



**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-

टेलीफैक्स 07926305136

**DIN-20211164SW0000333B2F**

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/593/2020-APPEAL &  
GAPPL/ADC/GSTP/594/2020-APPEAL / H33570 H8Y0  
 ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-67 to 68/2021-22**  
 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)

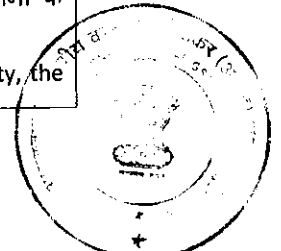
ग Arising out of Order-in-Original No **ZO2408200397264 & ZO2408200397520** दिनांक: **28-8-2020** issued by Assistant Commissioner, CGST, Division-VII-Satellite, Ahmedabad South

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

**M/s. Ratnam Stone Exports, 903, 9<sup>th</sup> Floor,**

**Indarprasth Corporate, Prahladnagar Road, Ahmedabad-380015**

(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

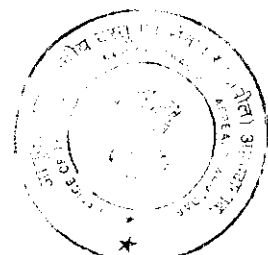
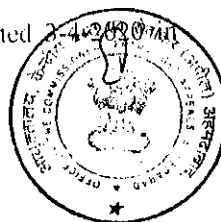
M/s. Ratnam Stone Exports, 903, 9<sup>th</sup> Floor, Indraprasth Corporate, Prahladnagar Road, Ahmedabad 380 015 (hereinafter referred to as 'the appellant') has filed the following appeals against Order passed by the Assistant Commissioner, Division VII (Satellite), Ahmedabad rejecting part of refund claimed by them. The details are as under :

Sr No.	Appeal File No.	Date of filing of appeal	Impugned Order Number and date	Amount of refund rejected
1	GAPPL/ADC/GSTP/593/2020	24-11-2020	ZO2408200397264/28-8-2020	2192/-
2	GAPPL/ADC/GSTP/594/2020	24-11-2020	ZO2408200397520/28-8-2020	60710/-

2. The fact of the case is that the appellant is registered under GSTIN 24AAAGR1203E1ZW. The appellant has filed refund claim for refund of ITC in respect of export made without payment of tax under Bond/LUT for the month of February 2020 and March 2020 amounting to Rs.14,68,599/- and Rs.14,67,355/- respectively. The appellant was issued show cause notice proposing rejection of part of refund claim amount on the reason that ITC amount not reflecting in GSTR 2A and as per CBIC Circular NO.135/05/2020-GST dated 31-3-2020, the ITC which is not reflecting in GSTR 2A is not eligible for refund. The adjudicating authority vide impugned orders rejected part of refund claim as shown in Table above on the ground proposed in show cause notice.

3. Being aggrieved the appellant filed the subject appeal on the following grounds :

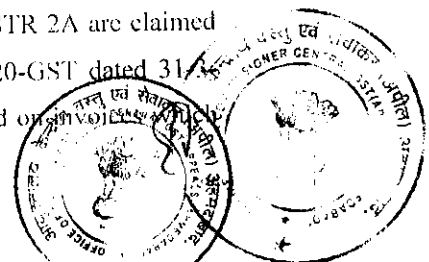
- That they had satisfied all the conditions prescribed under Section 16 of CGST Act, 2017 which deals with the eligibility of taking ITC and conditions to be fulfilled by the registered person and hence refund of accumulated ITC for export without payment of tax should be sanctioned ;
- That the impugned Orders were issued without referring to the reply filed by them in GST RFD 09 in response to show cause notice issued to them and hence stands vitiated by breach of principles of natural justice ;
- That under GST Law there are two patterns for filing of GST Return ie GSTR 1 in terms of Section 37 of CGST Act, 2017 read with Rule 59 of CGST Rules, 2017 first one is monthly and another one is quarterly which should be filed all normal taxpayers who are registered under GST. After filing of GSTR 1 supplies get reflected in Form GSTR2A.
- That in their case, they are taking the services of various suppliers like CHA etc. who due date falls on quarterly basis. Further as per Circular No.141/11/2020-GST dated 24-6-2020, Government has issued Notification NO.51/2020 to 54/2020 dated 2-4-2020





order to provide further relief to tax payers for different due dates for filing GST returns. Therefore for the Feb 2020 month/quarter due date for filing of return was 17<sup>th</sup> July 2020. Many tax payers has not filed their GST return on timely basis in view of the pandemic scenario of Covid 19. Since GSTR 1 was not filed by many tax payers till the date of filing of refund application many inward supplies were not reflected in GSTR 2A.

- v. That to the extent Circular says that ITC is not reflecting in GSTR 2A, it has to be read qua 'failure to pay tax'. In their case it is not failure to pay tax. The supplier will pay tax and will file GST return but as most of the supplier has quarterly filing of return due to lower turnover and due date for the same are different.
  - vi. It is undisputed that they had exported the goods without payment of tax, refund is on export of goods and credit was correctly claimed and the only condition of reflecting of ITC in GSTR 2A is completed based on filing of GST return by suppliers which were not due at the time of filing of refund in most of their cases ;
  - vii. That the contention of the Department for rejecting the refund on the basis of ITC reflecting in GSTR 2A is factually wrong and legally incorrect and the impugned order needs to be set aside and rejected and refund is to be sanction ;
  - viii. That the impugned order was passed without even referring to the reply filed by them which amounts to breach of natural justice. In support of the same the appellant relied upon various decisions of Courts.
  - ix. The appellant vide their letter dated 19-2-2021 filed additional submission wherein they reiterated the submissions made in their appeal memorandum. They further submitted details of all invoices in respect of which refund has been rejected along with copy of invoices and submitted that such invoices are duly reflected in GSTR 2A of the appellant in respect of GSTR 1 filed by various suppliers ; that all such invoices are correctly reflected in GSTR 2A till date and a copy of GSTR 2A reflecting such invoices was also submitted.
4. Personal hearing was held on 25-10-2021. Shri Abhishek Chopra, Authorized Representative appeared on behalf of the appellant on virtual mode. He stated that he has nothing more to add to their written submission.
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellants and documents available on record. In the subject cases part of the refund claim was rejected on the ground that the invoices which are not reflecting in GSTR 2A are claimed for refund which is contradicting para 5 of CBIC Circular NO.135/05/2020-GST dated 31-05-2020 and hence amount involved therein was rejected. Thus credit involved on





are not reflected in GSTR2A return of the appellant was rejected. I have gone through para 5 of the said Circular wherein it was clarified as under :

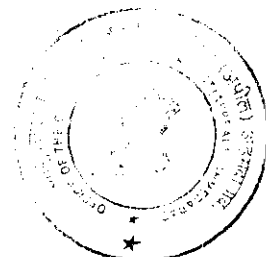
Guidelines for refunds of Input Tax Credit under Section 54(3)

*5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.*

*5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.*

6. The above Circular categorically restrict refund of ITC involved on those invoices which are uploaded by the suppliers in Form GSTR 1 and reflected in Form GSTR 2A of the applicant. Accordingly, it is clear that refund is admissible only in respect of invoices which are reflected in GSTR2A of the appellant. Since the Circular is binding on Department, the contention raised by the appellant regarding non filing of GSTR1 return by the suppliers does not merit any consideration. Similarly interpretation of the Circular is also factually wrong inasmuch as the Circular in clear and plain terms envisage refund only in respect of invoices which are reflected in GSTR2A return of the claimant. I also notice that it is an admitted fact that at the time of filing of refund claim the disputed invoices were not reflected in the GSTR2A return of the appellant. Hence, the quantum of refund rejected in the impugned order on this count was well within the scope of the said Circular and hence sustainable.

7. However, during the current proceeding the appellant filed additional submission dated 19-2-2021 wherein the appellant stated that all such disputed invoices are correctly reflected in GSTR 2A till date and also submitted copy of GSTR2A. I have scrutinized GSTR2A submitted by the appellant and find that it contains consolidated details of invoices issued by suppliers in tabulated form. I find that under GST Law the prescribed GSTR2A return is a purchase related monthly return which is automatically generated in GST Portal on the basis of details entered by the supplier in GSTR1 return. On scrutiny of GSTR2A now submitted by the appellant I find that the suppliers has filed GSTR1 return on various dates in different month in respect of invoices during the period from January 2020 to March 2020 whereas the appellant has submitted a single GSTR2A return covering all such invoices. It is also observed that subject claim was filed on dated 22-7-2020 and 1-8-2020 and some of suppliers have already filed their GSTR1 return prior to date of filing of refund claim. However while filing refund claim of claimant, the copy of refund copy of GSTR2A return reflecting such invoices were also not produced for which no





reasoning was given by the appellant. Apart from the above the GSTR2A also contains refund period which is not normally contained in the prescribed GSTR2A return. Therefore in the current proceedings before me the appellant has not satisfactorily proved that the disputed invoices are now reflected in their GSTR2A return in substantial compliance to the impugned order. In view of above, I do not find any error on the part of the adjudicating authority rejecting the refund amount on the basis of CBIC Circular No.135/05/2020-GST dated 31-3-2020. Accordingly uphold the impugned order and reject the appeal filed by the appellant.

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

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

Date :

Attested

(Sankar Raman B.P.)  
Superintendent  
Central Tax (Appeals).  
Ahmedabad

By RPAD

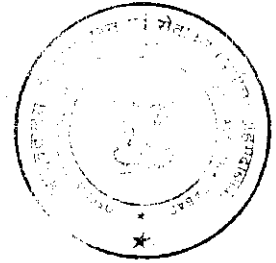
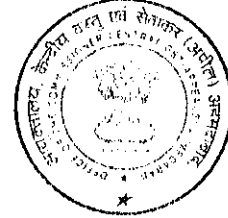
To,

M/s.Ratnam Stone Exports,  
903, 9<sup>th</sup> Floor, Indraprasth Corporate,  
Pralhadnagar Road,  
Ahmedabad 380 015

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 VII (Satellite), Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

  
(Mihir Rayka)  
Joint Commissioner (Appeals)





By RPAD

To,

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Indarprasth Corporate,  
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