



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

07926305065-

टेलीफैक्स 07926305136



DIN- 20220964SW000000A582

रजिस्टर्ड डाक ए.डी. द्वारा

3387 - 82

क फाइल संख्या : File No : GAPPL/ADC/GSTP/850/2022 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-114/2022-23
दिनांक Date : 08-09-2022 जारी करने की तारीख Date of Issue : 12-09-2022

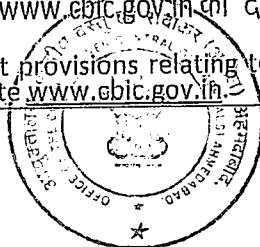
श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZZ2401210001013 DT. 01.01.2021
issued by Deputy Commissioner, CGST Division V (Odhav), Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Shri Hiren harsukhbhai Bathani of M/s. EPIC Elevators
49, Victoriya Ind., GIDC Kathwada, Ahmedabad-382430

| | |
|-------|---|
| (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

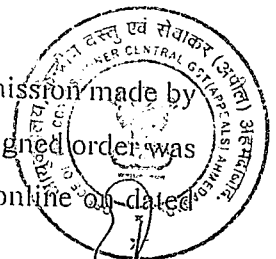
Shri Hiren Harsukhbhai Bathani of M/s.Epic Elevators, 49, Victoria Ind GIDC Kathwada, Ahmedabad 382 430 (hereinafter referred to as the appellant) has filed the present appeal online on dated 16-11-2021 against Order No.ZZ2401210001013 dated 1-1-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division V (Odhav), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24ANTPB7156L1ZK has filed refund claim for Rs.4,99,189/- for refund of ITC on export of goods and services without payment of tax for the month of August 2019 and September 2019. The appellant was issued show cause notice reference No.ZS241220039579 dated 3-12-2020 for rejection of refund on the reason of mis match of ITC in GSTR2A and wrong zero rated supply. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant due to mis match of ITC and that the appellant did not provide the GSTR2A for the relevant period or Annexure B and that the zero rated supply is also wrong.

3. Being aggrieved the appellant filed the present appeal on the following grounds:
That in terms of Section 54 of CGST Act, 2017 amended with effect from 1-2-2019 read with Rule 89 (4) of CGST Rules, 2017 read with Section 15 of CGST (Amendment) Act, 2018 and read with CBIC Circular NO.125/44/2019-GST dated 18-11-2019 they have considered invoice amount in zero rated supply of goods. However, if FOB value mentioned in shipping bill is considered as turnover of zero rated supply of goods then also amount of refund claim is within the provisions of the Act. In terms of CBIC Circular No.135/05/2020-GST dated 31-3-2020 they should claim GST refund of accumulated ITC only in respect of invoices reflected in Form GST 2A. As per statement of ITC shared by them only one invoice having amount of CGST of Rs.2340/- and SGST of Rs.2340/- is not reflected in GSTR2A because the same was uploaded by the supplier in wrong GST number and they claimed credit as well as refund on the basis of valid documents (tax invoice) available with them. Therefore the adjudicating authority rejected the entire refund on the basis of non reflection of one credit only. The adjudicating authority should sanction partial amount in case if few credit are not reflected in GSTR2A rather than rejecting the entire refund claim. The appellant further contended that in terms of Notification issued by the government and Order dated 27-4-2021 and 23-9-2021 passed by the Hon'ble Supreme Court the present appeal was filed within time limit.

4. Personal hearing was held on dated 18-8-2022. Shri Chintan R Oza, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission till date.

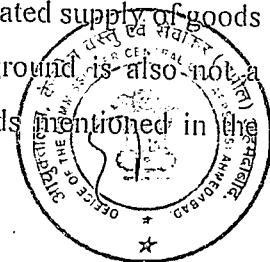
5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. At the outset, I find that the impugned order was communicated to the appellant on dated 1-1-2021 and present appeal was filed online on dated



16-11-2021 ie beyond the three months time limit prescribed under Section 107 of the Act. However as per Hon'ble Supreme Court's Order dated 10-1-2022 in suo motu writ petition (C) NO.3 of 2020 in MA No.665/2021, excluding the period from 15-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 1-3-2022 in filing appeals, I hold that the present appeal is not hit by time limitation factor.

6. In the subject case refund claim was rejected due to mis match of ITC, non submission of GSTR2A/Annexure B and wrong zero rated supply. Regarding mis match of ITC, I find from the show cause notice that mis match of ITC is noticed in GSTR2A as against ITC shown in refund application. In this regard I find that CBIC vide Circular No.135/05/2020-GST dated 31-3-2020 has also clarified that refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in Form GSTR1 and are reflected in Form GSTR2A of the applicant. Besides as per Rule 92 of CGST Rules, 2017 the proper officer is statutorily bound to sanction refund admissible to the claimant and reject refund inadmissible to the claimant. Therefore, even if there is mis match of ITC in GSTR2A ie ITC invoices covered in the claim were not reflected in GSTR2A, the adjudicating authority is empowered to restrict the claim to extent of ITC reflected in GSTR2A. However, in the subject case neither amount of ITC availed under invoices which are not reflected in GSTR2A was recorded nor refund of ITC under invoices which are reflected in GSTR2A was sanctioned. The appellant in their written submission stated that except one invoice involving tax of Rs.4680/- remaining claim was admissible to them. I find force in this contention. The adjudicating authority is duty bound to sanction refund to the extent availed under invoices which are reflected in GSTR2A rather than rejecting the entire claim amount. Therefore, rejection of entire claim of refund on this reason, I find is not a justifiable and sustainable reason.

7. Regarding non submission of GSTR2A/Annexure B I find that this ground is totally contradicts the reason mentioned in show cause notice inasmuch as in the show cause notice it was mentioned that there is mis match of ITC in GSTR2A whereas in the impugned order non submission of GSTR2A was taken as ground for rejection. Further, in terms of Rule 90 of CGST Rules, 2017, the adjudicating authority should have issued a deficiency memo calling for the said documents before acknowledging the refund application rather than taking it as a ground for rejection. Besides non submission of Annexure B was not taken as reason in show cause notice and hence this reason was taken in impugned order without putting the appellant to notice and beyond the scope of show cause notice. Regarding wrong zero rated supply, I find that no reason was mentioned as to how the appellant has wrongly taken zero rated supply and documents relied for the same. However, I find that in their refund application the appellant has taken into account the turnover of zero rated supply of goods/services at Rs.44,12,435/-. On scrutiny of GSTR3B return filed for the claim period August 2019 and September 2019 I find that taxable value of zero rated outward supply of goods was shown as Rs.44,12,435/- which I find is tallied with refund application. Therefore, I could not find any wrong/incorrect turnover of zero rated supply of goods in this case as mentioned in the impugned order and hence I find this ground is also not a sustainable and tenable ground for rejection. Therefore, I find that grounds mentioned in the

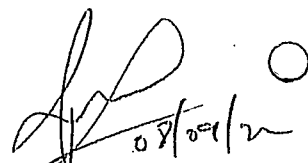


impugned order for rejection of refund, without properly substantiating with documents, are not justifiable and sustainable grounds for rejection of refund and also against the principles of natural justice.

8. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting refund on the grounds mentioned therein is not legal and proper and deserve to be set aside. Therefore I allow this appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequence to this Order may be dealt with in accordance with CGST Act and Rules framed thereunder and observing the principals of natural justice. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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

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

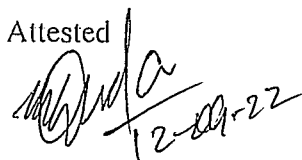

(Mihir Rayka)

Additional Commissioner (Appeals)



Date :

Attested


12-09-22

(R.P. JADHAV)

Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,

Shri Hiren Harsukhbhai Bathani
of M/s.Epic Elevators, 49,
Victoria Ind Park, GIDC
Kathwada, Ahmedabad 382 430

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 V (Odhav), Ahmedabad South.
- ~~5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South~~
- 6) ~~Guard File/PA file~~

