



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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DIN-20220564SW000000E774

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1090/2021-APPEAL / 1164 ~ 1169

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-16/2022-23**
दिनांक Date : **12-05-2022** जारी करने की तारीख Date of Issue : **19-05-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

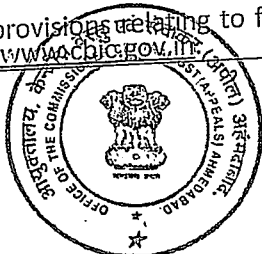
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZQ2404210042627 DT. 05.04.2021** issued by
Assitant Commissioner, CGST, Division I, Rakhial, Ahmedabad South

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

**M/s. Bhagat Dhanadal Corporation, Near Anupam Cinema,
1, Bhagat Estate, Khokhara, Ahmedabad-380008**

(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 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

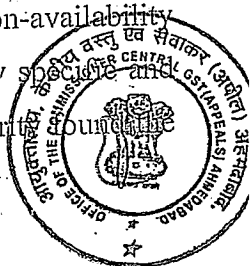
M/s.Bhagat Dhanadal Corporation, Near Anupam Cinema, 1, Bhagat Estate, Khokhara, Ahmedabad 380 008 (hereinafter referred to as the appellant) has filed the present appeal on dated 21-6-2021 against Order No.ZQ2404210042627 dated 5-4-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST 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 No.24AAIFB8411E1ZU has filed refund application for refund of ITC accumulated due to inverted tax structure for Rs.31,63,532/-. The appellant was issued show cause notice No.ZS2403210040393 dated 2-3-2021 for rejection of refund due to mis match of ITC ie mis match of eligible ITC in Annexure B, ST1A & GSTR3B. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant due to mis match of ITC and the appellant's contention in reply to SCN is not acceptable and did not upload mentioned documents. Accordingly, the claim was rejected.

3. Being aggrieved the appellant filed the present appeal on the following grounds:
They are engaged in retail and wholesale business of Dhanadal and other ancillary product which are chargeable at 5%. However, the raw materials for packing and other inputs are acquired at 18%. They had uploaded all the required documents while filing application for GST refund. The action of the officer is totally bad in law because when the appellant has fulfilled all responsibility which are imposed by Law, the appellant believes that the order passed by the proper officer for rejecting refund application is not a speaking order and rejection reasons are not clearly mentioned in the order, because in rejection order there is a remark, 'the claimant's contention submitted to the SCN is not acceptable and did not upload mentioned documents. Accordingly, claim is rejected u/s 54 of CGST Rules, 2017 but same was not demanded in SCN.

4. Personal hearing was held on 6-5-2022. Shri Sonu Patel, authorized representative appeared on behalf of the appellant on virtual mode. He has asked for seven working days for additional submissions which is duly granted. Accordingly, the appellant via email dated 11-5-2022 submitted copy of Statement 1A, refund application and GSTR3B returns.

5. 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 the claim was rejected due to non-acceptance of reply to SCN filed by the appellant and non-uploading of supporting documents. Apparently, the above reason shows the final decision of the adjudicating authority after examining the reply to the SCN but does not indicate the reasons for arriving the same ie. as to why the reply is not acceptable. I have also gone through the reply to SCN filed by the appellant in RFD 09 under Ref Number: ZS2403210040393 dated 17-3-2021, wherein the appellant stated that ITC as per GSTR3B is Rs.1,30,27,536/-. In earlier Annexure B ITC on capital goods was missed out by mistake and hence they submitted revised Annexure B showing ITC of Rs.1,30,27,536/- matching GSTR3B and Annexure B. As per Statement 1A the total ITC is Rs.1,27,83,877/- and reason for difference is due to non-availability of invoices in GSTR2A. From the above, I find that reply filed by the appellant is very specific and unambiguous to the query raised in the show cause notice. However, adjudicating authority



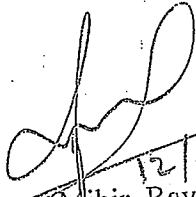
reason unacceptable but not recorded any reason for the same, which I find is not legal and proper and against the principles of adjudication. Regarding uploading of supporting documents, I find that in RFD 09, the supporting documents column show that no supporting documents found. Therefore, findings that no supporting documents was attached by the appellant is correct.

6. During appeal, the appellant has submitted copy of Statement 1A, Annexure B, GSTR2A and GSTR3B returns. I find that as per Statement 1A the total ITC was Rs.1,27,83,875/-, Annexure B shows ITC of Rs.1,30,27,564/-, GSTR3B returns shows ITC of Rs.1,30,27,536/- and GSTR2A shows ITC of Rs.1,19,82,140/-. Therefore, there is mismatch of ITC shown in above documents. However, I find that as per provisions of Rule 92 of CGST Rules, 2017, the sanctioning authority is empowered to sanction the admissible refund and reject the refund found inadmissible recording reasons in writing. I further find that vide Circular No.135/05/2020 – GST dated the 31st March, 2020, it was also clarified that the 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 GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Further as per Rule 89 (5) of CGST Rules, ITC availed on input services and capital goods are kept out of purview of 'Net ITC' in the formula prescribed for determining the admissible refund. Accordingly, so far as refund of ITC accumulated due to inverted tax structure cases are concerned, specific statutory provisions and clarification is in force. However, the adjudicating authority without applying the provisions of Rule and clarifications rejected the entire claim of refund. Further, even if there is mismatch in ITC shown in the documents filed with the claim, the adjudicating authority ought to have sanctioned refund to the extent admissible in accordance with CGST Act, Rules and Circulars issued by Board rather than rejecting the whole amount of refund. Therefore, I find that rejection of entire amount of refund on the ground of mis match of ITC in the documents filed with the claim and without recording reasons for rejection is against the statutory provisions and hence not legally sustainable and tenable.

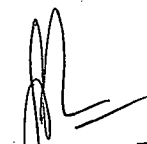
7. In view of above, I hold that impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside. Therefore, I allow the present appeal with consequential benefit to the appellant. I further order any claim of refund made in consequent to this order may be examined and processed in accordance with CGST Act and Rules made thereunder and also on the basis of Circulars issued by the Board. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

अपील कर्थाद्वारा दर्ज की गई अपील का निचटारा उपरोक्त तरीके से किया जाता है।

8. 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. Bhagat Dhanadal Corporation,
Near Anupam Cinema,
1, Bhagat Estate, Khokhara,
Ahmedabad-380008

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-I, Ahmedabad South
- 6) Guard File
- 7) PA file

