



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  
 07926305065- टेलीफैक्स 07926305136



DIN-20211264SW000000CDDA

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/170/2021-APPEAL / 5023 To 5028  
 ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-80/2021-22  
 दिनांक Date : 08-12-2021 जारी करने की तारीख Date of Issue : 09-12-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

Arising out of Order-in-Original No ZQ2401210117835 DT. 13.01.2021,  
 ZY2404210054361 DT. 06.04.2021, ZV2405210034128 DT. 04.05.2021,  
 ZT2405210034340 DT. 04.05.2021, ZQ2403210385337 DT. 26.03.2021,  
 ZY2405210032351 DT. 04.05.2021 & ZQ2408210082332 DT. 06.08.2021  
 issued by Deputy Commissioner, CGST, Division VI-Vastrapur, Ahmedabad South

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

**M/s. Suzlon Energy Limited, 'Suzlon' 5, Shrimali Society,  
 Near Shri Krishna Complex, Navrangpura, Ahmedabad-380009**

(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 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.Suzlon Energy Limited, 'Suzlon' 5, Shrimali Society, Near Shri Krishna Complex, Navrangpura, Ahmedabad 380 009 (hereinafter referred to as the appellant) has filed the following appeals against Order (hereinafter referred to as 'the impugned orders') passed by the Deputy Commissioner, CGST, Division VI (Vastrapur), 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	Remarks
1	GAPPL/ADC/GSTP/170/2021	27-1-2021	ZQ2401210117835/13-1-2021	130120572/-	Appeals filed online
2	ARN NO.AD240521001719E	7-5-2021	ZY2404210054361/6-4-2021	55020527/-	
3	ARN NO.AD240521004369E	19-5-2021	ZV2405210034128/4-5-2021	97284396/-	
4	ARN NO.AD240521013078K	27-5-2021	ZT2405210034340/4-5-2021	12809038/-	
5	ARN NO.AD240521004276L	18-5-2021	ZQ2403210385337/26-3-2021	100375418/-	
6	ARN NO.AD2406210111617G	21-6-2021	ZY2405210032351/4-5-2021	34635085/-	
7	ARN NO.AD240821009402L	17-8-2021	ZQ2408210082332/6-8-2021	38749992/-	

2. Briefly stated the facts of the case is that the appellant is registered under GSTN 24AADCS0472N1Z8. 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 refund to the extent it pertaining to refund of ITC on input services.

3. Being aggrieved with rejection of part of refund claim, the appellant filed the above appeals 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 the 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 wherein 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. 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 judgment passed by the Hon'ble High Court of Gujarat. 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.

5. During appeal proceedings, the appellant vide their letter dated 21-10-2021 informed that as per Hon'ble Supreme Court's Order/decision dated 13-9-2021 and considering the fact that they will be eligible to re-credit the amount of refund rejected in their electronic credit ledger which was debited/reversed at the time of filing the refund claim, they wish to withdraw the aforesaid appeals. Therefore the appellant requested for permission to withdraw the above appeals unconditionally and also requested to re-credit the amount of ITC involved in the above appeals. They further informed that they are withdrawing the appeals unconditionally and keeping their other legal remedies open in this regard in case of any favorable legal developments in this regard.

6. In view of above since the appellant has voluntarily and unconditionally withdrawn the appeals, I allow the appellant to withdraw the appeals and dismiss the appeals as withdrawn by the appellant. Regarding their request for re-credit of amount of ITC debited in electronic credit ledger at the time of filing of refund claim the same may be dealt by the appropriate authority in accordance with provisions of CGST Act and Rules.

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.

Date :

Attested

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

By RPAD

To.

M/s.Suzlon Energy Limited.  
'Suzlon' 5, Shrimali Society,  
Near Shri Krishna Complex.  
Navrangpura.  
Ahmedabad 380 009

  
(Mihir Rayka)  
Joint Commissioner (Appeals)

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