

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, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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फाइल संख्या : File No : GAPPL/ADC/GSTP/644/2020-APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-95/2021-22

दिनांक Date : 28-12-2021 जारी करने की तारीख Date of Issue : 28-12-2021

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

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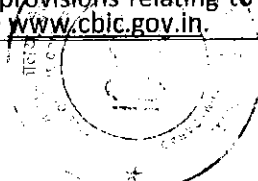
Arising out of Order-in-Original No ZR2410200011788 दिनांक: 01-10-2020 issued by
Deputy Commissioner, CGST, Division I, Ahmedabad South

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

M/s. Ashutosh Fibre P. Ltd., 11-B, New Cloth Market,
Outside Raipur Gate, Ahmedabad-380002

(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 .



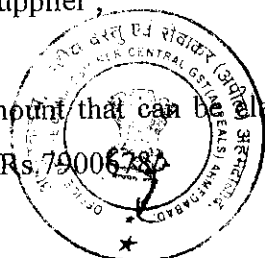
ORDER IN APPEAL

M/s.Ashutosh Fibre P.Ltd., 11-B, New Cloth Market, Outside Raipur Gate, Ahmedabad 380 002 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 4-12-2020 against Order No.R2410200011788 dated 1-10-2020 (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 24AABCA8054E1Z1, has filed refund application for refund of ITC on export of goods and services without payment of tax amounting to Rs.7,90,0678/- for the period April 2019 to December 2019. The appellant was issued show cause notice proposing rejection of refund claim on the ground that ; *Notification NO.49/2019 dated 9-10-2019 complied or not. Neither credit is lapsed nor working submitted-CIR 56/30/2018 dated 24-8-2018. ITC of RCM and invoices not reflecting in GSTR 2A considered in Annexure B. Zero rated turnover cannot be quantified Notification No.16/2020 dated 23-3-2020. The adjudicating authority vide impugned order rejected the refund on the ground that the taxpayers contention is not accepted. Hence the claim is rejected under section 54 of CGST Act, 2017 on the grounds mentioned in the SCN.*

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

- i. That the mere statement that 'the tax payer's contention is not accepted' without giving any details reasons and without recording the facts and any discussion shows that the impugned order is cryptic and should be set aside ;
- ii. That during personal hearing they had provide detailed costing vide letter dated 16-9-2020 and also stated that though they had not supplied any like goods domestically, the value of like goods for domestic supplies by similarly placed supplier should also be Rs.95851478/- during the period April 2019 to 31-12-2019,
- iii. That during personal hearing it was also stated that the amendment made under Rule 89 (4) (c) on 23-3-2020 cannot be applied to this refund claim and even if it is presumed to be applicable, it was requested to sanction the refund on the basis of their declaration as amended Rule 89 (4) lays down to compare the value as declared by the supplier. They also enclosed declaration to the effect that the value of like goods for domestic supplies by similarly placed supplier should also be Rs.95851478/- during the period April 2019 to December 2019, if made. In view of above the turnover of zero rated supply of goods in their case would be Rs.95851478/- being lower of value of zero rate supply of goods made during the relevant period without payment of tax under bond or LUT or value which is 1.5 times the value of like goods domestically supplied by the same or similarly placed supplier as declared by the supplier ;
- iv. As per Rule 89 (3) of CGST Rules, 2017 the maximum refund amount that can be claimed works out to Rs.8016575/- against which they had claimed refund of Rs.7900678/-



- v. Section 16 (3) of IGST ACT read with Section 54 of CGST Act permits refund of unutilized tax credit to a service provider when exports are made without payment of duty. Rule 89 of CGST Rules only provides the procedural aspects and the computation mechanism for claiming refund of GST which cannot override or be contrary to the benefit provided in the Section 54 of the CGST Act. It is well settled principle that rules cannot override the statute and in cases where the rules override the statute the rules become ultra vires the statute and invalid.
- vi. As per decision of Hon'ble Supreme Court in the case of UOI Vs Intercontinental Consultants and Technocrats Pvt.Ltd. refund claim filed by them is clearly admissible and impugned order rejecting the claim should be set aside.
- vii. It is a well settled proposition of law that whenever an application of refund is made, the statutory authorities are bound to consider the claim made and pass a reasons order. In the present case they had made an application and given a detailed reply objecting to the notice. All theses objection were required to be dealt with by the authority before taking a final call which is conspicuously absent. Therefore, the order itself can be termed to be a non speaking order and therefore liable to be set aside. They relied upon the decision of Hon'ble High Court of Madras decision in the case of Jay Jay Mills (India) P.Ltd. Vs State tax Officer.
- viii. Rejecting refund order based on a notice dated 4-9-2020 which is vague and after issuing acknowledgement of refund claim based on detailed scrutiny. In terms of Rule 90 (2) they were issued acknowledgment in Form GST RFD 02 on dated 21-8-2020 which proves that refund application was complete in all respects. Further no deficiencies were communicated in terms of Rule 90 (3) which means that there was no deficiency in the refund application. Despite the same a vague notice was issued without giving any clear and specific reasons for proposing rejection of refund claim which is void ab inito and cryptic order and not sustainable in the eyes of Law.
- ix. The appellant vide their letter dated 6-12-2021 reiterated the above submissions and further contended that as per Rule 89 (4) of CGST Rules, 2017, the maximum refund amount that can be claimed is Rs.8016575/- ; that they had not supplied any like goods domestically and has declared the value of like goods domestic supplied by similarly placed supplier should also be Rs.95851478/- and hence the value of turnover of zero rated supply of goods will be Rs.95851478/- ; since they had claimed refund of Rs.7900678/- against maximum refund of Rs.8016575/- the refund is admissible and rejection thereof is not justified ; that in terms of Rule 90 (2) of CGST Rules, 2017 and Rule 90 (3) of CGST Rules, 2016 acknowledgment was issued after scrutinizing the refund application and no deficiency memo was issued to them ; despite the same the adjudicating authority issued show cause notice with vague description as reasons of inadmissibility of refund and rejected their refund claim vide impugned order which is vague and issued without stating the facts and by passing non speaking order which is not sustainable in law ; that the mere statement that the tax payers contention is not accepted'

without giving any detailed reasons for doing so and without recording the facts and any discussion on the host of submissions made by the appellant shows that the impugned order is cryptic and hence should be set aside ; that based on a vague show cause notice dated 4-9-2020 the adjudicating authority rejected the refund claim in a cryptic manner without in any manner stating why and how the said contentions are not accepted ; that rejection of refund by passing non speaking order based on the SCN that falls short of all the known principles of natural justice and no prudent man could have given reply to the SCN which was served. They also relied on the decision of Hon'ble High Court of Allahabad in the case of M/s.Sahibabad Printers Vs Additional Commissioner of CGST (Appeals) dated 14-12-2020 and requested to set aside the impugned order ; that it is a settled Law laid down by Hon'ble Supreme Court in the case of M/s.Orxy Fisheries Pvt.ltd Vs UOI and others (2011 (1) AWC) 849 (SC) that at the stage of show cause the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence and in absence thereof entire proceedings get vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony ; that this has precisely happened in their case also ; that the refund claim for the period April 2019 to December 2019 was rejected by passing non speaking order and without there being any cogent reason for rejection thereof ; that under identical situation all their refund claims for subsequent period were sanctioned by the Department and hence rejection of refund claim for the subject period based on a non speaking order is not legal or proper when the said claim is clearly admissible in terms of provisions of Section 54 of the CGST Act 2017 read with Rule 89 of CGST Rules, 2017 ; that refund claim filed for refund of Rs.7900678/- against maximum refund amount of Rs.8016575/- is clearly admissible to them.

4. Personal hearing was held on dated 8-12-2021. Shri Nilesh V. Suchak authorized representative appeared on behalf of the appellant on virtual mode. He stated that decision may be taken on their written submission till date.

5. I have gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. In this case the appellant's main contention is that the impugned order issued by the adjudicating authority is vague, cryptic and non speaking order and hence deserves to be set aside. I have gone through the order and find that refund claim was rejected on the following reasons:

"The tax payer's contention is not accepted. Hence the claim is rejected under Section 54 of CGST Act, 2017 on the grounds mentioned in the SCN".

6. It transpires from the above remark that the appellant has filed reply to the SCN issued to them but their contentions were not found acceptable to the adjudicating authority. However, the reasons as to why the contention was not acceptable so as to reject the refund claim are not found recorded in the impugned order. In other words, the impugned order only indicates the adjudicating authority's final decision but does not contain reasons to arrive the decision. As per sub rule 92 (3) of CGST Rules, 2017, the provision for rejection of refund claim is provided as under:

Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed.

7. As per above provisions of sub rule (3) of Rule 92 of CGST Rules, it is a mandatory requirement to record the reasons in writing for issuance of show cause notice as well as for passing Order rejecting the refund claim. In the Master Circular No.1053/02/2017 – CX dated 10th March, 2017 issued by the Central Board of Excise and Customs, during erstwhile Central Excise and Service Tax regime, at Paragraph 14.5 it was laid down that *the adjudication order must be a speaking order. A speaking order is an order that speaks for itself. A good adjudication order is expected to stand the test of legality, fairness and reasons at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.*"

8. I further notice that in the case Law relied by the appellant in the case of M/s.Jay Jay Mills (India) Pvt.ltd Vs State Tax Officer, Tirupur, involving the issue of rejection of refund claim filed under Section 54 of CGST Act, 2017, Hon'ble High Court of Madras has also held that

It is a settled proposition of Law that whenever an application of this nature is made, the statutory authority are bound to consider the claim made and pass a reasoned order. In the present case, the petitioner had made an application for refund under Section 54 of the Act and when the respondent had issued notice to them for rejection of the ineligible goods and services of SGST, CGST and IGST they have given a detailed reply, objecting to the notices. All these objections were required to dealt with by the authority, before taking a final call, which is conspicuously absent. As such, the order itself can be termed to be a non speaking order and therefore are liable to be set aside.

9. I also reply upon another case of M/s.The Supreme Industries ltd Vs the CBIC & Others, wherein Hon'ble High Court of Bombay referring to Master Circular No.1053/02/2017 – CX dated 10th March, 2017 issued by the Central Board of Excise and Customs held that *this circular binding on the field formations clearly states that the adjudication order must be a speaking order which speaks for itself. It further goes on to say that a good adjudication order is expected to stand the test of legality, fairness and reasons at higher appellate forums and that such order should contain all the details of the issue, clear findings and a reasoned order.*

10. The above referred Circular and case laws mandate the view that an order passed by adjudicating authority should be a well reasoned and speaking order and should be able to stand test of legality, fairness and reasons at higher appellate authorities forums. Though the above referred Circular and decisions pertains to pre GST period, the guiding principles laid therein is applicable to quasi judicial proceedings in the GST cases also as held in M/s.Jay Jay Mills (India) Pvt.ltd supra. In the present case, the appellant was issued show cause notice and they have given reply to the show

cause notice as well as made their submissions during personal hearing also. However, adjudicating authority passed impugned order with a simple remark that 'contention is not acceptable' and thereby out-rightly rejected the refund claim. Apparently, neither discussion on compliance made by the appellant was recorded nor the reason for non acceptance of the contention was spelt out in the order. Consequently, the Order not only deprived the appellant to make submissions on merit seeking relief in appeal proceeding but also became incapable to stand before the current proceedings to examine its legality and fairness and to take a judicious decision in the matter.

11. In view of above discussions, I find that there is strong force in the contention of the appellant that the impugned order is vague, cryptic and non speaking order. Therefore, I hold that the impugned order passed by the adjudicating authority is against the guiding principles of adjudication and not a well reasoned and speaking order. Accordingly I allow the appeal and set aside the impugned order. Needless to say, any claim of refund made in consequence to this order may be dealt with by the appropriate authority in accordance with the provisions of CGST Act and Rules made there under and instruction issued from time to time and should be disposed of by passing a well reasoned and speaking order.

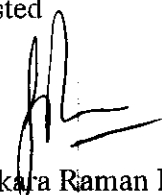
12. अपीलकर्ता द्वारा दर्ज की गई अपील को कानिपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.

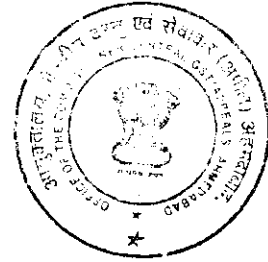

(Mihir Rayka)

Joint Commissioner (Appeals)

Date :

Attested


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



To,

M/s. Ashutosh Fibre P. Ltd.,
11-B, New Cloth Market,
Outside Raipur Gate,
Ahmedabad 380 002

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