



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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क फाइल संख्या : File No : GAPPL/ADC/GSTP/990 & 991/2021 -APPEAL/514-521

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-10/2022-23**
दिनांक Date : **20-04-2022** जारी करने की तारीख Date of Issue : **21-04-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZR2403210378804 DT. 26.03.2021 & ZS2403210378837 DT. 26.03.2021** issued by Deputy Commissioner, Division IV (Narol) Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Kaypee Enterprises, 219, Aslali Transport Nagar,
NH 8, Aslali, Ahmedabad-382427**

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 दायर 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 .

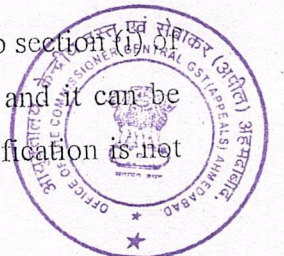
ORDER IN APPEAL

M/s.Kaypee Enterprise, 219, Aslali Transport Nagar, NH 8, Aslali, Ahmedabad 382 427 (hereinafter referred to as 'the appellant') has filed two appeals on dated 11-5-2021 against Order No.ZR2403210378804 dated 26-3-2021 and Order No.ZS2403210378837 dated 26-3-2021 (hereinafter referred to as 'the impugned orders') passed by the Deputy Commissioner, Division IV (Narol), Ahmedabad South (hereinafter referred to as 'the adjudicating authority') rejecting refund claim filed by them.

2. Briefly stated the fact of the case in both the appeals is that the appellant registered under GSTIN 24AAGFK5934K1Z4, has filed refund claims for refund of ITC accumulated on account of inverted tax structure for Rs.33,89,993/- for the period April 2020 to December 2020 and for Rs.16,07,050/- for the period April 2019 to March 2020. The appellant was issued show cause notice Ref No.ZV2403210021482 dated 1-3-2021 and Ref No.ZQ2403210021360 dated 1-3-2021 proposing rejection of refund on the ground that the tax rate on the HSN for which the appellant was registered was 18% however the tax paid in GSTR3B is @5% and hence to clarify the above discrepancy. The adjudicating authority vide impugned orders held that refund is inadmissible to the appellant on the ground that HSN of input and output supply is same and the supplies for special rate of GST has neither been notified in Section 54 of CGST Act, 2017 dealing with refund nor by GST council.

3. Being aggrieved the appellant filed by the present appeal wherein they interalia contended that;

- i. The adjudicating authority has erred in Law and facts in disallowing refund and not appreciating the fact that although HSN for which the appellant was registered, the tax rate on HSN is 18% however as per Notification NO.3/2017 dated 28-6-2017 the of IGST is 5% for outward supplies as mentioned in such Notification if the conditions of the Notification are fulfilled;
- ii. That from bare perusal of the notification it can be discerned that the said notification is issued by the Central Government after being satisfied that it is necessary in the public interest so to do and on the recommendations of the GST Council has decided to exempt certain inter state supplies of goods at the rates as mentioned in Section 5 ;
- iii. That the aforementioned Notification has been issued by the Central Government in exercising powers under Section 6 (1) of IGST Act exempting certain goods and services from partially exempting the tax leviable to Government Bodies which are engaged into special activities like petroleum exploration etc.;
- iv. That the view of the adjudicating authority that the supplies for special rate of GST have neither been notified in Section 54 of the GST Act dealing with refund nor by the GST Council is misplaced in correct and erroneous;
- v. That the Notification No.3/2017 has been published in Part II, Section 3 sub section (1) of Gazette of India on 29-6-2017 ; the Notification was part of the gazette and it can be unequivocally stated that there is no room for any ambiguity that the Notification is not



published and is not notified and thus the observation of the adjudicating authority rest at nought ;

- vi. That they had claimed refund under Section 54 of the CGST Act, read with Rule 89 (5) of the CGST Rules, 2017 ; that applying the formula under Rule 89 (5) they would be entitled for maximum refund of Rs.22,78,798/-;
- vii. That the adjudicating authority has not found any fault in the working of maximum amount of refund; that the adjudicating authority has doubted the veracity of the essentiality certificate for supply of goods under Notification NO.3/2017 issued by the Director General of Hydrocarbon for the supplies made by them to ONGC and Oil India Ltd required for petroleum operations for execution of projects under Petroleum Exploration Licenses or Mining Leases granted by the Government of India or any State Government to ONGC and Oil India Ltd on nomination basis;
- viii. That all essentiality certificate encompassed the list of goods being supplies as per the list attached which can be reconciled with the invoices and GSTR1;
- ix. That the conditions prescribed under Section 54 of CGST Act, 2017 read with Rule 20 of IGST Act, 2017 and refund is not prohibited under subsection (9) of Section 54;
- x. That the adjudicating authority denied the benefit of the refund which was due as per the aforesaid Notification as well as Section 54 of the CGST Act read with Rule 20 invoking hyper technicality of HSN of inward and outward supply being the same;
- xi. That the adjudicating authority ought to have appreciated that by virtue of reduced rate of IGST the petitioner was having unutilized ITC which has be refunded to the appellant;
- xii. That the view of the adjudicating authority is extremely myopic and pedantic and not tenable under Law;
- xiii. In view of above submissions, the appellant requested to allow the appeal; quash and set aside the impugned order and allow and sanction refund.

4. Personal hearing was held on dated 12-4-2022 Shr Hiren Trivedi authorized representative appeared on behalf of the appellant on virtual mode. They have been granted three working days to submit addition submissions. Accordingly, the appellant vide letter dated 18-4-2022 submitted copies of invoices for the FY 2019-2020 and FY 2020-2021 issued to ONGC and OIL India Ltd..

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. In this case the refund claim filed for refund of ITC accumulated due to inverted tax structure was rejected by the adjudicating authority on two grounds i) HSN of input and output supply is same and ii) the supplies for special rate of GST have neither been notified in Section 54 of CGST Act, 2017 dealing with refund nor by GST council viz. Before proceeding further, I refer to relevant provision contained under Section 54 of CGST Act, 2017 governing refund of ITC accumulated due to inverted tax structure which is as under:

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—



(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council: Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty: Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

6. As per clause (ii) of proviso to sub section (3) of Section 54, refund of unutilized ITC is allowed only in cases of where rate of tax on inputs being higher than rate of tax on output supplies. From the facts of the case, I find that the appellant is engaged in import and trading of oil field equipment and spare parts. Apparently in such nature of activity both the input and output supply of goods remain the same under same HSN attracting same rate of tax. This fact is also admitted by the appellant. However, by virtue of supply of goods to ONGC and OIL India Ltd under Notification No.3/2017-Integrated Tax (Rate) dated 28-6-2017 wherein reduced tax rate of 5% was notified for the goods supplied to above organizations, the subject claims were filed for refund under Section 54 (3) of CGST Act, 2017 for ITC availed and accumulated on inputs procured at higher tax on inputs and less tax on output supplies.

7. In this regard, I refer to CBIC Circular No.135/05/2020 - GST dated 31-3-2020, wherein it was clarified as under:

3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.

8. The above Circular categorically rules out refund of ITC under Section 54 (3) (ii) of CGST Act, 2017 in cases where input and out supplies are same. In other words, refund under Section 54 (3) (ii) of Act is admissible only in such cases where accumulation of ITC is due to use of inputs for providing distinct output supply of goods attracting higher rate of tax than the tax on inputs. In the subject case goods are supplied as such without carrying out any further processing and without any value addition, but the IGST on outward supply was paid at reduced rate by claiming benefit of exemption notification resulting in accumulation of ITC. However, as per Section 54 (3) (ii) of CGST Act, 2017 read with CBIC Circular above, accumulation of ITC due to supply of goods at reduced rate of tax under Notification, does not qualify the criteria prescribed for inverted duty structure as provided under Section 54 (3) (ii) of CGST Act, 2017 and consequent refund. Therefore, in the subject case, as per clarification issued vide Circular since the input/output supply

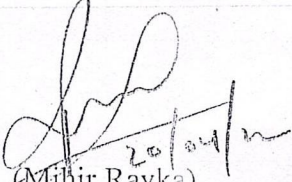
are same, even if output supply was made at reduced rate of tax, refund of ITC accumulated is not admissible under Section 54 (3) (ii) of CGST Act, 2017.

9. Regarding submission made with regard to validity of Notification No.3/2017, I find that Notification No.3/2017 issued under Section 6 (1) of Integrated Goods and Service Tax Tact 2017, provide reduced rate of 5% on supply of specified goods subject to specified conditions. I have also scrutinized invoices submitted by the appellant for supply of goods to ONGC and OIL India Ltd. However, in the subject case neither admissibility of benefit of said Notification for supply of goods to ONGC and OIL India Ltd nor fulfilment of specified conditions or refund of IGST under Section 54 (3) is disputed. On the other hand, the dispute is with regard to claim of refund of ITC accumulated due supply made under reduced rate under said Notification. I further find that nowhere in the said Notification it was specified that refund will be admissible in respect of supply made under the Notification. In the impugned order also, it was mentioned that refund of ITC accumulation due to special rate under Notification is not notified under Section 54 (3) or by GST Council. Therefore, it is wrong to interpret that claim was rejected on the ground that the Notification was not notified by the Government or by GST Council. Hence, submission made with regard to legality and validity of Notification is irrelevant and unrelated to the issue on hand and does not support the entitlement for refund.

10. In view of above facts and discussions I find that the none of the submission made by the appellant substantiate their entitlement for refund. I further hold that the adjudicating authority has correctly rejected the refund claim filed by the appellant on the grounds mentioned in the impugned order. Therefore, I do not find any infirmity in the impugned orders passed by the adjudicating authority. Accordingly, I upheld the impugned orders and reject the appeals filed by the appellant.

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

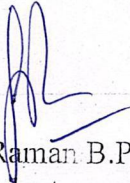
11. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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

By RPAD
To,
M/s.Kaypee Enterprise,
219, Aslali Transport Nagar,
NH 8, Aslali,
Ahmedabad 382 427



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 Asst./Deputy Commissioner, CGST, Division-IV, Ahmedabad South
- 6) Guard File
- 7) PA file

