



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.

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फाइल संख्या : File No : GAPPL/ADC/GSTP/556/2020-APPEAL / 4323 70 4328

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-66/2021-22**

दिनांक Date : **17-11-2021** जारी करने की तारीख Date of Issue : **18-11-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

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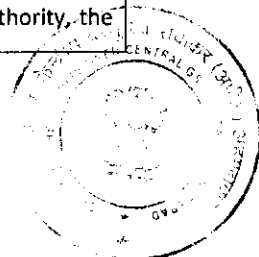
Arising out of Order-in-Original No **ZN2408200225686** दिनांक: **17-8-2020** issued by Assistant Commissioner, CGST, Division-IV-Narol, Ahmedabad South

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

**M/s. Gopi Synthetics Pvt. Ltd., Survey No. 302,
Narol-Vatva Road, 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 .



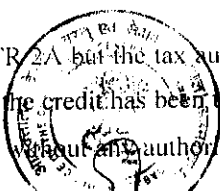
ORDER IN APPEAL

M/s.Gopi Synthetics Pvt.Ltd., Survey No.302, Narol-Vatva Road, Ahmedabad 382 405 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 13-11-2020 against Order Number ZN2408200225686 dated 17-8-2020 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST, Division IV, Narol, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. The brief fact of the case is that the appellant is registered under GSTIN 24AAACG7683G1ZJ. The appellant has filed refund claim for Rs.44,05,380/- on ITC accumulated on account of inverted tax structure under Section 54 (3) of CGST Act, 2017. The appellant was issued show cause notice proposing rejection of the claim on the ground that there is mismatch in ITC and hence refund to the tune of Rs.26,03,432/- was not admissible. The adjudicating authority vide impugned order rejected claim amounting to Rs.26,03,432/- on the ground that the claimant has filed NIL refund in the month of August and September 2019 and they have uploaded the purchase invoice of the same period in this claim.

3. Being aggrieved the appellant filed the present claim on the following grounds :

- i. That they had availed credit of input tax as prescribed in GST Law and there is no violation of this count and credit availed is legal and just and within the framework of GST Law ;
- ii. That provisions has been for refund of accumulated credit in such cases where procurement of inputs are at higher rate and output supply is attracting a lower rate of tax which may lead ITC to get accumulated ;
- iii. That the part denial of refund was based upon the allegation that some of ITC invoices were of previous month or in other words they were claimed to be in the category of "mis match of ITC" ;
- iv. That the refund claim was related to the month of October 2019 and November 2019 and during the period certain ITC was taken on the invoices of August 2019 and September 2019 ;
- v. That there is no bar or restriction that on Invoice of September 2019 no credit can be taken in November 2019 ;
- vi. That the supply (input purchase) is a regular process and any supply received during the last week of a given month the credit shall be taken in the first week of next month after examination, weightment/measurement, quality check of goods. Accordingly GST Law do not prohibit or there was no provisions which denies availment of ITC in ensuing month. Hence findings and Order issued by the refund sanctioning authority is erroneous and deserves to be set aside ;
- vii. That there was no mis match of ITC with GSTR 2A but the tax authority considered that the ITC on certain invoices on the ground that the credit has been taken belatedly with an intention to avail the refund. The allegation is without any authority since GST Law has



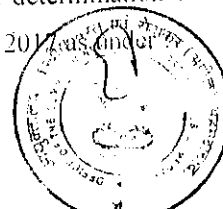
not debarred or denied such credit. In any case ITC taken on a given input invoice is considered for refund only and same cannot be accounted for twice for the purpose of refund :

- viii. That OIO issued by the refund sanctioning authority is a non speaking order : that they had preferred a detailed and reasoned reply but the one line order dated 17-8-2020 with remarks that the claimant has filed NIL refund in the month of August and September 2019 and they have uploaded the purchase invoice of the same period in this claim. The same allegation was made in SCN to which a reasoned and justified reply was tendered before the authority but none of the submission have been discussed in the Order ;
- ix. That the credit of input tax invoices has been taken as prescribed in Section 16 (2) of CGST Act, 2017 ;
- x. That none of the conditions laid down under Section 16 (2) of the Act has been violated and therefore the credit availed was in order and that there has been no mismatch as alleged in the SCN ;
- xi. That the credit of inputs taken should be related to the period to which refund relates. As per this provision ITC figures arrived at are the figures of ITC which was availed during the period to which the refund relates and hence this is not a case of mismatch, more so when the invoices on which ITC taken found reflected in GSTR 2A.
- xii. In view of above grounds, the appellant requested to set aside the impugned order with consequential relief.

4. Personal hearing was held on 15-11-2021. Shri Mahendra Kothari, Authorized Representative appeared on behalf of appellant on virtual mode. He stated that he has nothing more to add to their written submission dated 13-11-2020.

5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. In this case, the appellant has filed refund of ITC credit accumulated on account of inverted tax structure under Section 54 (3) of CGST Act, 2017 for the period October 2019 and November 2019. However, part of the claim amount was rejected on the ground that the appellant has not filed any refund for the months of August 2019 and September 2019 but included ITC taken on purchase invoices issued for the same period in their claim. It transpire from the impugned order that the rejected amount pertains to credit taken on purchase invoices issued during the period August 2019 and September 2019 during which the appellant has not filed any refund claim but included the credit involved therein in the claim filed for the months of October 2019 to November 2019. Countering the same, the appellant stressed upon their submission mainly on their eligibility to avail credit during the claim period and consequent refund.

6. I find that provisions relating to refund of accumulated ITC on account of inverted tax structure are governed under Section 54 (3) of CGST Act, 2017 and determination of refund under above category is governed under Section 89 (5) of CGST Rules, 2017 as amended :
Rule 89 (5) of CGST Rules, 2017 as amended :



(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula

Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods

Explanation:- For the purposes of this sub-rule, the expressions,-

(a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

b) "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4).

Rule 89 (4) (B) of CGST Rules, 2017 as amended

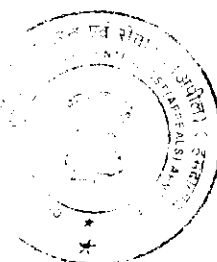
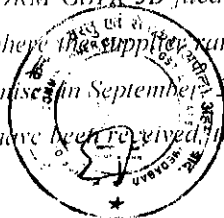
(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both

(F) "Relevant period" means the period for which the claim has been filed.

7. Concurrent reading of meaning assigned to Net ITC and relevant period leads to the expression that ITC means input tax credit availed on inputs during the period for which claim has been filed other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both. Thus, use of word 'availed' indicate that total credit taken on inputs during the claim period is to be taken under head ITC for determination of refund amount for that period. In other words the meaning of net ITC and relevant date allows all eligible input credit taken during the claim period irrespective of date and period of invoices for arriving Net ITC and for determining refund amount. Therefore so long as the credit is taken validly during the claim period in accordance with provisions of GST Law and found admissible it should be taken into account for determining refund for the claim period.

8. In this regard, I refer to Board vide Circular No. 125/44/2019 - GST Dated the 18th November, 2019 wherein it was clarified as under :

61. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self-declaration basis in FORM GSTR-3B for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2018, may be declared in the FORM GSTR-3B filed for a subsequent month, say September 2018. This is inevitable in cases where the supplier raises an invoice, say in August, 2018, and the goods reach the recipient's premises in September 2018. Since GST law mandates that ITC can be availed only after the goods have been received, the recipient can only avail the



ITC on such goods in the FORM GSTR-3B filed for the month of September, 2018. However, it has been reported that tax authorities are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September, 2018. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the said taxable person files his/her monthly return in FORM GSTR-3B. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August, 2019, "availed" in September, 2019 cannot be excluded from the calculation of the refund amount for the month of September, 2019.

9. The above clarification mandate the view that ITC availed during claim period on the strength of invoices issued during the past period cannot be excluded for calculation of refund amount for the claim period and should also be considered for determining refund amount. In the subject case, there is no dispute regarding admissibility of ITC availed during the claim period or ITC availed in question are not reflected in the GSTR 2A of the appellant and only dispute is that the credit taken during claim period include invoices issued during the prior period during which the appellant has not claimed refund. In this regard I find that as per meaning assigned to Net ITC and relevant date and also on the basis of clarification issued by Board vide circular mentioned above there is no restriction under GST Law for availing ITC in a month on the strength of invoices issued during past period. Therefore, I do not find any justification in excluding ITC of Rs.26,03,432/- on the reasoning given in the impugned order and hold that ITC amounting to Rs. Rs.26,03,432/- should also be taken into account for arriving Net ITC and determining consequent refund. In view of above I find force in the submissions made by the appellant in this appeal. Accordingly I set aside the impugned order and allow the appeal.

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

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

Date :

Attested

(Sankar Raviyan B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad

(Mihir Rayka)
Joint Commissioner (Appeals)

