



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 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलीफैक्स 07926305136



DIN-20211264SW000000D95B

रजिस्टर्ड डाक ए.डी. द्वारा

फाइल संख्या : File No : GAPPL/ADC/GSTP/641/2021-APPEAL / 14443 70 HAM8
अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-72/2021-22**
दिनांक Date : **30-11-2021** जारी करने की तारीख Date of Issue : **03-12-2021**

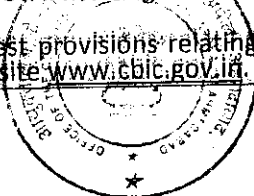
श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

Arising out of Order-In-Original No **ZO2409200051398 DT. 03.09.2020**
Issued by Deputy Commissioner, CGST, Division VI-Vastrapur, Ahmedabad South

अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. MSKEL-APPL JV, 2nd Floor, MSK House, Panjarpol,
Ambawadi, 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 दायर 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.MSKEL – APPL JV, 2nd Floor, MSK House, Panjarapol, Ambawadi, Ahmedabad 380 015 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 27-11-2020 against Order No.ZO2409200051398 dated 3-9-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, CGST, Division VI (Vastapur), Ahmedabad (hereinafter referred to as 'the adjudicating authority').

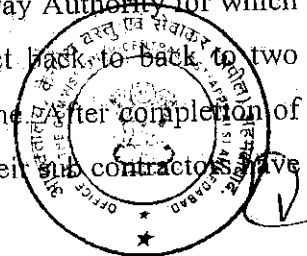
2. Briefly stated fact of the case is that the appellant is registered under GSTIN 24AAHAM6098G1ZB. The appellant has filed refund claim for Rs.35,06,494/- on the ground that got a work order from National Highway Authority for development of national highway. The said work was given 100% back to back to two other sub contractors. The appellant received advances from NHA in the month of January 2019 and also discharged GST liability on the same. They had adjusted tax paid on advances in the GST liability in the month of September 2019, March 2020, April 2020 and May 2020. The appellant received bill for full value from their sub contractors whereas they had adjusted tax paid on advance while filing their returns as the said recovery was made by their principal by reducing their RA Bills. Accordingly credit which is lying in their credit ledger due to tax paid on advances and back to back contract was excess tax payment of Rs.35,06,494/- As per Section 13 (2) (c) of CGST Act, 2017 the appellant is liable to pay GST on advances and the same is not exempted vide Notification NO.66/2017-Central Tax dated 15-11-2017 and accordingly they paid tax of Rs.35,06,494/-. The said advance was adjusted by NHA in their bills of September 2019, March 2020, April 2020 and May 2020 while they had received tax invoices from their sub contractors for 100% value and tax paid on advance remain unadjusted and remain as paid in excess. Accordingly they had filed refund application for refund of Rs.35,06,494/- which was rejected by the adjudicating authority vide impugned order on the following reasons :

I find that the claimant claimed ITC availed in their credit ledger and according to Section 54 (3) of CGST Act, 2017 no refund claim of unutilized ITC shall be allowed in cases other than 'Zero rated supplies made without payment of tax and ITC accumulated due to inverted duty structure'.

3. Being aggrieved the appellant filed the present appeal on the ground that the adjudicating authority has erred in understanding their refund application ; has erred in rejecting their refund application mentioning that there is no such provision but any tax paid in excess can be claimed as refund.

4. Personal hearing was held on 21-10-2021. Shri Priyam R Shah, Authorized Representative and Shri Arpit, Accountant appeared on behalf of the appellant on virtual mode. They stated that they have nothing more to add to their written submission dated 27-11-2020.

5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. I find that the appellant has got works contract from National Highway Authority for which they received advance from NHA and paid tax. They had given the contract back to back to two subcontractors to whom they also given advance who also paid tax on the same. After completion of work the NHA has raised bill after deducting the advance amount. However, their sub contractors have



issued bills for full value of contract. This has resulted in excess credit in their credit ledger due to back to back contract which they had claimed as refund as excess tax paid under the category of Any Other.

6. It transpire from the above nature of transaction that due to different practice in billing method input tax credit was accumulated in their credit ledger which the appellant considered as excess payment of tax and claimed as refund under category of 'any others'. Thus, refund claim filed by the appellant in fact pertain to ITC remain unutilized in their electronic credit ledger. I find that the provisions governing refund of unutilized credit available in credit ledger is contained under Section 54 (3) of CGST Act, 2017 as under :

Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

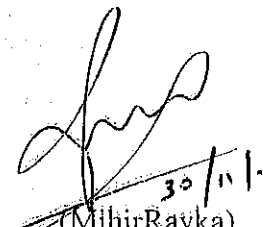
Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;
- (ii) (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

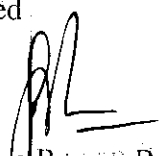
7. In view of above, Section 54 (3) of CGST Act, 2017 allows refund of unutilized ITC only in respect of situations covered under clause (i) and (ii) above. On the facts of the case, it is obvious that the accumulation of input tax credit in the instant case is not owing to the situation specified under clause (i) or (ii) of first proviso to Section 54(3) of the CGST Act and the corresponding state GST Act but apparently on account of different billing system adopted by their principal and sub contractors. Provisions of Section 54(3) of the Act does not provide for refund of unutilized input tax credit in such cases and hence the appellant's claim for refund of unutilized input tax credit in the case does not qualify for refund under Section 54 (3) of the Act. Therefore, I find that the impugned order passed by the adjudicating authority rejecting the refund claim is just proper and correct. Accordingly, I upheld 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.


(Mihir Rayka)
30/11/2020
Joint Commissioner (Appeals)

Date :
Attested


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



By RPAD

To,

M/s. MSKEL-APPL JV,
2nd Floor, MSK House, Panjarpol,
Ambawadi, Ahmedabad 380015

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

