



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/558/2020-APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-69/2021-22

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)

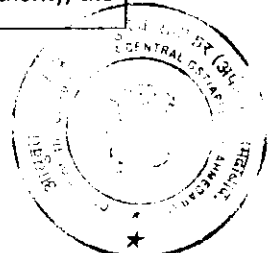
ग Arising out of Order-in-Original No ZR2408200376019 दिनांक: 27-8-2020 issued by
 Deputy Commissioner, CGST, Division-I-Rakhial, Ahmedabad South

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

Sagar Pratulchand Modi (M/s. Nisha Textile), Plot No.3,

Ashirwad Estate, Opp. Gujarat Farm, Behrampura, Ahmedabad

(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

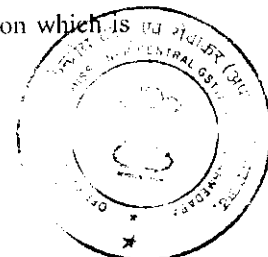
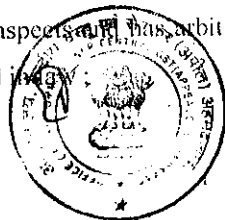
M/s. Nisha Textile, Plot No.3, Ashirwad Estate, Opp. Gujarat Farm, Behrampur, Ahmedabad (hereinafter referred to as 'the appellant') has filed the present appeal on dated 19-11-2020 against Order No.ZR2408200376019 DATED 27-8-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, CGST, Division I-Rakhial, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant is registered under GSTIN 24AMYPM6376M1Z0. The appellant filed refund claim of Rs.15,34,872/- on dated 25-7-2020 for refund of ITC accumulated on account of inverted tax structure under Section 54(3) of CGST Act, 2017. The appellant was issued show cause notice proposing rejecting of refund on the reasons that "*Whether Notification No.75/19-CT dated 26-12-2019 complied or otherwise. Inward ITC in ST1A pertains to inputs only or otherwise. Explain difference in adjusted turnover mentioned in GSTR 3B, GSTR 1 and RFD 01.*" After submission of reply by the appellant, the adjudicating authority vide impugned order sanctioned refund of Rs.14,23,320/- and rejected refund of Rs.1,11,552/- as under :

INV T/O Rs.24047487, Tax paid Rs.1264164 - Adj T/O Rs.24095751/-, Net ITC Rs.2692878/- ITC in ST1A Rs.2802345/- Rs.108496 Less ITC on Input Ser. Less Rs.971/- (ITC of In Ser claimed to input) Refund is Rs.14,23,320 (Rule 89 (5)).

3. Being aggrieved with the deduction of ITC on input services of Rs.1,08,496/- the appellant filed the present appeal on following grounds :

- i. That while calculating Net ITC for refund application, they had considered only those input invoices which were uploaded by the suppliers in Form GSTR 01 and were reflected in GSTR 2A ie they had complied with para 5.2 of Circular NO.135/05/2020 dated 31-3-2020 ;
- ii. That in response to query raised in SCN whether inward ITC in ST 1A pertains to inputs only or otherwise ? they had replied that they had wrongly considered invoices of input service of M/s.K.B.Electronics as input invoices which implies that all other invoices presented in refund application were relating to invoices of inputs only ;
- iii. That the adjudicating authority has passed the impugned order by deducting ITC on input services from the amount claimed in RFD 01 which only comprised of ITC on inputs ,
- iv. That the action of rejection of refund and not considering the facts of the case also devoid the appellant of right of natural justice ; that the adjudicating authority failed to appreciate the above aspects and has arbitrarily rejected the refund application which is grossly illegal and bad in law.



- v. That the rejection of refund claim vide impugned order is not sustainable and liable to be set aside in the interest of justice :
- vi. That the substantive benefit could not be denied for procedural mistakes as in this case and application for refund should not be rejected in the absence of any intention to defraud the Government :
- vii. That the impugned order is liable to be set aside as it is contrary to the facts on records and has been passed without considering the statutory provisions and without application of mind :
- viii. That the impugned order has been passed on the basis of assumption, presumptions, conjectures and surmises and without proper consideration of facts, records, opportunity of being heard and submissions therein and therefore liable to be set aside :
- ix. That the rejection of refund claim without providing sufficient opportunity of being heard is illegal, unjustified, bad in law and hence needs to be summarily quashed to meet the ends of justice.

4. Personal hearing was held on dated 15-11-2021. Shri Rahil Sanjivkumar Shah, Authorized representative appeared on behalf of the appellant on virtual mode. He stated that he has nothing more to add to their written submission dated 19-11-2020.

5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. In this case the appeal was filed challenging deduction of Rs.1,08,496/- being ITC availed on input services for determining Net ITC and admissible refund. Countering the same the appellant stated that they had filed refund application by calculating Net ITC consisting only on inputs amounting to Rs.27,98,995/-.

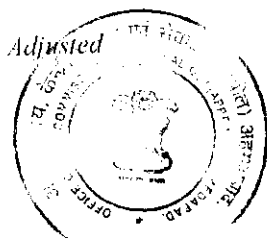
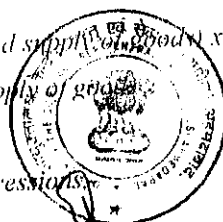
6. Before proceeding on merit of the case I reproduce the relevant provisions contained under Rule 89 (5) of CGST Rules, 2017 governing determination of refund on account of inverted duty structure:

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 = $\frac{\text{Turnover of inverted rated supply of goods}}{\text{Total Turnover} - \text{tax payable on such inverted rated supply of goods}} \times \text{Net ITC} \times \text{Adjusted}$

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

7. As per above provisions the Net ITC in the formula prescribed under Rule 89 (5) of the Rules include only ITC availed on inputs and ITC availed on input services is excluded. The adjudicating authority has arrived the Net ITC deducting Rs.1,08,496/- from total ITC considering the same as ITC availed on input services whereas the appellant's contention is that they had arrived Net ITC taking into account ITC availed on inputs only.

8. In this regard I have verified statement in Annexure B submitted by the appellant in terms of Circular-135/05/2020-GST, along with their refund application showing details of ITC availed by the appellant on input and input services, as per which total ITC availed on input and input services is summarized as under :

Description	CGST	SGST	IGST	Total
Inputs	13,88,837.89	13,88,837.89	21,319.20	27,98,994.98
Input services	54,125.92	54,125.92	243.76	1,08,495.60

9. As per above data, ITC of Rs.27,98,995/- pertains to ITC availed on inputs and credit of Rs.1,08,495.60 pertains to ITC availed on input services. Similarly I have also verified Statement 1A filed under rule 89(2)(h) of CGST Rules, 2017 along with refund application and find that total ITC availed on inputs was Rs.27,98,994.98/-. On further scrutiny of refund application filed by the appellant it is observed that the appellant has taken NET ITC of Rs.27,98,995/- for determining refund amount as per the formula. Thus, it is clear that the appellant has taken only the credit taken on inputs under head Net ITC for determining the refund amount which I find is in accordance with provisions of Rule 89 (5) of CGST Rules, 2017. Since, the appellant has not taken ITC of Rs.1,08,495/- availed on input services for arriving Net ITC, I find that the adjudicating authority has wrongly deducted the said amount from total ITC to arrive Net ITC and accordingly wrongly rejected refund of Rs.1,08,495/-. In view of above, I find force in grounds put forth in appeal. Accordingly I allow the appeal and set aside the impugned order.

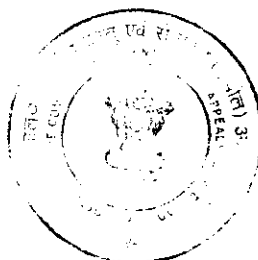
अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(MunirRayka)
Joint Commissioner (Appeals)

Date :
Attested

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



By RPAD

To,

Sagar Prafulchand Modi (M/s. Nisha Textile),
Plot No.3, Ashirwad Estate, Opp. Gujarat Farm,
Behind Gulab Nagar, Suez Farm Road,
Behrampura, Ahmedabad-380022

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

RPSL
30/11/21
M.No. 960162566
Ruhil S. Shah

