

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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फाइल संख्या : File No : GAPPL/ADC/GSTP/650/2021-APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-82/2021-22

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)

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Arising out of Order-in-Original No ZP2410200073500 DT. 07.10.2020

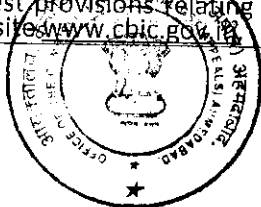
issued by Deputy Commissioner, CGST, Division I-Rakhial, Ahmedabad South

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

M/s. Shree Balaji Textiles, 36, Poultry Farm,  
Sukharam Estate, Rakhial, Ahmedabad-380023

(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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a>



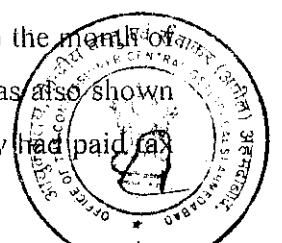
## ORDER IN APPEAL

M/s.Shree Balaji Textiles, 36, Poultry Farm, Sukharam Estate, Rakhial, Ahmedabad 380 023 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 10-12-2020 against Order No.ZP2410200073500 dated 7-10-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Division I (Rakhial) CGST, 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 No.24AMWPM3169L1ZB. The appellant has filed refund claim for Rs.5,70,344/- on account of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No.ZZ2409200126343 DATED 9-9-2020 proposing rejection of refund on the ground that i) *Notification 49/2018-CT dated 9-10-2019 and 75/2019-CT dated 26-12-2019 are complied with or not.* ii) *There appears difference in tax paid and payable in GSTR 1 and 3B* iii) *ITC for Jan, Feb and March 2019 is ineligible under section 16 of CGST Act, 2017.* iv) *Explain why certain input services shown as inputs in Annexure B.* The adjudicating authority rejected the claim vide impugned order on the ground that the claimant neither attended PH nor submitted any reply to SCN. Accordingly claimed amount of Rs.5,70,344/- is rejected for non compliance of SCN and grounds mentioned in SCN u/s 54 of CGST Act, 2017.

3. Being aggrieved the appellant filed the present appeal wherein the proprietor stated that he was unable to respond to the show cause notice as he was suffering from corona virus and by the time he became aware the time for filing response to the show cause notice was already lapsed. As the reason was genuine and the situation was not under his control he requested to allow him to file appeal against the rejection order so that he can provide evidence and other supporting documents in order to clarify that refund claimed by him was not fraudulent and he was eligible to claim refund.

4 (i). The appellant in their appeal and vide their letter dated 24-9-2021 further submitted that they had duly complied with the Notification No.49/2019-CT dated 9-10-2019 and 75/2019 CT dated 26-12-2019 and no violation has been made for the said Notification. With regard to clarification on difference between tax paid and payable in GSTR1 and GSTR3B returns, they clarified that in the month of December 2019 there was excess sales shown in GST return amounting to Rs.4,55,896/- which was later on reversed in the month of February 2020 return. The amount of difference was raised due to an error occurred in the month of December 2019 return where they made amendment in the return relating the period August 2019 to November 2019. Such amendment was made with a reason that earlier in the above mentioned months they showed sales made to one of their customer named M/s.RG Faith Creation Pvt.Ltd., as sales to unregistered person, as earlier the said party was not available with GST number, but later on when such GST number was provided they made amendment to such returns and in the month of December shown such sale in the account of the party but by mistake such sale was also shown in GSTR3B and additionally they paid tax on the same sales amount on which they had paid tax



in the month of August 2019 to November 2019. When such error was noticed by them, they made correction of the same in the month of February 2020 returns by shown full sales as per their records in GSTR1 returns but in the same month they reduced their tax liability by showing lesser GST sales in GSTR3B ;

ii) They further clarified that there is difference in GSTR1 and GSTR3B for the month of October 2019 amounting to Rs.3,43,098 which is due to a bill issued in the name of M/s.Shree Arvind Textiles dated 30-7-2019 with Bill number SBT88, which was not shown in July 2019 GSTR 1 but was included in GSTR3B of July 2019 and on which tax was paid. So in order to rectify the same mistake, they had included the said invoice in the month of October 2019's GSTR1 and as tax was already paid on the same it was not mentioned in GSTR3B of October 2019 and that's why it is showing as difference. Copy of relevant invoices attached by the appellant with appeal along with sales reconciliation showing difference in sales shown in GSTR1 and GSTR3B

iii) Regarding ineligibility of refund of ITC claimed for the months of January to March 2019, they provided annexure showing details of ITC availed invoice which clarified that only credit related to the period October 2019 to January 2020 is being claimed for the purpose of refund and rest credit is not being claimed for refund.

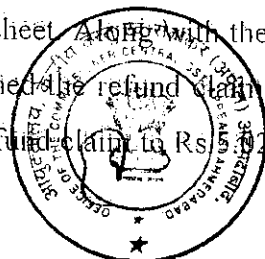
iv) They further accepted that they had claimed ITC of services availed during the said period was claimed in their GST return but the same was not being claimed for refund in the refund application filed for the period of October to March 2020.

6. In view of above submission the appellant requested to consider their clarification related to sales issues and proceed with the said facts and figures as explained along with attachments.

7. Personal hearing was held on 23-11-2020. Shri Bharat Chaudhary, Chartered Accountant appeared on behalf of the appellant on virtual mode. He has asked 3 working days to submit more details which is duly granted.

8. Accordingly the appellant made additional submission as under :

- i) That they confirmed that Notification No.75/2019-CT dated 26-12-2019 was duly complied by them and no any violation has been made for the said Notification ;
- ii) That in respect of query regarding difference in tax paid and tax payable in GSTR1 and GSTR3B returns they had given month wise calculation sheet. Along with the same they had also given the formula vide which they had determined the refund claim amount of Rs.5,70,334/- and revised calculation sheet revising the refund claim to Rs.42,635/-.



iii) In response to third query the appellant clarified that there was no ITC being availed or claimed in refund which belong the period January, February and March 2019 and no any such credit was ineligible during the said period ;

iv) That they had accepted that they had claimed ITC of Services as ITC of input and the same has been revised by them in the Annexure B submitted by them.

9. I have gone through the facts of the case, grounds of appeal, submissions made in appeal and after personal hearing and documents available on record. In this case, the refund claim was rejected on the grounds mentioned in SCN due to non filing of reply to SCN and non appearance in personal hearing. During the appeal proceeding I find that the appellant has given compliance to all the points. Therefore, in order to decide as to whether the appellant is entitled to refund or other I proceed to examine each points and submissions hereunder:

1) *Notification 49/2019-CT dated 9-10-2019 and 75/2019-CT dated 26-12-2019 are complied with or not.*

i) The appellant submitted that they had complied with aforesaid Notifications. However I find that as per Notification No.49/2019 CT dated 9-10-2019 amendment has been made under Rule 21A, 36, 83A, 91, 97, 117 and 142 of CGST Rules, 2017. The provisions governing refund is contained under Rule 89 to 97 of CGST Rules, 2017. Therefore, except amendment made to Rule 91 and 97 none of the amendment made under other Rules relate to refund matters. Regarding amendment made to Rule 91 and 97, I find that vide Notification No.49/2019 amendment was made as under :

6. *In the said rules, in rule 91, - (a) in sub-rule (3), with effect from the 24th September, 2019, after the words "application for refund", the words "on the basis of a consolidated payment advice;" shall be inserted; (b) after the sub-rule (3), with effect from the 24th September, 2019, the following sub-rule shall be inserted, namely:- "(4) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (3)."*

7. *In the said rules, in rule 97, - (a) after sub-rule (7), with effect from the 1st July, 2017, the following sub-rule shall be inserted, namely,- "(7A) The Committee shall make available to the Board 50 per cent, of the amount credited to the Fund each year, for publicity or consumer awareness on Goods and Services Tax, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty-five crore rupees per annum."*

ii) I find that both the above amendments relate to action on the part of Department officers in processing and sanctioning refund and do not call for any compliance from the appellant. However, an amendment was made to Rule 36 of CGST Rules, 2017



which restrict availment of ITC which have not been uploaded by the suppliers to the extent of 20% of eligible credit available in respect of ITC availed which are uploaded by the suppliers. Therefore in the subject case if such a situation exists the ITC for determination of refund is required to be taken as per above amendment.

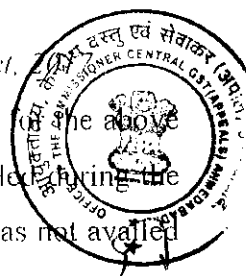
- iii) Similarly vide Notification No.75/2019-CT dated 26-12-2019 amendment was made to Rule 36, Rule 86 and Rule 138E of CGST Rules, 2017 and none of it pertains to Rules governing refund claims. However, as per amendment made to Rule 86 the Commissioner or any authorized officer not below the rank of Assistant Commissioner was empowered to disallow ITC fraudulently availed or found eligible on situations specified therein. Presumably amendment made vide above Notification No.75/2019 also does not need any compliance on the part of the appellant. In view of above, I find that the compliance of aforesaid Notifications from the appellant is not at all relevant to decide the refund claim and proposal made in the show cause notice for rejection of refund on this count does not seem to be a justifiable one. Nevertheless I notice that in compliance to above query the appellant has submitted that they had complied with provisions of aforesaid Notification.

2. *There appears difference in tax paid and payable in GSTR 1 and 3B*

- i) I have gone through the compliance submitted by the appellant to the above query and find that in the month of July 2019 in respect of supply valued at Rs.343098/- made to one of their buyer they had shown the same in GSTR3B returns but not shown the same in GSTR1 returns which resulted in excess payment of tax of Rs.17155/- in GSTR3B returns and they had made adjustment for the same in the month of October 2019. Similarly, supply made to an unregistered buyers valued at Rs.455896/- in the months of August 2019 to October 2019 on payment of tax of Rs.22817/- was shown in the month of December 2019 but by mistake they had shown such sales in GSTR3B return and also paid tax of Rs.22817/- which resulted in excess payment of tax. On noticing the same the appellant adjusted the excess tax in the month of February 2020. In this regard, I notice from the comparison sheet submitted by the appellant that by way of above adjustment the net tax liability in GSTR1 and GSTR3B returns remain the same during the period April 2019 to March 2020. Therefore, even if there is mismatch in tax paid and tax payable in GSTR1 and GSTR3B returns in certain months it does not have any adverse effect on the determination of refund as per formula prescribed under Rule 89 (5) of CGST Rules, 2017.

3. *ITC for Jan, Feb and March 2019 is ineligible under section 16 of CGST Act.*

In this regard, the appellant contended that they had not taken any ITC for the above period for claiming in this case. I have verified the details of ITC availed during the claim period October 2019 to March 2020 and find that the appellant has not availed



any credit which pertains to the period January 2019 to March 2019 therefore I find this query is unwarranted one.

4. *Explain why certain input services shown as inputs in Annexure B.*

In this regard the appellant submitted details of ITC availed during the claim period as per which total credit taken on inputs is shown as Rs.1633686/- and total credit taken on input services is shown as Rs.29432/-. The appellant themselves admitted that they had taken credit taken on input services for determining the refund claim amount and hence by considering the ITC availed on inputs they had arrived the revised claim amount to Rs.5,02,635/-. Thus the above query raised in the SCN has been accepted by the appellant and complied by the appellant.


10. In view of above, in the current proceedings the appellant has given compliance to all the grounds mentioned in the SCN. In this case the claim was rejected only on the basis of aforesaid grounds mentioned in the show cause notice. Therefore it transpires that there is no dispute with regard to value of turnover of inverted duty supply, tax payable on inverted supply and adjusted total turnover arrived by the appellant or with regard to other conditions governing admissibility of refund which indicate that except on the above grounds the refund is otherwise admissible to the appellant. Therefore since the appellant has satisfactorily resolved all the queries, I hold that the appellant is entitled to refund of ITC accumulated on account of inverted duty structure. Needless to say refund will be admissible taking into account the ITC availed on inputs during the claim period and subject to provisions of Rule 36 (4) of CGST Rules, 2017. Accordingly I allow the appeal and set aside the impugned order passed by the adjudicating authority.

11. अपीलकर्ताद्वारा दर्ज की गई अपील को निपटारा उपरोक्त तरीके से किया जाता है।  
The appeals filed by the appellant stand disposed off in above terms.

  
(Mihir Rayka)

Joint Commissioner (Appeals)

Date :  
Attested

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

To,

M/s.Shree Balaji Textiles,  
36, Poultry Farm, Sukharam Estate,  
Rakhial, Ahmedabad 380 023



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

