



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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DIN-20211264SW000000F995

रजिस्टर्ड डाक ए.सी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/714/2021-APPEAL / 5168 T 05132

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-86/2021-22**

दिनांक Date : **15-12-2021** जारी करने की तारीख Date of Issue : **15-12-2021**

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 **ZN2410200168911 DT. 14.10.2020**

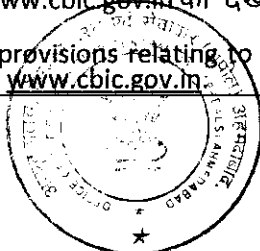
issued by Deputy Commissioner, CGST, Division I, Ahmedabad South

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

**Shri Paresh Vallabhbhai Dodia of M/s. Shree Vihot Engineering Works,3,  
Margha Farm, Subhlaxmi Estate, Rakhial, Ahmedabad**

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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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and<br>(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।<br>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**

Shri Paresh Vallabbhbai Dodia of M/s.Shree Vihot Engineering Works, 3, Margha Farm, Sudhlaxmi Estate, Rakhial, Ahmedabad (hereinafter referred to as 'the appellant') has filed the present appeal on dated 17-12-2020 against Order No.ZN2410200168911 dated 14-10-2020 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Division I, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

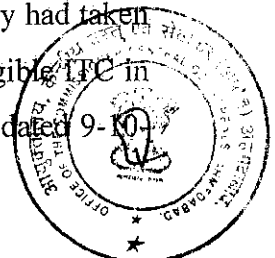
2. Briefly stated the facts of the case is that the appellant has filed refund claim for refund of Rs.133000/- on account of ITC accumulated due to inverted tax structure. The adjudicating authority vide impugned order rejected the claim on the ground that the appellant has not complied with the queries related to Notification No.49/2019-CT dated 9-10-2019 and Notification No.75/2019-CT and accordingly refund amount of Rs.133000/- is rejected under Section 54 of the CGST Act, 2017.

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

- i) That the adjudicating authority has rejected the application of refund without any reason and verify documents which was submitted by them ;
- ii) That they had filed all the GST returns and paid all tax as per return filed and also filed GST returns as per GST Act in time and submitted all the relevant documents and summary of refund, ITC matching statement which was reflected online of GST portal ;
- iii) Referring to Section 54 of the CGST Act, 2017, the appellant stated that they had filed refund claim under Section 54 of the CGST Act as per which where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest has not been passed on to any other person.

4. In view of above submission the appellant requested to set aside the refund rejection order and restore their refund application.

5. Personal hearing was held on dated 8-12-2021. Shri Urvish V Patel, Authorized representative appeared on behalf of the appellant on virtual mode. He stated that they had taken ITC on invoices shown in GSTR2A ; that they had not taken any fraudulent or ineligible ITC in this claim ; that they had complied queries related to Notification NO. 49/2019 CT dated 9-10-2019 and 75/2019-CT dated 26-12-2019.



6. 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 :

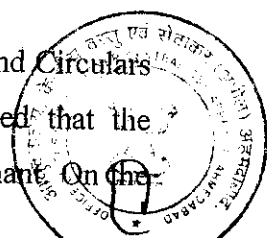
*6. In the said rules, in rule 91, - (a) in sub-rule (3), with effect from the 24th September, 2019, after the words "application for refund", the words "on the basis of a consolidated payment advice:" shall be inserted; (b) after the sub-rule (3), with effect from the 24th September, 2019, the following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

7. 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.

8. 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 envisage action on the part of Departmental officers and does not need any compliance on the part of the appellant. Further amendment made under Rule 36 reduces the percentage of restriction for availment of ITC from 20% to 10% only.


9. I find that the refund is governed under Section 54 of CGST Act and Rules and Circulars issued in the matter. Nowhere in the Act or Rules or Circulars it was provided that the admissibility of refund is subject to compliance aforesaid Notifications by the claimant. On the



contrary amendment made vide above Notifications in fact need to be applied and followed by the Departmental officers while processing and sanctioning refund, wherever applicable. Therefore, I do not find any justification in rejecting the refund claim due to non compliance of aforesaid Notification by the appellant. Nevertheless I notice that in compliance to above query the appellant has submitted that they had complied with provisions of aforesaid Notification. In this case the claim was rejected only on the basis of aforesaid ground mentioned in the show cause notice and impugned order. Therefore it transpires that there is no dispute with regard to other conditions and provisions governing admissibility of refund and except on the above grounds the refund is otherwise admissible to the appellant. Since the appellant has complied with the above Notifications, 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.


10. अपीलकर्ता द्वारा दर्ज की गई अपील को कानिपटारा उपरोक्त तरीके से किया जाता है।

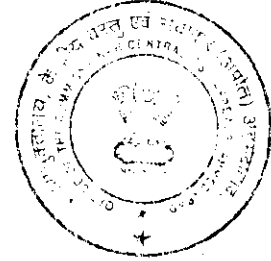
The appeals filed by the appellant stand disposed off in above terms.

  
15/12/24  
(Mihir Rayka)  
Joint Commissioner (Appeals)

Date :

Attested

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



To,

Shri Paresh Vallabhbhai Dodia  
of M/s. Shree Vihot Engineering Works,  
3, Margha Farm, Sudhlaxmi Estate,  
Rakhial, 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 Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) The Assistant Commissioner, Division I (Rakhial), Ahmedabad South
- 6) Guard File
- 7) PA file