



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-20211064SW0000111D61

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/155/2021-APPEAL & / 3784 703789
GAPPL/ADC/GSTP/163/2021-APPEAL
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-39 to 40/2021-22**
दिनांक Date : **14-10-2021** जारी करने की तारीख Date of Issue : **20-10-2021**
- श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mihir Rayka, Joint Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **WS06/Ref-04/Saibaba/DR/2020-2021** and
WS06/Ref-05/Saibaba/DR/2020-2021 दिनांक: **06-05-2020** issued by Deputy
Commissioner, CGST, Division-VI, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Shree Saibaba Petroleum, 4th Floor, B-404, 'The First; B/H Keshvbaug Party
Plot, Vastrapur, Ahmedabad 380 015

(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

M/s.Shree Saibaba Petroleum, 4th Floor, B-404, 'The First; B/H Keshvbaug Party Plot, Vastrapur, Ahmedabad 380 015 (hereinafter referred to as 'the appellant') has filed the two appeals on dated 31-8-2020 against Order No.WS06/Ref-04/Saibaba/DR/2020-2021 and WS06/Ref-05/Saibaba/DR/2020-2021 both dated 6-5-2020 (hereinafter referred to as 'the impugned Order') passed by the Deputy Commissioner, CGST, Division VI, Ahmedabad (hereinafter referred to as the 'adjudicating authority').

2. Briefly stated the facts of the case is that the appellant is registered under GST Registration No.24AAFFS9395H1ZP is engaged in business of agency services. The appellant has filed refund claims in respect of IGST paid on supplies made to units located in designated SEZ area. The appellant was issued notice for rejection of application of refund on account of following reasons:

On going through the documents submitted by you it is noticed that you have filed refund application on account of export of services with payment of tax while documents submitted pertains to on account of supplies to SEZ Unit/SEZ developer (with payment of tax).

3. The refund claims were subsequently rejected by the adjudicating authority vide impugned order on the following grounds :

In this case the claimant has filed the application on account of Export of services with payment of tax while documents submitted pertains to on account of supplies to SEZ Unit/SEZ Developer (with payment of tax). Hence the claim is liable for rejection.

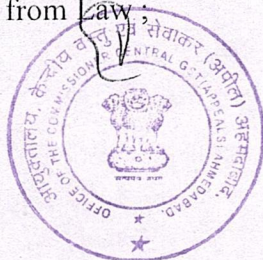
In view of above, the claimant has filed the refund claim in wrong category of export of services with payment of tax instead of on account of supplies to SEZ Unit/SEZ Developer (with payment of tax). Hence the claim filed by the claimant is liable for rejection.

4. The details of claims are as under :

Appeal file No.	Date of filing of appeal	Refund amount	Period	Order Number and date
GAPPL/ADC/GSTP/155/2020	31-8-2020	284312/-	April to September 2018	WS06/REF-05/SAIBABA/DR/2020-2021 DATED 6-5-2020
GAPPL/ADC/GSTP/163/2020	31-8-2020	363428/-	July to October 2017	WS06/REF-04/SAIBABA/DR/2020-2021 DATED 6-5-2020

5. Being aggrieved, the appellant filed the present appeal on the following grounds :

- The procedural mistakes cannot debar the appellant from the benefits arising from Law.



- ii. The substantial benefit should not be denied as there was mistake in choosing wrong category of refund claim while applying on GSTN portal which does not negate that supply to SEZ was not made and refund is not eligible.
- iii. That the adjudicating authority has not clarified as to why the logic of Circular issued under Customs 12/2018-Customs is not applied to the present case and hence the rejecting their claim is not proper and legal.
- iv. That the impugned order was passes in gross violation of principles of natural justice;
- v. That the adjudicating authority has not negated the fact that supply of service to SEZ was on payment of IGST but not considered the same while processing the refund claim;
- vi. That the supply of service to SEZ unit is zero rated supply in terms of Section 16 of CGST Act, 2017;
- vii. That while filing refund claim mistake may occur on the portal it does not mean that mistake cannot be resolved on the representation made in the submission by the appellant not the department can negate that supply of service on payment of IGST was made to SEZ and consequently cannot stench away the right of refund of IGST granted under Section 54 of CGST Act, 2017.
- viii. That the impugned order may be set aside and refund along with applicable interest may be considered.

6. Personal hearing was held on 12-10-2021. Shri Pravin Dhandharia, Authorized Representative appeared on behalf of the appellant through virtual mode. He stated that decision may be taken on the documents submitted by them till date. He has nothing more to add to it.

7. I have carefully gone through the facts of the case, grounds of appeals, impugned Orders, documents available on record; submissions made by the appellant. The issue to be decided as to whether the appellant is entitled for refund of IGST paid on supply of services made to SEZ unit due to wrong mention of such supplies as export on payment of tax in their refund applications and returns. At the outset, I find that in this case the supplies were made to SEZ Unit on payment of IGST. However, as per Refund ARN Receipts, the appellant has filed the refund applications mentioning refund of tax paid on export of services with payment of tax. I also find that in GSTR1 returns filed for period August 2017 to October 2017 and July 2018 to September 2018, the appellant has mentioned the invoices issued by them in Col 6A which pertains to export invoices. In GSTR3B returns filed for the period August 2017 to October 2017 no amount was shown



under the column 3.1 (b) which pertains to outward taxable supplies (zero rated), but in GSTR3B returns for the period July 2018 to September 2018, the details of supply was shown under column 3.1 (b). Thus, except in GSTR 3B return for the period July 2018 to September 2018, in the GSTR 1 returns and refund application the supply was shown as made for export of services on payment of tax, instead of for SEZ Unit. This fact was also admitted by the appellant in their written submissions.

8. I also find that in the prescribed form of GSTR 1 return, specific column is provided under Col 6 (B) for recording details of invoices issued for supplies made to SEZ Unit or SEZ Developer. Further, in spite of having aware that supplies were made to SEZ unit, in their refund application the appellant has mentioned the reasons for refund as export with payment of tax. However, in the grounds of appeal, the appellant has termed the above lapse as an error and procedural one and no clear or valid reason for wrong mention of category of supply was given. They have also relied upon Circular No.12/2018-Cus dated 29-5-2018 and Circular No.125/44/2019-GST dated 18-11-2019. However, I find that Circulars relied by the appellant are issued for rectification for online filing of refund due to errors in filing of returns and not to a situation which exists in this appeal.

9. The refund of IGST paid on supplies made to SEZ unit is governed under Section 16 of IGST Act, 2017 as under :

16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2)

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

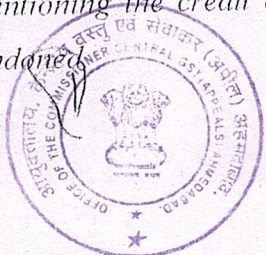
(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.



10. As per above statutory provisions, supply made to SEZ Unit/Developer and for export are termed as 'zero rated supply' and that in case of such supply on payment of integrated tax, the registered person is entitled for refund of IGST, subject to fulfilment of conditions, safeguards and procedures and in accordance with provisions of Section 54 of CGST Act, 2017 and Rule 89 of CGST Rules, 2017. In the instant case, there is no dispute to the fact that the supply was not made to SEZ Unit on payment of tax. The dispute was with regard to wrong mention of such supply as export of supply on payment of tax in their refund application and also in their GSTR1 returns. I find that in the impugned Order, the adjudicating authority has rejected the refund claim on this sole ground and no other discrepancy or deficiency or reasons which have bearing on non-admissibility of refund viz non supply of services to SEZ or non-payment of tax or delay in filing refund claim or non submission of relevant documents or non fulfillment of conditions prescribed under IGST Act and Rules made thereunder for grant of refund or unjust enrichment aspect were recorded in the impugned order for rejection of the refund. I further find that statutory provisions provided under Section 16 of IGST Act, 2017 allow grant of refund for supply made for export as well as to SEZ Unit on equal footing. In other words, both the category of supply is termed as zero rated supply and hence tax paid for the same is compensated by way of refund. Hence once it is established that supply was made either to SEZ unit or for export on payment of tax, the supplier is entitled to claim refund of tax so paid subject to fulfilment of conditions and observance of procedures. Therefore, I do not find any justification in rejecting the claim on mere wrong mention of category of supply as export of services instead of supply of services to SEZ Unit, thereby depriving the appellant of their substantial benefit.

11. In this regard, I also refer to Circular No. 37/11/2018-GST F. No.349/47/2017-GST dated the 15th March, 2018, issued by the Board, wherein it was clarified that refunds may not be withheld due to minor procedural lapses or non-substantive errors or omission.

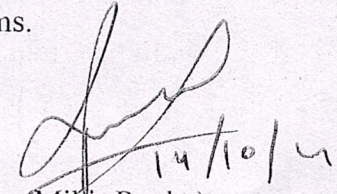
12. I also rely upon decision of Hon'ble CESTAT, Chennai passed in Service Tax Appeal No.40599/2017 dated 20-7-2021 in the case of M/s.Origin Learning Solutions P.ltd., wherein it was held that *it is not in dispute that the appellants are eligible for credit to the tune of Rs.16,93,074/- on the service tax paid by them under the reverse charge mechanism on input services availed by them. The only reason for denying the credit is that they have not reflected such availment of credit in ST-3 returns for July 2013 to September 2013. The services having been exported, the service tax paid on the input services used for export of services should be refunded to the appellants as per Rule 5 of Cenvat Credit Rules, 2004. The appellants have properly accounted in their books of Account. Not mentioning the credit availed in ST3 returns is only a procedural lapse which can be condoned.*



13. In accordance with above clarification and case law and also on the basis of case laws relied by the appellant, I hold that substantial benefit cannot be denied on procedural lapse, error or omission. In this case, it is established from the records that the supply was made to SEZ on payment of tax and there is no dispute regarding non observance of other conditions and procedures governing grant of refund of the same. Therefore, I find that the appellant is entitled for refund of IGST paid by them. Accordingly, I hold that merely on account of mentioning the wrong category of supply in their refund applications and returns should not disentitle the appellant from their entitlement for refund of tax paid by them, which is otherwise found admissible. Therefore, I find force in the grounds under which the present appeals are filed. Accordingly, I allow the appeals and dismiss the impugned Orders passed by the adjudicating authority.

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

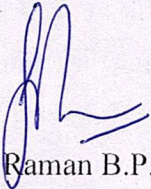
14. The appeals filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Joint Commissioner (Appeals)

Date :

Attested



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



By RPAD

To,

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