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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सत्यमेव जयते

DIN- 20221264SW0000111AF0

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/889/2022 -APPEAL /6087 - 92

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-180/2022-23**
दिनाँक Date : **19-12-2022** जारी करने की तारीख Date of Issue : **20-12-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **OIO No. 27/ AC/DIV-I/ RBB/2021-22 DT. 29.12.2021** issued by Assistant Commissioner, CGST & CX, Division-I, Ahmedabad South

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

M/s. Globe Textiles India Limited, Plot Nos. 38,39,40 & 41, Ahmedabad Apparel Park,GIDC, Khokhra, 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) **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 वेबसाइटwww.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

Brief Facts of the Case :

M/s. Globe Textiles (India) Limited, Plot No. 38, 39, 40 & 41, Ahmedabad Apparel Park, GIDC, Khokhra, Ahmedabad 380 008 (hereinafter referred as *'Appellant'*) has filed the present appeal against Order No. 27/AC/Div.-I/RBB/2021-22 dated 29.12.2021 (hereinafter referred as *'Impugned Order'*) passed by the Assistant Commissioner, CGST, Division – I, Ahmedabad South (hereinafter referred as *'Adjudicating Authority'*).

2(i). Briefly stated the fact of the case is that the appellant registered under GSTIN 24AACCS1339K1ZF had filed a refund claim of Rs.44,17,649/- for the month of July'2017 on account of *'Refund of accumulated Input Tax Credit (ITC) due to export of Goods & Services without payment of Tax'* under Section 54(3) of the CGST Act, 2017. During verification of said claim it was observed that they had claimed duty drawback at higher rate, i.e. Rate "A" on the goods exported. Further, it was noticed that the claimant had also availed Input Tax Credit (ITC) on their inputs/input services during the relevant period. Accordingly, a deficiency memo was issued to the claimant. In response, the claimant vide letter dated 06.09.2018 submitted to refund sanctioning authority on 02.11.2018 that they had filed said refund claim by mistake so same should be treated as withdrawn and requested for re-credit of amount of Rs.44,17,649/- in their electronic credit ledger. Since, the claimant had availed higher rate of drawback in the Shipping Bill for July-2017 on the goods exported and claimed refund of ITC on export of goods and services without payment of tax hence they were not entitled for refund of ITC for above said period. As per Section 54(3) of the CGST Act, 2017 *"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.."* Accordingly, refund claim was rejected vide order in Form-GST-RFD-06 dated 31.12.2018 as under :

Period	Amount of Refund claimed (Rs.)				Amount of Refund rejected (Rs.)				Remarks
	IGST	CGST	SGST	Total	IGST	CGST	SGST	Total	
July'17	1006211	1705719	1705719	4417649	1006211	1705719	1705719	4417649	PMT 03 issued

2(ii). Further, the department has observed that Rule 12 and 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Notification No. 131/2016-Customs (N.T.) dated

31.10.2016 as amended vide Notification No. 59/2017-Customs (N.T.) dated 29.06.2017 and Notification No. 73/2017-Customs (N.T.) dated 26.07.2017 provides as under during the relevant period, under the heading "Notes and conditions" –

"(12A) The rates and caps of drawback specified in columns (4) and (5) of the said Schedule shall be applicable to export of a commodity or product if the exporter satisfies the following conditions, namely:-

*(a)**(i)** the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, that no input tax credit of the central goods and services tax or of the integrated goods and services tax has been and shall be availed on the export product or on any of the inputs or input services used in the manufacture of the export product, or **(ii)** if the goods are exported on payment of integrated goods and services tax, the exporter shall declare that no refund of integrated goods and services tax paid on export product shall be claimed;*

(b) the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, that the exporter has not carried forward and shall not carry forward the amount of Cenvat credit on the export product or on the inputs or input services used in the manufacture of the export product, under the Central Goods and Services Tax Act, 2017 (12 of 2017)."

The Department has further observed that Circular No. 37/11/2018-GST dated 15.03.2018 issued from F. No. 349/47/2017-GST, provides as under :-

*"**2. Non-availment of drawback :** The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of central tax.*

2.1 This has been clarified in paragraph 8.0 of Circular No. 24/24/2017 – GST, dated 21stDecember 2017. In the said paragraph, reference to "section 54(3)(ii) of the CGST Act" is a typographical error and it should read as "section 54(3)(i) of the CGST Act". It may be noted that in the said circular reference has been made only to central tax, integrated tax, State / Union territory tax and not to customs duty leviable under the Customs Act, 1962. Therefore, a supplier availing of drawback only with respect to basic customs duty shall be eligible for refund of unutilized input tax credit of central tax / State tax / Union territory tax / integrated tax / compensation cess under the said provision. It is further clarified that refund of eligible credit on account of

State tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax."

2(iii). Further, it was observed by the department that the claimant had availed ITC as well as Drawback under Category "A" at higher rate for July-2017. However, the claimant had mis-declared that they had not availed ITC at the time of export. The said mis-declaration was done at the time of filing of aforesaid refund claim as well as before Customs Authority while claiming drawback at higher rate. Further, it was only after raising the query by department the claimant agreed to the fact and submitted in writing vide their letter dated 06.09.2018 submitted to department on 02.11.2018. Thus, it resulted into mis-declaration/mis-statement on the part of claimant that they had not availed ITC at the time of export, whereas they had availed the ITC. Accordingly, the department has referred Section 16 of the CGST Act, 2017 which read as under :

"16(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person...."

Further, the Section 41(1) of the CGST Act, 2017 provides as under :

"41(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger...."

In view of above the department has observed that the claimant has violated the provisions of Section 16 & 41(1) of the CGST Act, 2017 in as much as they failed to ensure the eligibility of ITC while availing Drawback at higher rate simultaneously.

2(iv). Further, on being requested by the claimant the department has rejected the claim of Rs.44,17,649/- and subsequently issued the PMT-03 on 31.12.2018 as shown in table at para 2(i) above. Accordingly, in view of facts narrated in foregoing paras the re-credited ITC amount of Rs.27,11,930/- (CGST Rs.17,05,719/-, IGST Rs.10,06,211/-) of Central Tax Portion is required to be recovered from the claimant as the same is not eligible to them in terms of the provisions and violations as mentioned in above paras.

2(v). Further, the department has referred the Section 74(1), 74(9) and 122(2) of the CGST Act, 2017 which is reproduced as under :

*"**74(1)** Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice..."*

*"**74(9)** The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order."*

*"**122(2)** Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-*

(a) .....

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher."

In view of above, the department has noticed that the claimant has rendered themselves liable for recovery and penal action under Section 74(1) & 74(9) as well as Section 122(2) of the CGST Act, 2017. Accordingly, the department has issued a Show Cause Notice to the claimant under F. No. V/Div-I/Ref-GST/06/Globe/Drawback/19-20 dated 04.03.2021. The said SCN has been adjudicated by the *adjudicating authority* vide *impugned order* and passed order as under :

i. *Disallowed the wrongly availed ITC of Rs.27,11,930/- (IGST Rs.10,06,211/- & CGST Rs.17,05,719/-) and order for recovery of same under Section 74(1) of the CGST Act, 2017.*

ii. *Recovery of interest at appropriate rate on wrongly availed ITC under Section 50 of the CGST Act, 2017.*

iii. *Imposed penalty of Rs.27,11,930/- under Section 74(9) read with Section 122(2) of the CGST Act, 2017.*

3. Being aggrieved with the *impugned order* the appellant has filed the present appeal on dated 02.03.2022. The appellant in the appeal memorandum has stated that -

- *They have filed the refund of accumulated ITC due to export of goods and services without payment of tax for the month of July'2017 for amount of Rs.44,17,649/- (IGST Rs.10,06,211/-; CGST Rs.17,05,719/- & SGST Rs.17,05,719/-).*
- *On 28.07.2017, the department issued acceptance memo, accepting Letter of Undertaking executed by notice for export of goods without payment of duty under Rule 96ZA of CGST Rules, 2017 read with Notification No. 15/2017-CT dated 01.07.2017.*
- *The department had issued deficiency memo dated 06.07.18 in connection with refund claim, it was noticed by department that they had claimed higher rate of Drawback i.e. Rate A on the goods exported. It was also noticed that they had availed ITC on their inputs/input services during relevant period. Therefore, department has held that they are not entitled for refund and accordingly rejected the refund claim and re-credit the amount in electronic credit ledger. In this regard, Form GST PMT-03 was issued on 31.12.2018, but they have neither received PMT-03 nor got re-credit of input tax credit which was debited at the time of filing of refund claim application.*
- *Vide SCN F. No. V/Div-I/Ref-GST/06/Globe/Drawback/19-20 dated 04.03.2021, the department proposed to recover the ITC of Rs.2711930/- (pertaining to CGST & IGST) under Sections 74(9) & 122(2) of the CGST Act alleged to be wrongly availed by them.*
- *Case of department is on following premise :*
    - *Proviso to Section 54 (3) of CGST Act provides that refund of ITC shall not be allowed if supplier has availed duty drawback in respect of Central Tax*
    - *Rules 12 & 13 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Noti. No. 131/2016-Customs (NT) dtd. 31.10.16, as amended by Noti. No. 73/2017-Customs (NT) dtd. 26.07.17 provides that for availing duty drawback, the exporter should not have availed ITC of CGST or IGST on the export products or on any inputs or input services used in manufacture of the export product.*
    - *Circular No. 37/11/2018-GST dtd. 15.03.18 provides that the supplier availing drawback only with respect of basic customs duty shall be eligible for refund of unutilized ITC of Central Tax/State Tax/Integrated Tax. The refund of eligible credit on account of state tax shall be available even if supplier of goods or services has availed drawback in respect of Central Tax.*

- *Thus, the Noticees have violated Sections 15 & 41(1) of the CGST Act inasmuch as they failed to ensure eligibility of ITC while availing duty drawback at a higher rate simultaneously.*

- *They have submitted reply to said SCN vide submission dated 13.12.2021 wherein they had given detailed explanation about the issue after which adjudicating authority has issued Order-In-Original No. 27/AC/Div-I/RBB/2021-22 dtd. 19.12.2021.*

The appellant has filed the present appeal on following grounds of appeal -

- *The SCN is vague, non-est and perverse, therefore it is liable to be dropped*
- *Impugned SCN is unsustainable and is liable to be quashed based on understated objections, which are in alternate and without prejudice to one another.*
- *It is pertinent to note that no clear case is made out by department in the SCN against notice and no further investigation is carried out by department to understand the export transactions done by noticees and availing ITC in terms of CGST Act.*
- *The SCN has not assigned any reason as to why the ITC is required to be recovered from Noticees. The SCN has not even considered if the noticees have fulfilled the applicable conditions for availing ITC in terms of CGST Act.*
- *Noticee rely upon judgment of Hon'ble Gujarat High Court in case of Arcelormittal Nippon Steel India Ltd. vs. Assistant Commissioner, 2021-VIL-840-GUJ, wherein it was held that if the SCN, being foundation of any proceedings, is vague and lacks fundamental details, then it is violation of principles of natural justice and is also breach of statutory requirement.*
- *Whole proceedings gets vitiated for want of proper SCN. Referred case of CCE v. Brindavan Beverages (P) Ltd. reported at 2007 (213) ELT 487 (SC).*
- *Further reliance placed on following judgments :*
  - *Royal Oil Field Pvt. Ltd. Vs. UOI 2006 (194) ELT 385 (Bom.)*
  - *B. Lakshmichand Vs. GOI 1983 (12) ELT 322.*
  - *Collector of C. Ex. Vs. HMM Ltd. 1995 (76) ELT 497 (SC)*
  - *Amrit Foods Vs. CCE 2005 (190) ELT 433 (SC)*
  - *Madhur Hosiery Inds. Vs. CCE 2006 (200) ELT 147*
- *Impugned SCN failed to discuss the reasoning behind the determination of disputed activities as taxable service. Therefore, demand is liable to be dropped on this ground alone as led to violation of principle of natural justice.*

- *The impugned SCN concluded that the Noticees have not availed excess ITC as well as Duty Drawback claimed at higher rate is also justifiable however impugned SCN have not discussed any reasoning behind recovery of ITC alleged to be wrongly availed. Therefore, impugned SCN is liable to be dropped on this ground alone.*
- *Referred decision of Hon'ble Bombay High Court in Rajmal Lakhichand v. Commissioner of Customs 2010 (255) ELT 357 (Bom).*
- *Present SCN mere based on assumptions, thus cannot be sustained. SCN is without reasoning, without specific grounds, reliance placed on*
    - *Kaur & Singh v. Collector of C. Ex. 1997 (94) ELT 289 (SC)*
    - *Oryx Fisheries (P) Ltd. v UOI 2010 (13) SCC 427*
    - *Om Vir Singh v. UOI 2016 (340) ELT 277 (Guj.)*
    - *Vaiyapuri v. Commissioner of Cus. (Seaport), Chennai 2015 (325) ELT 403 (Tri. Chennai)*
- *Proposal for recovery of ITC is not sustainable especially when the Noticees have fulfilled all the conditions for availing ITC prescribed under CGST Act. In this regard, referred section 16 of the CGST Act, 2017.*
- *Refund cannot be denied merely on the ground that the Noticees have claimed higher rate of duty drawback.*
- *Refund claim filed by them of unutilized ITC was withdrawn by them and amount was re-credited to their electronic credit ledger in terms of Rule 93(2) of the CGST Rules, 2017*
- *SCN proceeds on erroneous premise that since the noticees have availed duty drawback at higher rate while also availing ITC of CGST and IGST on the exported products or on any of the inputs used in the manufacture of exported products, thus the ITC availed by them is wrongful. Accordingly, ITC availed wrongly ought to be recovered in terms of Section 74 of the CGST Act, 2017.*
- *The Department is erred in understanding. For alleged benefit of duty drawback at higher rate as is being claimed by department no proceedings for recovery of ITC can be initiated by the Department, more so, when the ITC was rightly availed by the Noticees and the Department has not made out any case on non-eligibility of the Noticees for the said ITC.*

Further, the appellant has made alternative plea that without prejudice, the Noticees submit that they are willing to forego the benefit of duty drawback availed by them under the provisions of Customs Act, 1962. Since the basis for proposed recovery of ITC in the SCN by the Department is that duty

drawback at higher rate and ITC of CGST and IGST have been simultaneously availed by the Noticees, in violation of the Drawback Rules.

- *Relied upon following case-laws :*
  - *Chaizup Beverages LLP vs. Asstt Commissioner, Coimbtore, 2021 (4) TMI 963 (Madras High Court)*
  - *Real Prince Spintex Ltd. vs. UOI 2020 (3) TMI 614-Guj. HC.*
  - *Amit Cotton Inds. Vs. Pr. Commr. Cust. 2019 (7) TMI 472-Guj. HC.*
  - *Dileep Potteries Pvt. Ltd. 2020 (1) TMI 1298 – Commr. (GST) Appeals*
- *The credit availed by Noticees is not part of ITC in terms of CGST Act. Thus, the provisions of Drawback Rules read with Noti. No. 131/2016-Customs dated 31.10.16 will not be applicable.*
- *For the month of July 2017 the Noticees could not possibly have any ITC pertaining to CGST or IGST.*
- *The finished goods exported by Noticees in July 2017 were manufactured out of stock available as on 30.06.17, on which no ITC was availed in pre-GST regime. Further, the Noticees had not filed Form GST Tran-1, thus no credit of erstwhile regime was carry forwarded into GST regime.*
- *Further, the appellant has referred Section 2 (62) & (63), Section 74 (1) of the CGST Act, 2017.*
- *Based on combined reading of the above provisions, it is evident that the term "Input Tax Credit" for the purpose of Section 73 of the CGST Act read with definition under Sec. 2(62) and 2 (63) of the CGST Act, does not cover input tax credit. Therefore, it cannot be construed as "Input Tax Credit" for the purpose of Section 74 of the CGST Act, 2017 and SCN cannot propose to recover the said ITC in terms of Section 74 of the CGST Act.*
- *In this regard, referred CBIC Circular No. 37/11/2018-GST dated 15.03.2018.*
- *No proceedings can be initiated by the Department under the provisions of CGST Act for alleged non-fulfillment of conditions in the Drawback Rules.*
- *The Noticees submit that for alleged violation, no proceedings can be initiated by the Department under the CGST Act for recovery of ITC. The sole basis for issuing present SCN under Section 74 of the CGST Act is non-fulfillment of conditions prescribed under Drawback Rules.*
- *There is no violation of any provisions contained in the CGST Act. Therefore, by any stretch of imagination, no proceedings can be initiated under CGST Act.*

- *In view of above submissions, the present SCN deserves to be dropped.*
- *Interest proposed to be recovered in the SCN is not sustainable as is cannot be demanded from Noticees under Section 50 or Section 74 of the CGST Act, being credit availed in Form GST TRAN-1.*

In view of above submissions, the appellant has submitted that proceedings initiated by the SCN deserve to be dropped and OIO needs to be set aside. Since, demand for recovery of the ITC alleged to be wrongly availed is itself not sustainable, there is no question of imposing penalty on the Noticees.

4. Personal Hearing in the matter was scheduled on 22.08.2022 for which the appellant has sought adjournment of 15 days. Accordingly, another opportunity of Personal Hearing was offered on 07.09.2022, for which the appellant has informed about their pre-scheduled professional commitment. Thereafter, the Personal Hearing in the matter was held on 20.09.2022 through Virtual mode, wherein Mr. Nitesh Jain, CA and Mr. Praveen Maheshwari were appeared on behalf of the *'Appellant'* as authorized representatives. During PH they have asked that they want to submit additional submission, which was approved and 07 working days period was granted for the same. Accordingly, the appellant has submitted the additional submission vide letter dated 25.09.2022 through e-mail Praveen@niteshjain.co.in dated 29.09.2022. The appellant in the additional submission has submitted that –

- *They had filed refund application u/s 54 for refund of ITC. Thereafter, the GST Department has issued SCN for reversal of ITC equivalent to the Refund claimed under CGST and IGST head stating that they have claimed duty drawback on higher side. In this regard, would like to make following submission :*
- *During July 2017 they made 23 Exports and uploaded the same in their GSTR-1 Return. Out of total 23 Export consignments they have not claimed Duty Drawback on 5 Export Invoices. Instead of claiming Duty Drawback they have availed Duty Free Import Authorization (DFIA) on 4 Nos. Export Invoices. Moreover, 5 Nos. of Shipping Bills were filed in the month of June 2017, but exports were made in July 2017 so there is no debate or issue claiming of ITC on inputs as the goods were manufactured in June 2017 only, when Central Excise and VAT was not applicable.*
- *They are engaged in manufacture of fabrics and readymade garments and the production cycle is of 35-40 days, so input procurement of*

goods exported in the month of July 2017 have been done in the month of June 2017 or prior to thereof. Pre GST i.e. July 2017 there were no Central Excise Duty and VAT on our Raw Material, hence there is no question of availment of ITC of inputs used/consumed in manufacture of exported goods in the month of July 2017.

- *They have not filed GST Tran-1 Returns as there were no Central Excuse Duty or VAT was applicable on their final products.*
- *Additionally, the company would like to submit that there were no separate inquiry/investigation was made in this case, the refund filed by company was rejected and were asked to reverse the ITC equivalent to the amount of refund claimed.*

Discussion and Findings :

5(i). I have carefully gone through the facts of the case available on records, submissions made by the *'Appellant'* in the Appeals Memorandum as well as additional submission made by appellant. I find that the appellant has filed a refund claim of Rs.44,17,649/- under category *'Refund of accumulated Input Tax Credit (ITC) due to export of Goods & Services without payment of Tax'* for the period of July 2017. While verifying the refund claim the department has noticed that the appellant has claimed the duty drawback at higher rate i.e. Rate 'A' on the goods exported. Further, the department has noticed that the appellant has also availed Input Tax Credit on their input/input services during relevant period. Accordingly, the department has issued a deficiency memo to the appellant and in response to same the appellant has informed that said refund claim was filed by mistake so same should be treated as withdrawn and re-credit the amount in their electronic credit ledger. Accordingly, the department has rejected the refund claim and issued the PMT-03.

5(ii). Further, I find that the department has observed that in terms of Section 54(3) of the CGST Act, 2017 that refund of ITC shall not be allowed, if the supplier of goods or services or both avails drawback in respect of Central Tax or claims refund of Integrated Tax paid on such supplies. Further, I find that the department has referred the Rule 12 and 13 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 read with Noti. No. 59/2017-Customs (NT) dtd. 31.10.16 as amended by Noti. No. 59/2017-Customs (NT) dtd. 29.06.17 and Noti. No. 73/2017-Customs (NT) dtd. 26.07.17. According to which, prescribed rate of drawback shall be applicable if exporter satisfies conditions that no input tax credit of the CGST or IGST has been and shall be availed on the

export product or on any of the inputs or input services used in the manufacture of export product. Further, I find that the department has also referred Circular No. 37/11/2018-GST dtd. 15.03.2018.

5(iii). Considering the above facts, the department has noticed that the appellant has availed the ITC as well as Drawback under Category 'A' at higher rate during period July 2017 however, appellant has mis-declared that they had not availed ITC at the time of export before the customs authority while claiming the drawback at higher rate. Further, it was noticed by department that at the time of filing refund claim only, the appellant has submitted that they had claimed drawback at higher rate for goods exported. Accordingly, the department has concluded that it is mis-declaration/mis-statement on the part of appellant that they had not availed ITC at the time of export, whereas they had availed the ITC.

In view of above facts, a SCN was issued to the appellant and same was decided by the adjudicating authority vide impugned order, against which the appellant has preferred the present appeal.

5(iv). I find the appellant in the present appeal mainly contended that the SCN is vague, non-est and perverse and not sustainable; that without proper investigation the SCN is issued. The appellant has referred the various judgments of Hon'ble High Courts and Hon'ble Supreme Court in this regard. Further, I find that the appellant is contending that recovery of ITC is not sustainable especially when they have fulfilled all the conditions for availing ITC prescribed under CGST Act. Further, no proceedings can be initiated by the Department under the CGST Act for recovery of ITC as the sole basis for issuing present SCN under Section 74 of the CGST Act is non-fulfillment of conditions prescribed under Drawback Rules; that there is no violation of any provisions contained in the CGST Act.

5(v). Further, I find that the appellant vide additional submission contended that they are engaged in manufacture of fabrics and readymade garments and the production cycle is of 35-40 days, so input procurement of goods exported in the month of July 2017 have been done in the month of June 2017 or prior to thereof. Further, the appellant has submitted that during Pre GST there were no Central Excise Duty and VAT on their Raw Material, hence there is no question of availment of ITC of inputs used/consumed in manufacture of exported goods in the month of July 2017. Further, they have not filed GST Tran-1 Returns as there were no Central Excuse Duty or VAT was applicable on their final products.

5(vi). On going through the impugned order I find that the appellant has raised all these submissions before the adjudicating authority. I find that the adjudicating authority has given findings that appellant had mis-declared that they had not availed ITC at the time of export before the Customs Authority thus charges framed under SCN are beyond doubt. Further, the adjudicating authority has held that the appellant has not only mis-represented before the department about non-availment of Cenvat but also claimed higher drawback on export of goods; that the said facts comes to their knowledge only when appellant filed the claim in question; that these acts of omission and commission renders the appellant liable for penal action; that thus, till the date of filing of the claim, the facts were suppressed from the department by the appellant.

5(vii). In view of above facts, I find it pertinent to refer Section 16 and Section 41(1) of the CGST Act, 2017. I find that according to said provisions it is very much clear that the every registered person has to ensure before availing of ITC about the prescribed conditions and restrictions regarding eligibility of ITC. In the present matter I find that the appellant has claimed higher rate of drawback and in this regard, there is condition that no ITC of CGST or IGST has been or shall be availed on the export product or on any of the inputs or input services used in the manufacture of export product. Therefore, I find that the appellant has violated the prescribed conditions and availed the Input Tax Credit. I find that the appellant in the present appeal contended that they have not availed the ITC, but it is pertinent to mention here that the appellant has filed the refund claim of accumulated ITC due to export without payment of tax. Further, ongoing through the copy of GSTR-3B for the month of July 2017 I find that in the details at *"4. Eligible ITC – it shown as – Net ITC available – Integrated Tax - 1650602, Central Tax – 2798084, State/UT Tax - 2798084"*. Further, I find details of payment of tax at *"6.1 Payment of Tax – Tax paid through ITC – Integrated Tax – 105161, Central Tax – 1904220, State/UT Tax – 1904220."* Therefore, I do not find force in appellant's submission in this regard.

5(viii). Further, I find that it is on record that the appellant has filed refund claim of accumulated ITC due to export without payment of tax for the period July 2017 and on being pointed out by the department that they had claimed higher rate of drawback hence they are not entitled for refund. Accordingly, the appellant has withdrawn the refund claim by informing that refund claim was filed by mistake and requested for re-credit of said amount in their electronic credit ledger. So, it is very much

clear that the appellant has accepted the view of department. Therefore, now claiming that they have not committed any offence is not correct.

5(ix). Further, I find that the adjudicating authority has imposed the equal amount of penalty of Rs.27,11,930/- on the appellant in the present matter in terms of Section 74(9) read with Section 122(2) of the CGST Act, 2017. Accordingly, the relevant provisions are reproduced as under :

**Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-*

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

74(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

**Section 122. Penalty for certain offences.-*

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

According to above provisions equal amount of penalty can be imposed in the matter when *input tax credit wrongly availed or utilised by/for reason of fraud or any willful misstatement or suppression of facts.* Here in the present matter the appellant has availed the ITC as well as Drawback under Category 'A' at higher rate during period July 2017 however, they have mis-declared that they had not availed ITC at the time of export before the customs authority while claiming the drawback at higher rate. Further, I find that appellant has claimed refund of accumulated ITC due to export without payment of Tax and when pointed out by department they accepted their mistake and withdrawn the claim. Accordingly, I find that it is mis-declaration/mis-statement on the part of appellant as they have suppressed the material facts from the department as discussed in foregoing paras. Therefore, I find that the adjudicating authority has

rightly passed impugned order vide which disallowed the ITC to the tune of Rs.27,11,930/- (IGST Rs.10,06,211/- & CGST Rs.17,05,719/-) and ordered for recovery of same with interest under Section 50 of the CGST Act. Further, in view of above discussions I find that the adjudicating authority has rightly imposed equal amount of penalty of Rs.27,11,930/- in terms of provisions of Section 74 read with Section 122(2) of the CGST Act, 2017.

6. In view of above discussions, I do not find any force in the contentions of the *'appellant'*. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is legal and proper as per the provisions of GST law.

7. Accordingly, I do not find any reason to interfere with the decision taken by the *adjudicating authority* vide *"impugned order"* Accordingly, the appeal filed by the appellant is hereby rejected.

अपीलकर्ता 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.

19/12/22

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 19.12.2022

Attested

20/12/22

(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
M/s. Globe Textiles (India) Limited,
Plot No. 38, 39, 40 & 41, Ahmedabad Apparel Park,
GIDC, Khokhra, Ahmedabad 380 008

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-I, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File