# 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 ३८०००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065- टेलेफैक्स07926305136

सत्यमेव जयते

NATION TAX MARKET

**DIN-20211264SW0000002670**

रजिस्टर्ड डाक ए.डी. द्वारा

5129 TO 5131

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2066/2021-APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-79/2021-22**
दिनांक Date : **02-12-2021** 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)

ग Arising out of Order-in-Original No**ZN2408210037110 DT. 03.08.2021** issued by Assitant Commissioner, CGST, Division I-Rakhial, Ahmedabad South

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

**M/s. Shivam Agarwal (M/s. Shivam Associates) Bolck G 3rd Floor, Titanium City Centre, Near Sachin Tower, Satellite, Ahmedabad-380015**

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|---|---|
| (A) | इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।<br>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 -<br>(i) **Full amount of Tax, Interest, Fine, Fee and Penalty** arising from the impugned order, as is admitted/accepted by the appellant, and<br>(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 वेबसाइटwww.cbic.gov.in को देख सकते हैं।<br>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.Shivam Agarwal (Trade Name : M/s.Shivam Associates) Block G 3rd Floor, Titanium City Centre, Near Sachin Tower, Satellite, Ahmedabad (hereinafter referred to as 'the appellant') has filed the present appeal on dated 28-8-2021 against Order No.ZN2408210037110 dated 3-8-2021 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Division I (Rakhial), Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant is registered under GSTIN 24DHYPA7925J1ZT. The appellant has made export of goods during the months of April 2021 and May 2021 under Letter of Undertaking without payment of integrated tax. The appellant availed Input Tax Credit on purchase of said goods. The appellant filed refund application on dated 5-7-2021 claiming refund of ITC on goods exported without payment of tax amounting to Rs.26,29,923/-. The appellant was issued show cause notice on dated 22-7-2021 proposing rejecting of refund claim on the ground that zero rated turnover cannot be quantified as per Notification No.16/2020-CT dated 23-3-2020. The appellant filed reply to SCN on dated 28-7-2021. The adjudicating authority vide impugned order rejected the refund claim on the following grounds : The claimant did not comply the objection in the SCN-Notification No.16/2020-CT dated 23-3-2020 in as much as they failed to substantiate their claim regarding supply of like goods domestically as well as under export. The claim is not admissible.

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

i. The adjudicating authority has abruptly passed the order for rejection of refund without even considering facts and validity of the transaction. Hence the passing the order on unjustifiable reason is not at all tenable and liable to be set aside.

ii. As stated in Rule 89 of CGST Rules, value of goods exported should not excess 1.5 times of the value of like goods supplied domestically by the same, the said rule is being brought to restrict the maximum amount of ITC that a person can claim only when person claiming refund has both domestic as well as export sales. However, in the impugned matter aggregate turnover of the appellant includes only export turnover (zero rated turnover) and there is no domestic turnover. Hence the total ITC availed by the appellant relate only to export turnover. Hence the question of quantification of zero rated turnover doesn't arise in the impugned application.

iii. Amendment made under Rule 89 (4) vide NotificationNo.16/2020-CT dated 23-3-2020 provides that turnover of zero rated supply of goods is equal to value of goods supplied under LUT without payment of tax or 1.5 times of the value of like goods supplied domestically, whichever is lower.

iv. Applying the formula prescribed under amended Rule 89 (4) of the Rules, the admissible refund amount is Rs.26,29,923/- and the aggregate turnover during the relevant period includes only zero rated turnover of goods (export of goods). Hence the numerator and denominator in the formula remain same and hence the amount of refund shall be equal to the net ITC ie ITC availed during the relevant period.

v. Considering the above submission, it is clear as crystal that the order passed by the adjudicating authority is incorrect and liable to be set aside

vi. The adjudicating authority has abruptly passed the order for rejection of refund application on the context of non compliance of SCN and relevant Notification which is untrue as the appellant has duly complied with the provisions of the Act and the notification issued thereon and also has submitted their reply to SCN with stipulated time. Hence rejection of refund application on the invalid ground is highly unjustifiable and should be set aside.

vii. In response to SCN they had submitted reply informing the adjudicating authority that the Notification No.16/2020-CT dated 23-3-2020 has been duly complied with and also submitted relevant supporting in stand of its reply. The quantification of zero rated turnover for supply of goods is not required in the impugned matter as the aggregate turnover of the appellant includes only export turnover. That they had submitted reply to SCN wherein it was clearly described that the amount of ITC claimed as refund is in line with the provisions of Law. They had submitted that the goods which were exported were procured domestically and no additional processing was made on such goods. Hence the purchase price of such goods shall be treated as value of like goods supplied domestically as per Rule 89 of the Rules. The total purchase value (including tax) of goods so exported was Rs.2,44,66,320/- and total export value of the goods, being consideration received against export of goods was Rs.2,30,88,155/-. Thus it is clear that the value of zero rate turnover is well less than the value of goods supplied domestically ie. Purchase value of same goods. The only margin the appellant was getting was from the amount of ITC for which refund was applied.

viii. That even after duly submission of reply to SCN, the adjudicating authority passed order for rejection of refund and hence the order passed by the adjudicating authority lacks proper reasoning and grounds and is merely passed to harass the honest taxpayer which should be revoked immediately.

ix. The adjudicating authority issued an order for rejection of refund application without providing opportunity of being heard to the appellant which is against the provisions

of law and various judicial pronouncement hence the impugned order passed by the adjudicating authority is liable to set aside.

x. As per Rule 92 of CGST Rules, 2017 application of refund cannot be rejected without providing an opportunity of being heard to the applicant which in the case has not been provided to the appellant by the adjudicating authority. Thus the order of the adjudicating authority itself contravenes the provisions of Law and not valid in the legal statute and is invalid and should be set aside.

xi. As per judgments made in the case of M/s.Tulid Global Pvt. Ltd Vs CCE Jaipur (2014 (36) STR (Tri.Del) ; M/s.Convergeon HR Services (India) Pvt.Ltd Vs Commissioner of Service Tax and Hon'be High Court of Gujarat decision in M/s.Formative Tex Fab Vs State of Gujarat it is clear that whenever without giving opportunity of being heard, passed the order, such order is against the natural justice and liable to be set aside. Thus, the impugned order which was passed without considering the reply to SCN and further also not giving any personal hearing after reply to SCN is against the natural justice and liable to be set aside.

xii. Thus considering the facts and submissions above the adjudicating authority had shown an ignorant view and passed an order for rejection of refund application of Rs.26,29,923/- for tax amount which is wrong, unsustainable and liable to be set aside.

4. In view of above submissions, the appellant prayed to set aside the impugned order ; to give them an opportunity to submit additional ground with an opportunity of being heard ;to pass as such order as deem fit and to condone the delay if any.

5. Personal hearing was held on dated 24-11-2021. Shri Kartik Motlani of J.K.Gupta, Tax Litigators and Advisors appeared on behalf of the appellant on virtual mode. He said that he had nothing more to add to their written submission dated 31-8-2021.

6. I have carefully gone through the facts of the case, grounds of appeal, documents available on record. In the subject case refund claimed by the appellant was rejected by the adjudicating authority due to non compliance of Notification NO.16/2020-CT dated 23-3-2020. I find that as per Notification No.16/2020, amendment was made under Rule 89 (4) of CGST Rules, 2017 as under :

*8. In the said rules, (Central Goods and Services Tax Rules, 2017) in rule 89, in sub-rule (4), for clause (C), the following clause shall be substituted, namely:- „(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed,*

*supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;".*

7. I find that as per Rule 89 (4) of CGST Rules, 2017 in case of zero rated supply of goods the maximum amount of refund is to be determined by applying the following formula :

$$\frac{\text{Turnover of zero rated supply of goods} + \text{Turnover of zero rated supply of service}}{\text{Adjusted total turnover}} \times \text{Net ITC}$$

Prior to amendment made under Rule 89 (4) vide Notification No.16/2020, the turnover of zero rated supply of goods was defined under clause (C ) as *"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking.* Consequent to amendment made vide Notification No.16/2020, the turnover of zero rated supply of goods was defined as *"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both."* Thus as per amendment made under Rule 89 (4) for the purpose of determining the admissible refund in case of zero rate supply of goods, the turnover of zero rated supply of goods in the formula is to be taken as lesser of value of zero rate supply of goods or 1.5 time of value of like goods domestically supplied by the same or similarly placed supplier as declared by the suppliers.

8. In the subject case the adjudicating authority has rejected the claim on the ground that the appellant has not complied with Notification No.16/2020 inasmuch as they had failed to substantiate their claim regarding supply of like goods domestically as well as under export. It transpire from the above order that the appellant has not given value of like goods domestically supplied by them or by similarly placed supplier along with their refund claim so as to arrive turnover of zero rate supply of goods in terms of Notification No.16/2020. Countering the same, the appellant stated that said amendment was made to restrict the maximum amount of ITC that a person can claim only when such person claiming refund has both domestic as well as export sales and that in their case the aggregate turnover include only export turnover and there is no domestic turnover and that the total ITC availed by them relates only to export turnover (zero rated turnover). I find the contention of the appellant is not well reasoned. I find that the appellant has limited their submission to NIL domestic clearance of like goods on their own but seems to have ignored the second limb of the meaning assigned to 'turnover of zero rated supply of goods' which brings into ambit the value of like goods domestically supplied by similarly placed supplier as declared by the supplier. In other words, the impact of amended meaning makes it a mandatory requirement on their part of suppliers, who do not have any domestic clearance on their own,to declare

similarly placed suppliers and the value of like goods domestically supplied by such suppliers so as to arrive the turnover of zero rated supply of goods. However on the face of the facts of the case it is evident that the appellant has neither declared similarly placed suppliers nor submitted value of like goods domestically cleared by such suppliers. Therefore contention of the appellant that since they do not have any domestic clearance of their own, the export value of the goods is to be taken for arriving the turnover value of zero rated supplies is not in accordance with the provisions of Rule 89 (4) of CGST Rules, 2017 and devoid of any merit.

9. I further find from the grounds of appeal that the appellant has claimed refund of Net ITC amount availed during the relevant period by considering only the export value of goods as they do not have any domestic clearance of like goods. It is also contended that the purchase value of export goods was Rs.2,44,66,320/- whereas the export value of goods was only Rs.2,30,88,155/- and that they had adopted export value of Rs.2,30,88,155/- for determining the admissible refund amount which is lesser in compliance to amended Rule 89 (4) of CGST Rules, 2017. This contention is also not well founded inasmuch as the amended Rule 89 (4) envisage lesser value of like goods domestieally supplied by the same suppliers or similarly placed suppliers and not the lesser value of purchase value and export value of goods.

10. The appellant further contended that the submissions made by them in response to SCN were not considered and that they were not given opportunity of personal hearing before rejection of the claim. As per Rule 92 of CGST Rules, 2017 it is a statutory requirement to issue notice and grant an opportunity of personal hearing before rejecting a refund claim. In this case show cause notice was issued to the appellant proposing rejecting of claim on the grounds mentioned therein and the appellant has also filed reply to the notice. . The appellant's grievance is that the adjudicating authority has abruptly passed the rejection order without considering reply made by them. I find that the adjudicating authority functioning as a quasi judicial authority is empowered to take independent and judicious decision based on the charges leveled in the notice and reply tendered by the noticee in accordance with provisions of Law in force. It is not incumbent upon the adjudicating authority to pass order in favor of appellant accepting the reply without any exception. Regarding grant of personal hearing I find that in the show cause notice itself, the appellant was asked to appear before the adjudicating authority on 28-7-2021 at 5.42 pm. However, the appellant's submission is totally silent as to whether they appeared on the schedule date and time or sought any adjournment. Hence submission made in this regard is also not tenable.

11. In view of above, since the appellant has neither submitted the value of like goods domestically cleared by themselves nor declared similarly placed suppliers or submitted value of like goods domestically cleared by such suppliers which is statutorily required to arrive the turnover of zero rated supply of goods in terms of amended Rule 89 (4) of CGST Rules, 2017 and to determine admissible refund amount, I find that the appellant has failed to substantiate

their claim in terms of Rule 89 (4) as amended vide Notification No.16/2020-CT dated 23-3-2020 and hence none of the submissions made by the appellant hold any merit. Therefore I do not find any infirmity in the Order passed by the adjudicating authority rejecting refund on this ground. Accordingly I upheld the order passed by the adjudicating authority and reject the appeal filed by the appellant.

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

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

(Mihir Rayka)
Joint Commissioner (Appeals)

Date :
Attested

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

By RPAD

To,

M/s.Shivam Agarwal (Trade Name : M/s.Shivam Associates)
Block G 3rd Floor,
Titanium City Centre, Near Sachin Tower,
Satellite, 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 Commissioner, CGST, Division I (Rakhial) Ahmedabad South
5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
6) Guard File
7) PA file