



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/643/2020-APPEAL

/51M 705148

अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-83/2021-22

दिनांक Date : 13-12-2021 जारी करने की तारीख Date of Issue : 14-12-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

Arising out of Order-in-Original NoZZ2410200311277 DT. 26.10.2020

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

**Shri Munafbhai Kasambhai Vadnagarwala of M/s. Vadnagarwala Brothers,
Panchpipli Nr. Bamdani Valo Kancho, Jamalpur, Ahmedabad-380001**

(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



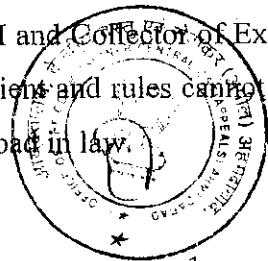
ORDER IN APPEAL

Shri Munafbhai Kasambhai Vadnagarwala of M/s.Vadnagarwala Brothers, Panchpipli Nr Bandani Valo Kancho, Jamalpur, Ahmedabad 380 001 (hereinafter referred to as the appellant) has filed the present appeal on dated 1-12-2020 against Order No.ZZ2410200311277 dated 26-10-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy 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, registered under GSTIN 24AAJPV8796K1ZN, has filed refund claim for Rs.1,03,273/- for refund of ITC accumulated due to inverted tax structure in terms of Section 54 (3) of CGST Act, 2017. The appellant was issued show cause notice No.ZP2410200039044 dated 5-10-2020 proposing rejection of refund on the ground that i) ITC of input services claimed which is inadmissible as per Notification No.26/2018 – CT dated 13-6-2018 ; ii) Notification NO.49/2019-CT dated 9-10-2019 and Notification No.75/2019-CT dated 26-12-2019 complied or not ; iii) address of principal place of business is incomplete and iv) clarification HSN of outward supplies. The adjudicating authority vide impugned order rejected the claim on the ground that the claimant did not appear for PH ; reply to SCN was vague ; they did not reply about compliance of Notification NO.49/2019 and Notification NO.75/2019.

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

- i) The adjudicating authority has disallowed ITC of input service without considering the judgment passed by Hon'ble High Court of Gujarat ;
- ii) That they had uploaded relevant proof mentioned in the SCN;
- iii) That as per judgment of Hon'ble High Court of Gujarat in the case of M/s.VKC Footsteps India P.Ltd Vs UOI denial of ITC of input services is invalid and they had also mentioned that Rule 89 (5) is ultravires Section 54 (3) provisions of CGST Act, 2017 ;
- iv) That Section 16 of the Act is a plenary legislation which governed the availment of input tax credit ; that the condition of matching ITC is found specifically and covered under Section 43 or 43 A of the CGST Act and not in Section 16 (1) ;
- v) The requirement of matching ITC under Section 43 has been suspended due to technical difficulties in implementing the same and Section 43 (A) is yet to be notified. Thus restrictions of ITC cannot be introduced through Rules when the Section itself has not been implemented;
- vi) The provisions of Section 37 read with Section 42 already provide for matching the supplier outward details with recipient inward details. Thus GSTR2A which has been attached shows that all their ITC in Annexure B has been reflected in GSTR2A;
- vii) That as per decision I the case of IFGL Refractors Ltd Vs Joint Director General of Foreign Trade; State of Kerala Vs K.M.Charia Abdullah and Co ; M/s.Eicher Motors ltd Vs UOI and other Vs UOI and Collector of Excise, Pune vs Dai Ichi Karkaria Ltd ITC is a vested right of the recipient and rules cannot override substantial Law. Hence denial of ITC as per Rule 36 (4) is bad in law.



viii) That in RFD 08 it was mentioned that if you fail to furnish a reply within the stipulated time or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merit. As the word or has been mentioned it give them right to do either of above mentioned actions. Thus they had replied to the SCN within the stipulated time. Further they had also uploaded the required documents with their reply. As per Rule 92 (3) the office has to make an order in Form GST RFD 06 in regard to sanctioning or rejection of the refund claimed. That the adjudicating authority has rejected an amount of INR 0/- and hence the adjudicating authority has not rejected any amount and therefore refund should be granted fully.

4. In view of above submissions, the appellant requested to allow the appeal and issue refund.

5. The appellant vide their letter dated 4-12-2021 has given additional submissions for each point in the SCN as under:

- i) ITC claimed of input service in refund application : Notification No.26/2018-CT dated 13-6-2018 :

That they had submitted appeal application upon claiming the ITC of input service in their refund application as per Hon'ble Gujarat High Court judgment in M/s.VKC Footsteps India P.Ltd, which has been challenged in Hon'ble Supreme Court and the Gujarat High Court order was set aside.

That they had submitted Statement 1 (working of refund calculation) and Annexure B (with bifurcation of input and input services). Hence their refund amount will be reduced accordingly.

Denial of ITC under Rule 36 (4) if bad in Law. That Section 16 of the Act is a plenary legislation which governs the availment of ITC.

- ii) Notification No.49/2019 dated 9-10-2019 :

They reiterated submissions made to earlier submission. Para 3 (iv) to 3 (vii) above.

- iii) Notification NO.75/2019-CT dated 26-12-2019 :

They had not claimed any ITC fraudulently and hence this Notification does not apply to them

- iv) Address of principal place of business is incomplete :

That their address is as mentioned as per GST Certificate.

- v) HSN of outward supplies :

That they are doing only job work of textile materials Hence their SAC Code is 998821



6. In addition to the above submissions the appellant has also sought interest on refund amount as per Section 54 (12) of the ACT referring to judgment in the case of M/s. Willwood Chemicals P.ltd and UOI and M/s. Saraf Natural Stone Vs UOI.

7. In view of above the appellant requested to set aside the order passed by the adjudicating authority and issue refund with interest.

8. Personal hearing was held on 8-12-2021. Shri Rohan Shah, Authorized representative appeared on behalf of the appellant on virtual mode. He said that decision may be taken on their written submission till date.

9. I have carefully gone through the facts of the case, grounds of appeal and submissions made during appeal. I find that in this case the appellant was issued show cause notice No.ZP2410200039044 dated 5-10-2020 proposing rejection of refund on multiple reasons and the claim was rejected on the ground of non appearance for personal hearing, vague reply to SCN and non submission of reply about compliance of Notification NO.49/2019 and Notification NO.75/2019. During the current proceedings the appellant has given reply to all the points. I have examined the same and record my findings as under :

- 1) ITC of input services claimed which is inadmissible as per Notification No.26/2018 – CT dated 13-6-2018 :

The appellant vide their letter dated 4-12-2021 admitted the objection on the basis of Hon'ble Supreme Court's decision in the case of UOI Vs M/s.VKC Footsteps India P.Ltd. and accordingly revised their refund claim to Rs.118012/- taking into account the Net ITC availed on inputs of Rs.895958/-. Since the appellant has admitted the objection no further discussion is made on this point.

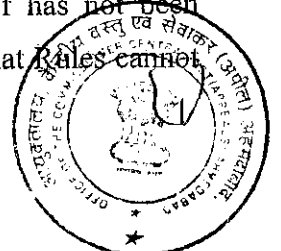
- 2) Compliance to Notification NO.49/2019 dated 9-10-2019

- i) I find that vide Notification No.49/2019 3 sub rule (4) was inserted under Rule 36 as under :

In the said rules, in rule 36, after sub-rule (3), the following sub-rule shall be inserted, namely:-

"(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37."

- ii) The appellant contended that restriction of ITC cannot be introduced through rules when the Section 43 and 43A, which stipulate condition of matching of ITC, itself has not been implemented. They also referred to various case laws which mandate the view that Rules cannot override substantial Law

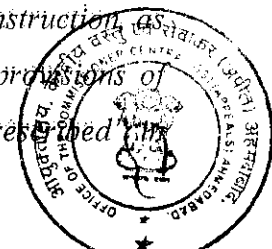


ii) I find that Section 43 of CGST Act envisage matching, reversal and reclaim of output tax liability due to discrepancy in output tax reduced by the suppliers by way of issuing credit note and corresponding reduction of ITC by the recipient whereas Rule 36 (4) of CGST Rules, 2017 envisage restriction for availment of ITC, the details of which have not been uploaded by the suppliers. Thus, the provisions contained under Section 43 and Rule 36 (4) is entirely on a different proposition and hence contention made in this regard is not well founded one. I further notice that CBIC Vide Circular No. Circular No.135/05/2020 – GST dated 31-3-2020 further clarified that

"5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant. The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent".

iv) With regard to the submission that rules cannot override substantial Law, I find that so far GST Law is concerned Hon'ble Supreme Court in the case of UOI Vs VKC Footsteps India P.ltd has laid down the principle as under :

85 We are unable to accept the above submission as it proceeds on a misconception. Under Section 164(1), confers an express power on the Central Government to make rules for carrying out the provisions of the CGST Act on the recommendations of the GST Council. It may be true that in certain specific statutory provisions, the Act recognizes, by using the expression 'prescribes', that rules may be framed for that purpose. But the converse cannot be assumed inferentially, by presuming that in other areas, recourse to the rule making power cannot be taken. By its very nature, a statutory provision may not visualize every eventuality which may arise in implementing the provisions of the Act. Hence it is open to the rule making authority to frame rules, so long as they are consistent with the provisions of the parent enactment. The rules may interstitially fill-up gaps which are unattended in the main legislation or introduce provisions for implementing the legislation. So long as the authority which frames the rules has not transgressed a provision of the statute, it cannot be deprived of its authority to exercise the rule making power. The wide powers given under Section 164 of the CGST Act are only limited by the provisions of the Act itself, in furtherance of which a rule maybe framed. It is for this reason that the powers under Section 164 are not restricted to only those sections which grant specific authority to frame rules. If such a construction, as Mr Sridharan has hypothesized, were to be acceptable, it would render the provisions of Section 164 otiose. Thus, we find that the absence of the words "as may be prescribed" in



Section 54(3) does not deprive the rule making authority to make rules for carrying out the provisions of the Act.

v) In view of above, the contention made by the appellant in this regard is also lack merit. Therefore, provisions of Rule 36 (4) of the CGST Rules, 2017 need to be applied, if applicable, for the purpose of arriving net ITC in the formula for determining admissible refund amount. Nevertheless the appellant has stated all their ITC in Annexure B has been reflected in GSTR2A.

3) Compliance to Notification No.75/2019-CT dated 26-12-2019 :

I find that 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 relate to action on the part of the Departmental officer and does not need any compliance on the part of the appellant. However, in compliance to the query the appellant submitted that they had not claimed any ITC fraudulently and hence the said Notification not apply to them.

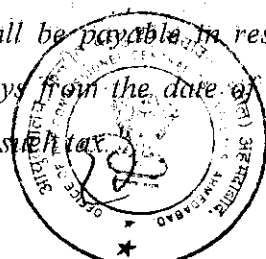
4) Address of place of business is incomplete :

The appellant submitted that their address is as mentioned in GST certificate. I have verified the same in GST portal and found that principal place of business is shown as Panchpipli, Near Bamdani Valo Khancho, Jamalpur, Ahmedabad, Gujarat 380 001. I notice that the appellant has filed refund claim under their GSTIN number and registered name and the SCN and refund rejection order was issued on the above address. Therefore, I do not find it a valid and justifiable ground to reject the refund claim. Therefore I accept the appellant's contention that this query is an unwarranted one.

5) HSN of outward supplies :

The appellant contended that they were doing business of only job work on textile materials and their SAC Code No.998821.

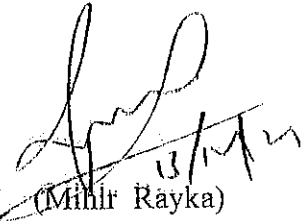
10. I further find that in addition to above compliance the appellant has also claimed interest on refund amount. I find that as per Section 56 of CGST Act, 2017, it was provided that *"If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of an application under the said sub-section till the date of refund of such tax."*



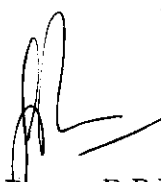
11. In the subject case no order was passed yet ordering refund of tax necessitating payment of interest. Further non grant of interest is also not a part of Order appealed against in this appeal. Therefore, at this stage of proceedings I do not intend to make any further discussion on this ground. With regard to their submission made in Para 3 (viii) above as per CGST Rules, 2017, in adherence to the principles of natural justice it is a mandatory requirement to issue SCN and grant personal hearing asking them to file reply to SCN and to appear for personal hearing before rejection of refund claim. However, if the claimant does not wish to appear for personal hearing they can do so by mentioning the same in their written reply to SCN. Further admissibility of refund is governed under Section 54 of CGST Act and Rules framed there under and mere mention of rejection of Rs 0/- in rejection order does not entitle a claimant for refund.

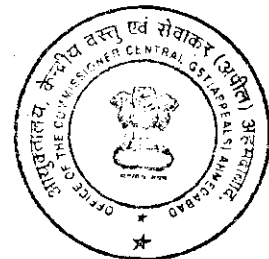
12. In view of above, in the current proceedings the appellant has given compliance to all the grounds mentioned in the SCN. In this case the claim was rejected only on the basis of aforesaid grounds mentioned in the show cause notice. Therefore it transpires that there is no dispute with regard to other conditions governing admissibility of refund and except on the above grounds the refund is otherwise admissible to the appellant. 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.

13. अपीलकर्ता द्वारा दर्ज की गई अपील को कानिपटारा 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


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



To,

Shri Munafbhai Kasambhai Vadnagarwala
of M/s. Vadnagarwala Brothers,
Panchpipli, Nr Bamdani Valo Kancho,
Jamalpur,
Ahmedabad 380 001

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

