



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.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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टेलीफैक्स 07926305136



DIN-20211264SW000016781C

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No :
GAPPL/ADC/GSTP/1050,1054,1055,1057,1059,1061,1062,1063,1064,1065,1067,1070/2021-
APPEAL / 14768 70 4773
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-76/2021-22
दिनांक Date : 01-12-2021 जारी करने की तारीख Date of Issue : 01-12-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

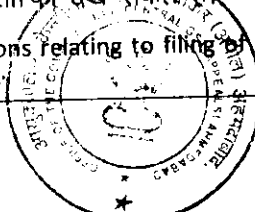
ग Arising out of Order-in-Original Nos. ZT2405210061551 DT. 05.05.2021, ZR2405210061417
DT. 05.05.2021, ZT2405210061228 DT. 05.05.2021, ZQ2405210091606 DT. 07.05.2021,
ZR2402210233625 DT. 23.02.2021, ZQ2402210233669 DT. 23.02.2021, ZU2402210233570 DT.
23.02.2021, ZR2402210233536 DT. 23.02.2021, ZT2402210233192 DT. 23.02.2021,
ZQ2402210232403 DT. 23.02.2021, ZQ2410200067755 DT. 07.10.2020, ZS2410200067966 DT.
07.10.2020 & ZO2410200067888 DT. 07.10.2020

issued by Deputy/Assistant Commissioner, CGST, Division II- Vatva I, Ahmedabad South

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

M/s. Shree Krishna Processors, 71/7, GIDC Estate, Vatva, Ahmedabad-382445

(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 Krishna Processors, 71/7, GIDC Estate, Vatva, Ahmedabad (Hereinafter referred to as the appellant) has filed the following appeals against Order (hereinafter referred to as 'the impugned orders') passed by the Deputy/Assistant Commissioner, CGST, Division II (Vatva I), Ahmedabad South (hereinafter referred to as 'the adjudicating authority') rejecting refund claim filed by the appellant for refund of ITC accumulated on input services under inverted tax structure.

Sr No.	Appeal File No.	Date of filing of appeal	Impugned Order Number and date	Amount of refund Rejected
1	GAPPL/ADC/GSTP/1064/2021	18-6-2021	ZT2405210061551/5-5-2021	105934
2	GAPPL/ADC/GSTP/1070/2021	18-6-2021	ZR2405210061417/5-5-2021	68554
3	GAPPL/ADC/GSTP/1065/2021	18-6-2021	ZT2405210061228/5-5-2021	39107
4	GAPPL/ADC/GSTP/1063/2021	18-6-2021	ZQ2405210091606/7-5-2021	60564
5	GAPPL/ADC/GSTP/1069/2021	18-6-2021	ZR2402210233625/23-2-2021	93004
6	GAPPL/ADC/GSTP/1062/2021	18-6-2021	ZQ2402210233669/23-2-2021	64846
7	GAPPL/ADC/GSTP/1067/2021	18-6-2021	ZU2402210233570/23-2-2021	111480
8	GAPPL/ADC/GSTP/1055/2021	18-6-2021	ZR2402210233536/23-2-2021	54525
9	GAPPL/ADC/GSTP/1057/2021	18-6-2021	ZT2402210233192/23-2-2021	62560
10	GAPPL/ADC/GSTP/1059/2021	18-6-2021	ZQ2402210232403/23-2-2021	45631
11	GAPPL/ADC/GSTP/1061/2021	21-6-2021	ZQ2410200067755/7-10-2020	41291
12	GAPPL/ADC/GSTP/1054/2021	21-6-2021	ZS2410200067966/7-10-2020	269370
13	GAPPL/ADC/GSTP/1050/2021	21-6-2021	ZO2410200067888/7-10-2020	16235

2. Briefly stated the facts of the case is that the appellant is registered under GSTN 24AAECN8555G1ZB. The appellant has filed refund applications for refund of Input Tax Credit accumulated due to inverted tax structure in terms of Section 54 of CGST Act, 2017. The adjudicating authority vide impugned orders mentioned in Table above has rejected part of claim amount on the following reasons : *RFD-09 is not acceptable as no instructions has been issued by CBIC against Rule 89 (5) of CGST Rules, 2017. Hence refund is being rejected as per RFD - 08 and rest of amount is sanctioned in Form GST RFD -06.*

3. Being aggrieved with rejection of part of refund claim, the appellant filed the present appeal relying on Order dated 24-7-2020 passed by Hon'ble High Court of Gujarat's decision in the case of M/s.VKC Footsteps India P.ltd Vs UOI and 2 others, to set aside the impugned orders and to allow entire refund claim amount.

4. I have carefully gone through the facts of the case and submissions made by the appellant. I find that the claim amount rejected by the adjudicating authority pertains to ITC involved on input services which are excluded for computation of net ITC under Rule 89 (5) of CGST Rules, 2017. The appellant has filed the present appeals seeking refund rejected by the adjudicating authority relying on Order dated 24-7-2020 passed by Hon'ble High Court of Gujarat's decision in the case of M/s.VKC Footsteps India P.ltd Vs UOI and 2 others. In the said case Hon'ble High Court held that the Explanation to Rule 89 (5) of CGST Rules, 2017 which denies unutilized input tax paid on input services as part of ITC accumulated on account of inverted tax structure ultra vires the provisions of Section 54 (3) of CGST Act, 2017 and accordingly ordered the Department to allow the claim of refund filed by the petitioners.

considering the unutilized ITC of input services as part of 'net ITC' for the purpose of calculation of refund claim as per Section 54 of CGST Rules, 2017 read with Rule 89 (5) of CGST Rules, 2017.

5. However, I find that the said decision of Hon'ble High Court of Gujarat was challenged by the Department before the Hon'ble Supreme Court of India under Civil Appeal No.4810 of 2021. Hon'ble Supreme Court vide common Order dated 13-9-2021 has allowed the appeal filed by the Department and set aside the judgement passed by the Hon'ble High Court of Gujarat. Accordingly, the vires of Rule 89 (5) of CGST Rules, 2017 vis a vis Section 54 (3) of CGST Act, 2017, its constitutional validity and legality were upheld by the Apex Court. Consequently, in terms of Section 54 (3) of CGST Act, 2017 read with Rule 89 (5) of CGST Rules, 2017, refund is admissible only for accumulated ITC availed on inputs and not admissible for ITC availed on input services. Therefore, impugned orders passed by the adjudicating authority rejecting refund of ITC availed on input service is within the statutory provisions.

6. During appeal proceedings, the appellant vide their letter dated NIL (received on 22-11-2021) has intimated that based on the judgment of Hon'ble Supreme Court in the case of UOI Vs M/s.VKC Footsteps India P. Ltd., wherein the case was settled against the assessee they wish to withdraw the above mentioned appeals. Since, the appellant has voluntarily and unconditionally withdrawn the appeals, I dismiss the appeals as withdrawn by the appellant.

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


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


(Mihir Rayka)

Joint Commissioner (Appeals)

Date :

Attested


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

By RPAD

To,

M/s.Shree Krishna Processors,
7/7, GIDC Estate,
Vatva, Ahmedabad

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 Deputy/Assistant Commissioner, CGST, Division II (Vatva I) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

