



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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रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/1142/2021 -APPEAL / 1135 70 1139
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-20/2022-23**
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. **ZT2403210379537 DT. 26.03.2021** issued by Deputy Commissioner, CGST, Division IV (Narol) Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Venus Denim, 181, Shahwadi, Behind MG Mill, Narol, Ahmedabad-382405

(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.Venus Denim, 181, Shahwadi, Behind MG Mill, Narol, Ahmedabad 382 405 (hereinafter referred to as the appellant) has filed the present appeal on dated 28-6-2021 against Order No.ZT2403210379537 dated 26-3-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division IV (Narol), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated that the fact of the case is that the appellant registered under GSTIN 24AAMFV4350N1ZP, has filed refund claim for Rs.29,31,072/- for refund of ITC accumulated due to inverted tax structure under Section 54 (3) of CGST Act, 2017. The appellant was issued show cause notice reference No.ZX2403210316471 dated 22-3-2021 for rejection of refund claim on the ground that ITC of input services availed. The adjudicating authority vide impugned order held that refund of Central Tax of Rs.14,65,536/- is inadmissible to the appellant and refund of State Tax of Rs.14,65,536/- was sanctioned. The refund of Central Tax of Rs.14,65,536/- was held inadmissible on the ground that reply to SCN not made/not visible

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

The refund order is bad in Law since it does not contain any Section under which the refund application is rejected. The refund was rejected by not considering the reply to SCN. The refund order was passed soon after the submission of reply to SCN in RFD 09 dated 23-3-2021. This makes it very clear that the adjudicating authority could locate that the reply to SCN was made but could find the attachment to the reply to SCN, Therefore the reason provided in the rejection order that reply to SCN was not made is not tenable. The adjudicating authority has grossly erred in not considering the documents at all. The refund order is bad in Law since it has been issued against the natural justice by not providing the opportunity of being heard. Referring to judgment of Hon'ble Supreme Court in the case of M/s.Umanath Pandey Vs State of UP (2009 (12) SCC), judgement of Hon'ble High Court in the case of M/s.Ramadas Vs Joint Commissioner of C.Ex Puducherry and judgment in the case of Navneet R Jhanwar Vs State Tax Officer and Order the appellant contended that it is very clear that the adjudicating authority should have provided the appellant with the reasonable opportunity of being heard as per part of natural justice in case reply to SCN is not visible on the portal before issuing the order rejecting the refund. The refund is rejected only one major head under Central Tax without containing any details or clear findings with regard to rejection of refund in only one head. In view of above the appellant requested to allow the entire refund claim and to quash the impugned order.

4. Personal hearing was held on dated 22-4-2022. Shri Kunal Agrawal, authorized representative appeared on behalf of the appellant on virtual mode. He has asked for seven working days for additional submissions which is granted.

5. Accordingly, the appellant vide letter dated 28-4-2022 filed additional submission submitting Annexure A containing all details for which ITC claimed segregating the same as inputs, input services



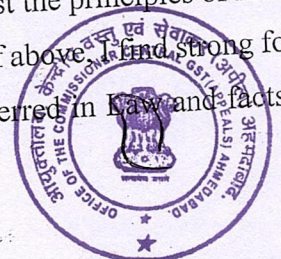
and capital goods; a summary of total ITC along with the above-mentioned segregation and copy of manual RFD 01 containing net ITC as 'inputs' only stating the revised amount of refund.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that the adjudicating authority has rejected the refund due to the reason that compliance to SCN not made/not visible on the portal. I find the findings itself is very contradictory inasmuch as it does not pin point as to whether the appellant has not filed reply to SCN or filed reply to SCN but it is not visible on portal. However, I find that the appellant has filed reply to SCN in Form GST RFD 09 under Ref No.ZX2403210316471 dated 23-3-2021. Therefore, it is apparent that the appellant has filed reply to SCN but due to invisibility of reply to the adjudicating authority in the portal the refund was rejected. In such a situation as an alternative mode the adjudicating authority could have obtained a physical copy of the reply uploaded in the portal and verified the same but instead of doing so rejected the entire claim without even looking into the reply filed by the appellant. Consequently, it emerges that the impugned order was passed without considering the reply filed by the appellant. I further notice that in the SCN, personal hearing was fixed on dated 29-3-2021, but the impugned order was issued on dated 26-3-2021 ie before the schedule date of personal hearing. Therefore, it is also apparent that impugned order was passed without granting opportunity of personal hearing.

7. In this regard, I refer to the provisions governing rejection of refund contained under Rule 92 (3) is as under:

Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed: Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

7. As per provisions of sub rule (3) of Rule 92 of CGST Rules, it is mandatory requirement to issue show cause notice; consider the reply filed by the claimant; provide opportunity of personal hearing and record the reasons in writing for rejection of refund claim. In the subject case it is evident that except issuance of show cause notice, no other procedures were followed by the adjudicating authority before rejecting the refund claim. Further opportunity of personal hearing is one of the principles of natural justice and hence issuance of rejection order without granting opportunity of personal hearing leads to violation of principles of natural justice. Therefore, I hold that the impugned order passed by the adjudicating authority without following the prescribed procedures and against the principles of natural justice is bad in Law and hence legally untenable and unsustainable. In view of above I find strong force in the submission made by the appellant that the adjudicating authority has erred in Law and facts by



passing the impugned order without considering reply filed to SCN and without granting personal hearing.

8. Regarding submission made to the effect that refund is rejected only one major head ie under Central Tax, I find from refund application that the appellant has filed refund claim for Rs.29,31,072/-, involving Central Tax of Rs.14,65,536/- and State Tax of Rs.14,65,536/-. However, in the impugned order refund of Central Tax of Rs.14,65,536/- was held inadmissible and refund of State Tax of Rs.14,65,536/- was held admissible and sanctioned. I find that sanction of State Tax and rejection of Central Tax was ordered arbitrarily and not either in accordance with the formula prescribed under Rule 89 (5) or to the extent involved on ITC availed on input services. Further, since the reply filed by the appellant was not even looked into by the adjudicating authority, I find that sanction and rejection of refund was ordered without any basis or reason. Therefore, I find that there is merit in submission made by the appellant in this regard.

9. I find that in this case refund claim was filed for refund of ITC accumulated due to inverted tax structure taking into account ITC availed on inputs and input services for the relevant period. As per explanation given under Rules 89 (5) of CGST 2017, for determining the admissible refund, the amount of input tax credit availed only on inputs is to be taken in account for arriving 'Net ITC' in the formula. In other words, ITC availed on input services and capital goods are kept out of the purview of the formula for arriving the Net ITC. However in SCA filed by M/s.VKC Footsteps P.ltd., Vs UOI and 2 Others, Hon'ble High Court vide its order dated 27-4-2020 held that the Explanation to Rule 89 (5) of CGST Rules, 2017 which denies unutilized input tax paid on input services as part of ITC accumulated on account of inverted tax structure ultra vires the provisions of Section 54 (3) of CGST Act, 2017 and directed the Department to allow claim of refund considering the unutilized ITC of input services as part of the Net ITC for the purpose of calculation of the refund of the claim as per Rule 89 (5) of CGST Rules, 2017 for claiming refund under sub Section 3 of Section 54 of CGST Act, 2017. Thus, the Order of Hon'ble High Court allows refund under Section 54 (3) of CGST Rules, 2017 taking into account the ITC availed on input services also. However, against the said Order of Hon'ble High Court, in appeal filed by the Department before Hon'ble Supreme Court, Hon'ble Supreme Court vide common Order dated 13-9-2021 allowed the appeal filed by the Department and set aside the judgment passed by the Hon'ble High Court of Gujarat. Thus, the vires of Rule 89 (5) of CGST Rules, 2017 vis a vis Section 54 (3) of CGST Act, 2017, its constitutional validity and legality were upheld by the Apex Court. Consequently, the Order of Hon'ble High Court of Gujarat, terming the explanation to Rule 89 (5) of CGST Rules, 2017 as ultravires Section 54 (3) of CGST 2017 has become void and inconsequential. Thus, as per decision of Hon'ble Apex Court the refund on account of ITC accumulated due to inverted duty structure is restricted to ITC availed and accumulated on inputs only and not allowed to ITC availed and accumulated on input services. Therefore, claim filed by the appellant relying on Hon'ble High Court's decision no longer sustainable and refund to the extent involved on ITC availed on input services is not admissible to the appellant.

10. During appeal, the appellant has submitted worksheet showing revised amount of refund of Rs.20,05,102/- taking into account the ITC availed on inputs against refund of Rs.29,31,072/- claimed.

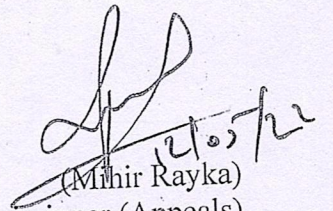
by them. I further find that except on the ground that the appellant has availed ITC on input services and claimed refund for the same, there is no dispute with regard to admissibility of refund under Section 54 (3) of CGST Act 2017 or under Rule 89 (5) of CGST Rules, 2017 or on the value taken towards turnover of inverted rated supply of goods and services, tax payable on such inverted rated supply of goods and services or adjusted total turnover or on any other grounds having bearing on admissibility of refund.

11. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting refund of Rs.14,65,536/- without considering the reply filed by the appellant, without granting opportunity of personal hearing is not legal and proper and deserve to be set aside. However, in terms of Rule 89 (5) of CGST Rules, 2017 read with judgement of Hon'ble Supreme Court, supra, I hold that the appellant is entitled for refund of ITC availed and accumulated on inputs only and not on input services. Therefore, I allow this appeal with consequential benefit of refund to the extent it pertains to ITC availed on inputs. Accordingly, I pass the following order:

- i. I allow the appeal and set aside the impugned order to the extent it pertains to rejection of refund taking into account ITC availed on inputs;
- ii. I reject the appeal and upheld the impugned order to the extent it pertains to rejection of refund taking into account ITC availed on input services.

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

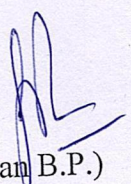
12. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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

To,

M/s.Venus Denim,
181, Shahwadi,
Behind MG Mill, Narol,
Ahmedabad 382 405

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



