



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-20211264SW0000823264

रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/705/2021-APPEAL

/5262 To 5267

अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-90/2021-22**

दिनांक Date : **21-12-2021** जारी करने की तारीख Date of Issue : **22-12-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

Arising out of Order-in-Original No **ZU2410200036744 DT. 05.10.2020**

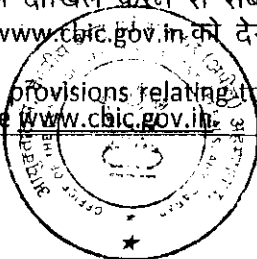
issued by Assistant Commissioner, CGST, Division IV-Narol, Ahmedabad South

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

M/s. Gopi Synthetics P. Ltd. Survey No. 302, Narol
Vatva Road, Ahmedabad-382405

(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

M/s.Gopi Synthetics P.ltd. Survey No.302, Narol Vatva Road, Ahmedabad 382 405 (hereinafter referred to as the appellant) has filed the present appeal on dated 11-12-2020 against Order No. ZU2410200036744 dated 5-10-2020 (hereinafter referred to as 'the impugned orders') passed by the Assistant Commissioner, CGST, Division IV (Narol), 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.

2. Briefly stated the facts of the case is that the appellant is registered under GSTN 24AAACG7683G1ZJ. 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 order has rejected part of claim amounting to Rs.1425740/- on the reason non filing of reply to show cause notice ; non attendance of personal hearing and due to ITC accumulated because of input service and RCM.

3. Being aggrieved with rejection of part of refund claim, the appellant filed the present appeal wherein they interalia submitted ;

That the part denial of refund was based upon the allegation that some of ITC invoices were related to availment of services for furtherance of business and as per Order of Gujarat High Court the ITC taken on services is to be added for the purpose of arriving at the refund amount ;

That the OIO issued by the refund sanctioning authority is a non speaking order and thus the same is against the principles of natural justice ;

That they have taken credit of input tax invoices as per Section 16 (2) of CGST Act, 2017 and none of the conditions prescribed under said Section was violated and hence credit availed was in order ;

That they had taken ITC on goods and services for arriving the refund and no credit related to capital goods was taken in RFD 01 ;

That the denial of refund of ITC on input services do not fulfil the objective of GST Law as it generates an element of cost to the manufacturers in the form of accumulated ITC without option of claiming refund ;

That the subordinate legislation such as GST Rules cannot override the main enactment of GST Act ;

That the explanation to Rule 89 (5) allowing refund of ITC on inputs and not on input services is ultra vires the provisions of Section 54 (3) of CGST Act and Hon'ble High Court concluded that the said explanation is to be read to include inputs and input services ;

4. During appeal proceedings, the appellant vide their dated 3-12-2021 further submitted that the part rejection of refund in the impugned order was related to ITC taken on various services and credit so taken on services was not considered for the purpose of arriving at the admissible refund under inverted duty. Thus the present appeal was filed on 11-12-2020. However it is now learnt that the issue relating to refund on inverted duty structure matter

relating to credit on services believed to have been decided by the Hon'ble Supreme Court and held that the credit taken on services shall not form part of total credit. In the given situation the appeal filed by us lost its ground and the issue stands settled. In view of above they withdraw the appeal unconditionally and the intimated that the same may not be pursued further.

5. I have carefully gone through the facts of the case grounds of appeal and submission made by the appellant. In this case 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. Hon'ble High Court vide its order dated 27-4-2020 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, Hon'ble Supreme Court vide common Order dated 13-9-2021 has set aside the judgment passed by the Hon'ble High Court of Gujarat. On the basis of decision of Hon'ble Supreme Court the appellant has voluntarily and unconditionally withdrawn the present appeal. Therefore, I dismiss the appeal as withdrawn by the appellant.


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

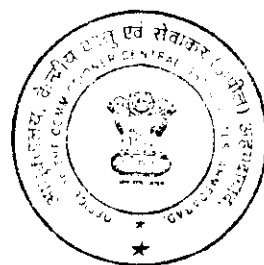
6. The appeals filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Joint Commissioner (Appeals)

Date :
Attested


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



By RPAD
To,
M/s. Gopi Synthetics P.ltd.
Survey No.302, Narol Vatva Road,
Ahmedabad 382 405

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