



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



07926305065-

टेलिफैक्स 07926305136



**DIN-20211064SW000000E95D**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/300-304/2020-APPEAL

3790 703796

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-34 to 38/2021-22**

दिनांक Date : **13-10-2021** जारी करने की तारीख Date of Issue : **14-10-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **CGST/WS08/Ref/Demand/01 to 05/BSM/2020-2021** दिनांक: **21-7-2020** issued by Assistant Commissioner, CGST, Division VIII, Ahmedabad South

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

**M/s. Dhruv Earthmovers, 1<sup>st</sup> Floor, 7-8, Krishna Complex, Opp. Essar Petrol Pump, Sarkhej, Ahmedabad 382210**

(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**

M/s.Dhruv Earthmovers, 1<sup>st</sup> Floor, 7-8, Krishna Complex, Sarkhej, Ahmedabad 382 210 (hereinafter referred to as 'the appellant') has filed five appeals against Order In Original No.CGST/WS08/Ref/Demand/01 to 05/BSM/2020-2021 dated 21-7-2020 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST, Division VIII, Ahmedabad South (hereinafter referred to as 'the adjudicating authority'), ordering recovery of refund erroneously sanctioned to them. The details are as under:

Sr No.	Appeals File No.	Date of filing	OIO Number and date	Amount confirmed
1	GAPPL/ADC/GSTP/300/2020	6-10-2020	CGST/WS08/Ref/Demand/01 to 05/BSM/2020-2021 dated 21-7-2020	874054
2	GAPPL/ADC/GSTP/301/2020	6-10-2020		382664
3	GAPPL/ADC/GSTP/302/2020	6-10-2020		685626
4	GAPPL/ADC/GSTP/303/2020	6-10-2020		728044
5	GAPPL/ADC/GSTP/304/2020	6-10-2020		720861
			TOTAL	33,91,249/-

2. The brief facts of the cases are that the appellant is registered under GST Registration Number 24AAIFD6319H1ZJ. The appellant has claimed refund of IGST paid on account of supply of earthwork for loading, spreading, rolling and watering services made to SEZ units viz M/s.Zyodus Infrastructure P.ltd., Pharmez, Matoda MH 8A, Ahmedabad and M/s.Amneal Pharmaceuticals P.ltd., Matoda, Ahmedabad, which were sanctioned by the Assistant Commissioner, Division VIII, Ahmedabad South. On examining the legality and propriety of order sanctioning refund, it was observed by the Department that the adjudicating authority has erred in sanctioning refund to the appellant by considering that the invoices for supply of duty free goods are endorsed by the SEZ as per SEZ norms and without submission of evidence regarding receipt of services for authorised operation as endorsed by the specified officer as required in terms of clause (b) of second proviso to Rule 89 of CGST Rules, 2017 and clause (e) of sub rule (2) of Rule 89 of CGST Rules, 2017. Therefore, by issue of Review orders, Department has filed appeals before the Joint Commissioner (Appeals), CGST, Ahmedabad. The Joint Commissioner (Appeals), CGST, Ahmedabad vide OIA No.AHM/EXCUS/001/APP/JC/30 to 34/2019-2020 dated 28-11-2019 has allowed the Department Appeals. Consequently, the Assistant Commissioner, Division VIII, Ahmedabad South has issued Show cause notice for recovery of refund erroneously sanctioned to the appellant. The SCNs were decided vide impugned orders wherein the adjudicating authority has ordered recovery of erroneously sanctioned refund of Rs.33,91,249/- from the appellant.

3. Being aggrieved the appellant filed the present appeals on dated 6-10-2020 on the following ground:

The appellant stated that endorsement of the service supply bill, as per SEZ Act no endorsement has been carried out by the Customs Officer, service being a tangible one, verification has not



been possible, so not been endorsed by the jurisdictional special officer. Whereas in the case of goods supply endorsement by the specified office has been required whereas in the case of the

service only the endorsement of services for the authority operation usages only require. So in this case no physical endorsement requires. Further notwithstanding anything above, the appellant has endorsed such bills. So the appellant wants to state that the appellant was rightly eligible for refund which was sanctioned and thereby set aside the said OIO. Hence, the Order passed by the Assistant Commissioner, CGST, Division VIII, Ahmedabad South is required to be set aside and drop the demand. The appellant has also paid pre deposition of 10% of disputed amount, amounting to Rs.339125/- while filing the appeals.

4. Personal hearing was held on 8-10-2021. Shri Vipul Khandar, Chartered Accountant appeared on behalf of the appellant on virtual mode. He stated that he had nothing more to add to their written submission dated 6-10-2020.

5. I have carefully gone through the facts of the case, the impugned Order and Orders previously passed in this case and the grounds of appeal. I find that in these appeals the appellant requested to set aside the impugned Order passed by the adjudicating authority ordering recovery of refund erroneously sanctioned to them. I find that the adjudicating authority has ordered recovery of refund due to the reason that the appellant has not submitted documents specified under clause (b) of second proviso to Rule 89 (1) of CGST Rules, 2017 read with clause (e) of Rule 89 (2) of CGST Rules, 2017 along with their refund application and thereby not complied with requirements specified under said Rules. For better appreciation of the facts, I reproduce the relevant provisions of Rule 89 of CGST Rules, 2017 as under:

Rule 89 of CGST Rules, 2017: Application for refund of tax, interest, penalty, fees or any other amount: -

*(1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

*Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be.*



*Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –*

*(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;*

*(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:*

*(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-*

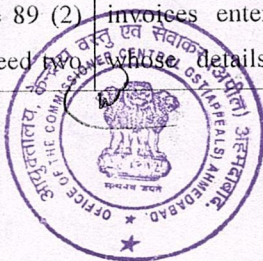
*(a) to (c) .....*

*(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;*

*(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;*

6. I further notice that CBIC vide Circular No.125/44/2019 dated 18-11-2019 has given a list of all statements/declarations/undertaking/certificates and other supporting documents to be provided along with the refund application, wherein at Sr.No.4, the following documents/supporting documents are specified, in case of refund of tax paid on supplies made to SEZ units/developers with payment of duty,

Sr No.	Type of refund	Declaration/statement/undertaking /Certificates to be filled online	Supporting documents to be additional uploaded
1	Refund of tax paid on supplies made to SEZ unit/developer with payment of tax	Declaration under second and third proviso to Section 54 (3) ; Declaration under Rule 89 (2) (f) ; Statement 4 under Rule 89 (2) (d) and Rule 89 (2) (e ) ; Undertaking in relation to section 16 (2) (c ) and Section 42 (2) and self declaration under Rule 89 (2) (1) if amount claimed does not exceed 500	Endorsement (s) from the specified officer of the SEZ regarding receipt of goods/service for authorized operations under second proviso to Rule 89 (1) ; self certified copies of invoices entered in Annexure A if details are not found in



	lakh rupees, certification under Rule 89 (2) (m) otherwise	GSTR2A of the relevant period and self declaration regarding non prosecution under sub rule (L) of Rule 91 of the CGST Rules for availing provisions refund.
--	--	--

7. In view of above, as per provisions of Rule 89 of CGST 2017 and guidelines issued by the Board, it is mandatory requirement to submit evidence in the form endorsement by the specified officer of the Zone showing receipt of goods or services for authorized operations of the unit. In the subject cases, no such document was submitted by the appellant at the material time and hence the refund earlier sanctioned to the appellant was ordered for recovery.

8. I find that the grounds put forth by the appellant in the present appeals is on the same lines of the ground submitted by them in earlier adjudication and appeal proceedings inasmuch as it was contended that supply of service being a tangible one, verification is not possible and hence no endorsement was made by the jurisdiction specified officers and also in case of service only the endorsement of service for the authorized operation only required and no physical endorsement is required. They had also contended that in spite of above, they had endorsed such bills. Thus, as per the appellant's contention no endorsement is required for the supply made by them. No other submissions in addition to above was submitted in the present appeals.

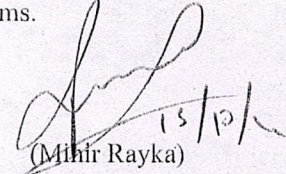
9. I do not find any force in the grounds put forth in appeals. The provisions of Rule 89 of CGST 2017, clearly stipulate submission of evidence regarding receipt of services for authorized operations of the SEZ Unit duly endorsed by the specified officer for the purpose of claiming refund of tax paid on supply made to SEZ Unit. Therefore, appellant's contention that such a requirement is not required in their case due to reason that their service is a tangible one hence verification is not possible and that for service only endorsement of service is required and no physical endorsement is required is legally and factually not correct and not acceptable. Further, the appellant has also contended that they had endorsed bills. However, no copy of such endorsed bill is brought on record during the current proceedings. Therefore, I find that there is non-compliance of provisions of clause (b) of second proviso to Rule 89 (1) of CGST Rules, 2017 and also sub rule 2 (d) and 2 ( e ) of Rule 89 of CGST Rules, 2017 by the appellant inasmuch as the appellant has not submitted the documents specified under above Rule in support of their claim of refund tax paid on supply made to SEZ Unit. I further find that admissibility of refund under GST Law is subject to submission of specified documents and unless such specified documents are submitted the claimant lose their right for refund of tax paid by them. In the subject case, I find that there is non submission of specified documents by the



appellant due to which refund earlier sanctioned to them was erroneous which is liable for recovery. I find that in the impugned Orders the adjudicating authority has ordered recovery of refund sanctioned to them due to non-compliance of requirement specified under Rule 89 of CGST 2017, as above. Therefore, I do not find any infirmity in the impugned Orders passed by the adjudicating authority ordering recovery of refund erroneously sanctioned to them. Therefore, I upheld the Orders passed by the adjudicating authority and reject the appeals filed by the appellant.

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

10. All the five appeals filed by the appellant stands disposed of in above terms.

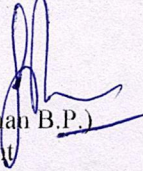
  
(Mihir Rayka)

Joint Commissioner (Appeals)



Date :

Attested

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

By RPAD

To,  
M/s.Dhruv Earthmovers,  
1<sup>st</sup> Floor, 7-8,  
Krishna Complex,  
Sarkhej, Ahmedabad 382 210

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 VIII, Ahmedabad South
- 5) The Superintendent, CGST, Range V, Division VIII, Ahmedabad South
- 6) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 7) Guard File
- 8) PA file