



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/72/2021-APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-99/2021-22**

दिनांक Date : **29-12-2021** जारी करने की तारीख Date of Issue : **29-12-2021**

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. **CGST/WSO7/Ref 10/MK/AC/2020-2021** DT.

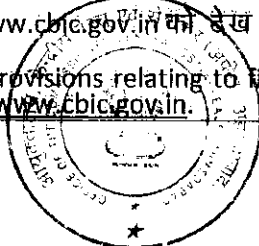
05.10.2010 Issued by Deputy Commissioner, CGST, Division VII, Ahmedabad South

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

M/s. Canon India Pvt. Ltd. C/O Ensure Support Services India Ltd. No. 22, Ground Floor, Block H, TPS 14, Sumel Business Park 6, Jupiter Mill Compound, Dudheshwar, Ahmedabad-380004

(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 .



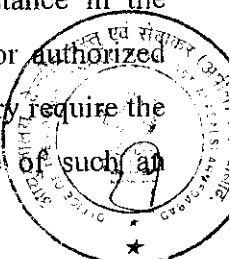
ORDER IN APPEAL

M/s.Cannon India Pvt.ltd. C/O Ensure Support Services India Ltd No.22, Ground Floor, Block H, TPS 14, Sumel Business Park 6, Jupiter Mill Compound, Dudheshwar, Ahmedabad 380 004 (hereinafter referred to as the 'appellant') has filed the present appeal on dated 7-1-2021 against Order No.CGST/WS07/Ref 10/MK/AC/2020-2021 dated 5-10-2010 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, CGST Division VII, Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant, registered under GSTIN 24AAACC4175D1Z4, has filed refund claim for Rs.2,03,195/- in respect of IGST paid on supplies made to SEZ units. The appellant was issued SCN proposing rejection of claim on the ground that i) duly endorsed copy of invoice of supply made to SEZ Units/SEZ developers by specified SEZ officer not submitted and ii) fresh application after issuance of deficiency memo submitted after expiry of two years as prescribed under Section 54 of the CGST Act, 2017. The adjudicating authority vide impugned order rejected the claim on the ground that the appellant has failed to submit endorsed copy of invoices of supply made to SEZ unit by specified SEZ Officer; not submitted declaration of SEZ unit regarding supplies made by non availment of ITC in respect of supplies made by the appellant and delay in submission of reply to deficiency memo.

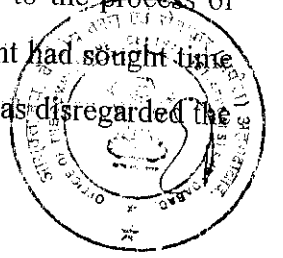
3. Being aggrieved the appellant filed the present appeal on the following grounds :

- i) That the adjudicating authority is not justified in passing the refund rejection order only on the infraction of non production of invoices duly endorsed by SEZ Officer ;
- ii) That they had discharged IGST on supplies made to SEZ Unit and hence eligible for refund under Section 16 (3) of the IGST Act, 2017 ;
- iii) That the adjudicating authority has denied substantive benefit of refund of IGST only on account of a procedural lapse in terms of non-submission of endorsed copy of SEZ invoices ; that the endorsement of SEZ invoices is a mechanism wherein the acknowledged copies of the invoices establish that the goods were received by the SEZ and were duly used for authorized operation by the SEZ unit. This fact of use of services for authorized operations of SEZ unit has not been a matter of dispute in the instant case and hence the rejection is factually unsustainable.
- iv) As per Section 54 of CGST Act, 2017, a GST registered taxpayer is eligible for refund wherein Rule 89 of the CGST Rules elucidate the Rules for claiming the same
- v) That the adjudicating authority should understand that the facts and circumstance in the instance case to establish whether the supply of the goods/service was used for authorized operations of an SEZ Unit. In the absence of a statutory provision which mandatory require the rejection of refund claim/such refund claim becoming invalid in the absence of such an



endorsement on the invoices, the adjudicating authority has committed error in rejecting the claim for refund on the ground which does not exist in law. There is no doubt that it is a beneficial provision and it is settled legal principle that any beneficial provision should be interpreted liberally ;

- vi) Referring to Hon'ble Supreme Court's decision in the case of M/s.Mangalore Chemicals and Fertilizers Ltd Vs Deputy Commissioner the appellant contended that a procedural lapse at the end of the assessee cannot lead to a denial of substantive benefit. They also referred to decisions in the case of M/s.Thermax P.ltd Vs CCE ; M/s.Lupin Laboratories Ltd Vs CCE Bhopal and M/s.Jay Engineering Works Vs CCE Calcutta I.
- vii) While it is an undisputed fact that at the services provided by the appellant has been used for authorized services in the SEZ units, however the appellant to establish that the supply made by the appellant is undenially being made for only the authorized operations of an SEZ Unit has collated various documents which are enclosed along with this appeal.
- viii) A statement duly certified by a Chartered Accountant that the supplies were made for the Authorized Operations of an SEZ Unit ; Declaration by the SEZ units (on sample basis) that the receipt of goods/services were indeed used for the authorized operations by such SEZ units ; The letter of approvals (on sample basis) issued by the Ministry of Commerce and Industry to the SEZ Units.
- ix) By virtue of above documents, the appellant submitted that the supplies were made for authorized operations of the SEZ units. Thus, infraction of the only the procedural formality of getting the invoice copies endorsed should not be the foundation of availing the benefit as the above submissions establish beyond reasonable doubt that the supplies were made for authorized operations of the SEZ units.
- x) That they had already submitted declaration issued from the SEZ customers on sample basis to the adjudicating authority and if given sufficient opportunity can furnish the said declaration for all SEZ customers ;
- xi) That no GST has been charged or mentioned in the invoices at all and the point of availment of credit by the SEZ customer does not arise.
- xii) That GST Act 2017 was a major overhaul of the erstwhile Indirect tax regime and accordingly there was lack of clarity across business and specified officers with regard to the process of endorsing the invoices copies during the period of refund. Hence the appellant had sought time for providing the endorsed copies of invoices and the adjudicating authority has disregarded the same which is against the principles of natural justice ;



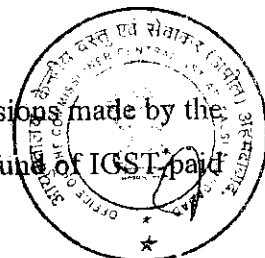
xiii) That they had put all efforts to get the endorsed copies of invoices which have been disregarded by the adjudicating authority and no extension of time granted. However the appellant through all their submissions have duly proved to the satisfaction of the adjudicating authority that i) IGST on such zero rated SEZ supplies were self discharged by them and ii) that such supplies were used by the SEZ for its authorized operations. Beyond such submission the refund being rejected on mere non submission of endorsed invoices which is a procedural requirement and not justifiable.

4. In view of above submissions the appellant requested to allow the appeal; to quash and set aside the rejection order.

5. Personal hearing was held on dated 23-12-2021. Shri Suresh Chand and Shri Sushil Kumar Verma, authorized representatives appeared on behalf of the appellant on virtual mode. They stated that last time they gave submission regarding some different issue and that they want to submit additional information, for which 5 working days are given to them.

6. Accordingly the appellant vide letter dated 27-12-2021 made additional submissions wherein they interalia stated that non production of a single document cannot be the basis of denial of substantive benefit ; that Rules are always subservient to the Act and in the instant case section 54 provide for the enabling provision to claim for a refund in a case of supplies to SEZ unit and Rule 89 provides for the procedural aspects like documents which are required to be filed along with refund application in order to justify the claim of refund ; that the substantiate benefit provided under Section 54 of CGST Act cannot be denied on the ground of non fulfillment of any one of the procedural aspects provided under Rule 89 ; that if the refund application is filed in accordance with Section 54 and all procedural aspects stipulated under Rule 89 are also complied with except for one document, the entire benefit cannot be denied on this ground along ; that in the case of M/s.Manglore Chemicals and Fertilizers Ltd Vs Deputy Commissioner Hon'ble Supreme Court has laid that a procedural lapse at the end of the assessee cannot lead to a denial of substantive benefit ; that there are plethora of other judgments on this aspect ; that the intention behind the condition of producing the evidence regarding receipt of goods/services for authorized operations as endorsed by the specified officer is ultimately to substantiate that the supply of goods/services are to be used for authorized operations of an SEZ unit ; that the endorsement on an invoices is something which is not in their control as it is to be done by proper Government officer ; that they had already furnished various documents along with original appeal ; that they submit additional documents obtained from respective SEZ Units declaring that the goods/services were used for authorized operations which further corroborate the facts that the goods/services were actually used for authorized operations of its SEZ units ; that they could fetch the endorsed copy of invoices from M/s.Firmenich Aromatics Productions (India) Pvt. Ltd. involving tax of Rs.26,273/- ; that in view of above submissions the appeal may be allowed and rejection order may be set aside.

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. In this case refund was claimed for refund of IGST paid



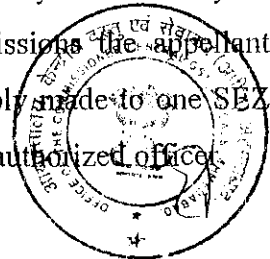
on supplies made to SEZ Units. The adjudicating authority vide impugned order rejected the claim due to reason of non submission of documents in terms of Rule 89 (2) of CGST Rules, 2017 and time limitation factor. I have gone through Rule 89 (2) of CGST Rules, 2017 and find that the said Rule provide for documentary evidences which should be accompanied with a refund application to establish that the refund is due to the applicant and in clause (d), (e) and (f), documents required in respect of supply made to SEZ are specified. For better appreciation of the facts I reproduce relevant clause of Rule 89 (2) of CGST Rules, 2017 as under :

- (d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;*
- (e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorized operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;*
- (f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;*

The Second Proviso to sub rule (1) specify as under :

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the – (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the Zone; (b) supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone:

8. From the above it is very clear that in case of supply made to SEZ units/developers it is mandatory requirement on the part of claimant to submit documentary evidence indicating that the supply of goods/services is for authorized operations of SEZ unit duly endorsed by the proper officer of the particular SEZ. However from the facts of the case, it transpire that the appellant has not submitted documents prescribed under second proviso to sub rule (1) and also declaration of SEZ unit has not availed ITC on such supplies along with their refund claim. During appeal proceedings, in compliance to above requirement, the appellant submitted a statement duly certified by chartered accountant that the supplies were made for authorized operation of an SEZ Unit; declaration by the SEZ unit (on sample basis) that the receipt of goods and services were indeed used for the authorized operation by such SEZ unit and Letter of Approvals (on sample basis) issued by the Ministry of Commerce and Industry to the SEZ Unit. Further in their additional submissions the appellant submitted additional declaration from SEZ units and invoices in respect of supply made to one SEZ Unit viz. Firmenich Aromatics Productions (India) Pvt.Ltd duly endorsed by the authorized officer.

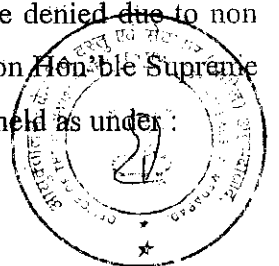


9. I have scrutinized the aforesaid evidences submitted by the appellant. I find that self declarations of SEZ units and Chartered Accountant certificate are not suffice for the requirement specified under proviso to sub rule (1) of Rule 89, inasmuch as the document envisaged under said proviso is evidence regarding supply of goods for authorized operation of SEZ unit duly endorsed by the specified officer of the Zone. Nevertheless, I further find that except the self declaration given by M/s. Jubilant Life Science Ltd, M/s. Jubilant Infrastructure Ltd and M/s. Thermax Ltd, the declarations made by other SEZ unit do not categorically confirm that the supply made by the appellant is for their authorized operations. Besides declaration from SEZ unit regarding non availment of ITC by SEZ unit is also absent in their submissions. With regard to submission of endorsed copy of invoices issued to M/s. Firmenich Aromatics Productions (India) Pvt. Ltd. I have verified the invoices and find that all invoices contain endorsement by specified officer to the effect that service has been used for authorized operations and has been received by the SEZ Unit, which fulfill the requirement of proviso to Rule 89 (1) of CGST Rules, 2017. Therefore, except the endorsed copy of invoices issued to M/s. Firmenich Aromatics Productions (India) Pvt. Ltd., none of the other documents submitted by the appellant can be considered in compliance to proviso to Rule 89 (1) of CGST Rules, 2017.

10. With regard to appellant's contention that submission of endorsed copy of invoices is a procedural aspect which cannot taken as a ground for rejection of refund claim, I find that said contention is not well reasoned and well founded one inasmuch as provisions of CGST Act and Rules, governing grant of refund, prescribes certain set of conditions to be fulfilled and documents to be submitted so as to determine the admissibility of refund. Such statutory provisions and stipulations are binding on registered persons and Departmental Officers. Therefore all such documents which are required to be accompanied with refund claim should invariably be submitted in the manner provided and non submission of the same cannot be treated as a mere procedural requirements. I also rely upon an Advance Ruling dated 26-7-2018 given in the case of M/s Coffee Day Global Limited, Bangalore, wherein the Advance Ruling Authority, Karnataka held as under

The Rule related to refund stipulates that the supply, in respect of which tax had been paid and refund is sought, shall be necessarily for authorized operations. In other words the sine qua non or indispensable element is that the supply has to be certified by the proper officer as constituting authorized operations. Benefit flowing out from the SEZ Act, 2005, accrues to anyone only when the condition of authorized operations is fulfilled. Therefore even in the event of the IGST Act, 2017, not explicitly using the term „authorized operations" in Section 16(1)(b), it is implicit that the supply of goods or services or both described in Section 16(1)(b) have to be read as in relation to authorized operations.

11. In their additional submissions the appellant contended that Rules are always subservient to the Act and hence substantial benefit provided under Section 54 of the Act cannot be denied due to non fulfillment of procedural aspects provided under Rule 89. In this regard I rely upon Hon'ble Supreme Court's decision in the case of UOI Vs VKC Footsteps India P.ltd, wherein it was held 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 may be 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.

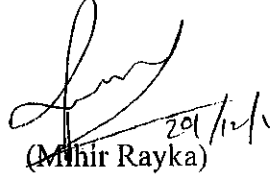
12. With regard to delay in filing of refund claim, the appellant stated that they had sought more time for submission of required documents, which has not been granted to them. From the facts of the case I find that refund claim was filed on dated 20-8-2019 for the period July 2017 to November 2017. A deficiency memo was issued to the appellant on dated 28-11-2019 and appellant submitted rectified claim on dated 15-7-2020, ie after a period of eight months. As per Rule 90 (3) of CGST Rules, 2017 where any deficiencies are noticed and communicated in Form GST RFD 03, the claimant is required to rectify the deficiencies and file fresh claim. Thus as per Rule 90 (3) the rectified is treated as fresh refund claim. In this regard CBIC vide Circular No. 125/44/2019-GST dated 18-11-2019 has clarified that since the refund claim filed after correction of deficiency is treated as fresh refund application, such a rectified refund application submitted after correction of deficiencies shall also have to be submitted within 2 years of the relevant date as defined in the explanation after sub section (14) of Section 54 of the CGST Act. Therefore for determining the time limit, the date of filing of rectified refund application is to be considered as per which the rectified application filed on 15-7-2020 was filed beyond the time period stipulated under Section 54 of the CGST Act, 2017.

13. In view of above, since the appellant has failed to submit documentary evidences envisaged under proviso to Rule 89 (1) of CGST Rules, none of the submissions made by them hold merit and substantiate their entitlement for refund. On the basis of documents submitted by the appellant during the current proceedings, I hold that the appellant is entitled for refund of IGST involved on supplies made to M/s.Firmenich Aromatics Production (India) Pvt.Ltd and not entitled for refund of IGST involved on supply made to other SEZ units. However I also hold that the entire claim, including claim made in respect of supply made to M/s.Firmenich Aromatics Production (India) Pvt Ltd, was filed

beyond the time period stipulated under Section 54 of CGST Act, 2017 and hence time barred. Since the time limit for filing refund is prescribed by way of statute, it is binding on both the Departmental authorities and the registered person to adhere to the time limit prescribed under Section 54 of the CGST Act, 2017. Accordingly, I do not find any infirmity in the impugned order passed by the adjudicating authority rejecting the refund claim and hence upheld the impugned order and reject the appeal filed by the appellant.

14. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

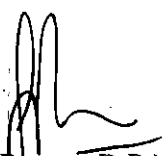
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Joint Commissioner (Appeals)

Date :

Attested


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



M/s. Cannon India Pvt. Ltd.
C/O Ensure Support Services India Ltd
No.22, Ground Floor, Block H, TPS 14
Sumel Business Park 6,
Jupitar Mill Compound,
Dudheshwar,
Ahmedabad 380 004

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 Assistant Commissioner, CGST, Division VII, Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file