected both the refund claims vide impugned orders with the remark-"reply to SCN not made/not visible". Since the issue involved is identical for different periods, therefore, both appeals are taken up for decision vide this common order.

3. Being aggrieved with the impugned orders, the appellant preferred both the appeals 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 application rejected without considering the details of GSTR-2A as available on GST Portal.
- c. Refund application rejected without considering the reply to SCN.
- d. RFD-06 was issued within 5 days of issuance of SCN. However to comply with the SCN your appellant was offered 15 days time limit which was supposed to be expired on 01/04/2021. RFD-06 was issued soon after the submission of reply to SCN in form RFD-09 dated 23/03/2021. This makes it very clear that the adjudicating authority could locate that the reply to SCN was made but could find the attachment to the reply to SCN. Therefore the reason provided in the rejection order "reply to SCN not made" is not tenable. Adjudicating authority has grossly erred in not considering the documents at all.





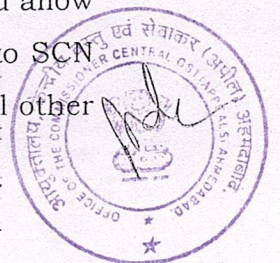
4. A personal hearing in the matter was held on 20.07.2021. Shri Kunal Agrawal, CA appeared before me for personal hearing on dated 20.07.2021 on behalf of appellant through video conferencing mode in appeal no. GAPPL/ADC/GSTP/1118&1119/2021-Appeal. He re-iterated submission made in appeal memorandum and requested to consider their appeal.

5. I have carefully gone through the case records, and written submission made in the appeal memo as well as oral submissions made at the time of personal hearing and impugned order. Accordingly, I proceed to decide the case.

6. Prima facie, I find that the appellant had filed aforesaid refund claim under Section 54 of CGST Act, 2017 on account of ITC on Export of Goods & Services without payment of tax for the month of November-2020 & December-2020. I find that the adjudicating authority has rejected refund claim on the basis that the reply to SCN not made/not visible. Further, I find that the appellant has mentioned in grounds of appeal that the reply to SCN was submitted on 23/03/2021. I also find that the appellant has submitted copy of RFD-09 before me in which reply date is mentioned as 23/03/2021. Further I find that the adjudicating authority has rejected refund application within 10 days of issuance of SCN. Therefore, I find that the reason provided in the rejection order "reply to SCN not made" is not tenable. Further, I find that the appellant has also submitted Form GSTR-3B for the month of November-2020 & December-2020 in which Net ITC available are total Rs. 2,66,04,646/- & Rs. 2,97,45,837/- respectively. The appellant has also submitted GSTR-2A for the month of November-2020 & December-2020 in which Net ITC available are total Rs. 2,69,33,523/- & Rs. 3,11,63,675/- respectively. In view of the above, the appellant is admissible for refund as per Section 54(3) of the CGST Act, 2017 read with Rule 89(4) of CGST Rules, 2017.

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

8. In view of the discussions above, I reject the ground of the impugned orders based on which the refund claims of the appellant are rejected and allow both the appeals filed by the appellant to the extent the issue of reply to SCN not made/not visible, 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(4) of the CGST Rules,2017.

9. The appeals 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*  
26/7/21

(मोहित अग्रवाल)  
अपर आयुक्त(अपील्स)

दिनांक : 26-07-2021

Attested

*B.P.A.D.*



Superintendent (Appeals)

CGST, Ahmedabad.

By R.P.A.D.

To,

M/s. Venus Denim

(GSTN:24AAMFV4350N1ZP),

181, Shahwadi, B/h MG Mill,

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.