



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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टेलीफैक्स 07926305136



DIN- 20230164SW00009429D4

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/171/2022 -APPEAL

753 - 18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-212/2022-23**

दिनांक Date : **18-01-2023** जारी करने की तारीख Date of Issue : **19-01-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZX2409210195655 DT. 14.09.2021** issued by The Assistant Commissioner, CGST & CX, Division-IV, Ahmedabad South

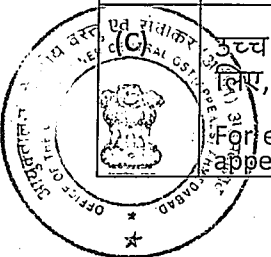
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant	Respondent
Assistant Commissioner, CGST, Division-IV, Ahemdabad South	M/s. Balkrishna Textile Pvt., S.No. 267,263,264,268, Bombay Highway, 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.

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**Brief Facts of the Case :**

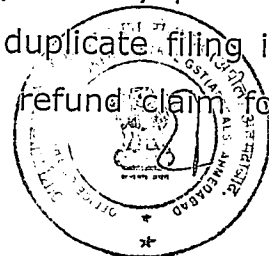
The following appeal has been filed by the Assistant Commissioner, CGST, Division - IV, Ahmedabad South (hereinafter referred as '*appellant*' / '*department*') in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as '*the Act*') by the Reviewing Authority against RFD-06 Order (hereinafter referred as '*impugned order*') passed by the Assistant Commissioner, CGST, Division - IV, Ahmedabad South (hereinafter referred as '*adjudicating authority*') in the case of **M/s. Balkrishna Textile Pvt. Ltd.**, S. No. 267, 263, 264, 268, Bombay Highway, Narol, Ahmedabad - 382405 (hereinafter referred as '*Respondent*').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date
GAPPL/ADC/GSTD/171/2022- APPEAL Dated 16.02.2022	54/2021-22 Dated 02.02.2022	ZX2409210195655 Dated 14.09.2021

2. Brief facts of the case are that the '*Respondent*' holding GSTN No. 24AABCB5213G1Z9 had filed refund claim of Rs.9,55,800/- for the month of February 2020 under any other category on account of deemed export goods received by the recipient vide ARN No. AA240921002826E dated 01.09.2021 under Section 54 of the CGST Act, 2017. The said refund claim was sanctioned by the *adjudicating authority* vide Order No. ZX2409210195655 dated 14.09.2021 (RFD 06).

During Review of the 'Impugned Order' dated 14.09.2021 the department has observed as under :

3. During review of said refund claim, it was observed that the claimant has filed refund claim for the month of February 2020 for the same category i.e. refund by recipient of deemed export (in any other category); in as much as they had already filed the refund claim for the period December 2019 to March 2020 on account of refund by recipient of deemed export for Rs.13,21,200/- vide ARN No. AA2408210828137 dated 17.08.2021, which was sanctioned by the adjudicating authority vide Order No. ZT2408210345676 dated 26.08.2021. Thus, refund for the same period in same category has been sanctioned twice. The claimant can claim refund for the same category for any period only once. Since, the system does not allow for any duplicate filing in the same category, the claimant resorted to file the refund claim for the

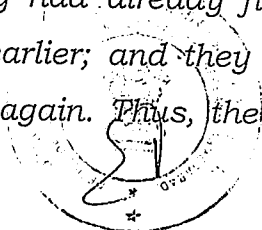


month of February 2020 in any other category for refund by recipient of deemed export which was already covered in the refund claim for the period December 2019 to March 2020 in the specific category of recipient of deemed export. Therefore, present refund order need to be set aside and erroneous sanctioned refund is required to be recovered with interest and penalty.

4. In view of above, the appellant has filed the present appeal on the following grounds:

- i. *The adjudicating authority has sanctioned refund filed by the Respondent under any other category for the month of February 2020 vide impugned order for the amount of Rs.9,55,800/-. The said refund claim was filed by the Respondent on account of deemed export goods received by the recipient.*
- ii. *However, the Respondent has already claimed refund for the period December 2019 to March 2020 on account of refund by recipient of deemed export for Rs.13,21,200/-, which was sanctioned by the adjudicating authority vide order dated 26.08.2021. Thus, it is observed that the Respondent has again claimed refund for the month of February 2020, though said period is already covered in December'19 to March'20.*
- iii. *Attention invited to Circular No. 110/29/2019-GST dated 03.10.2019. According to condition no. 3 (a) of the said Circular –*
“The registered person must have filed a NIL refund claim in Form GST RFD-01A/RFD01 for a certain period under a particular category.”

In the instant case claimant has not filed NIL refund claim for the month of February 2020 in the “refund filed by recipient of deemed export category”; on the contrary, claimant has already filed refund claim for the period December 2019 to March 2020 for Rs.13,21,200/- in “refund filed by recipient of deemed export category” and they have also been sanctioned the same vide order mentioned above. Thus, refund for the same period in same category has been sanctioned twice. Thus, it appears that adjudicating authority has failed to follow above said Circular and sanctioned present refund claim of Rs.9,55,800/- which was required to be rejected. The claimant appears to have taken recourse to filing refund in any other category, as they had already filed refund claim for the period of February 2020 earlier; and they were not allowed to file claim for the same period again. Thus, the claimant has mis-stated and defrauded the



department by filing the claim in any other category. Therefore, the present refund order needs to be set aside and erroneously sanctioned refund of Rs.9,55,800/- is required to be recovered with interest and penalty.

- iv. In view of above grounds the appellant has made prayer to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned Rs.9,55,800/- under Section 54 (3) of CGST Act, 2017 ; to pass order directing the said original authority to demand and recover the amount erroneously refunded of Rs.9,55,800/- with interest and penalty; to pass any other order(s) as deemed fit in the interest of justice.*

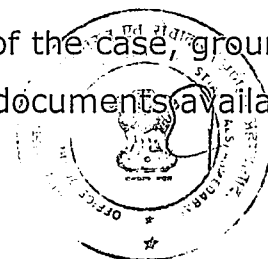
Personal Hearing :

5. Personal Hearing in the matter was held on 30.08.2022 though virtual mode. Mr. Gunjan Shah, C.A. was appeared on behalf of the 'Respondent' as authorized representative. During PH he has stated that they want to submit their reply/additional information, which was approved and 03 working days period was granted for the same. The Respondent has accordingly, submitted their submission with documents through e-mail id *contact@taxolegal.com* dated 06.09.2022. The Respondent in their said email submitted that –

- i. It is expressed in grounds of appeal filed by department that the refund has been claimed under the same category and same period and has been sanctioned twice as well*
- ii. Hereby submitted the RFD-01 and ARN of both the refund filed for the period December 2019 to March 2020 and February 2020 respectively along with the invoices for which refund has been claimed.*
- iii. Since both the refunds are different and on account of different invoices there has not been any misstatement on their part in claiming refund.*
- iv. Since the refund for separate invoices was filed for February 2020 which were not claimed in the refund filed for the period December 2019 to March 2020.*
- v. Further, this amount has never been received by them in cash; it has been lying in the Electronic Credit ledger only. The sanctioning authority had not generated RFD-05.*

Discussion and Findings :

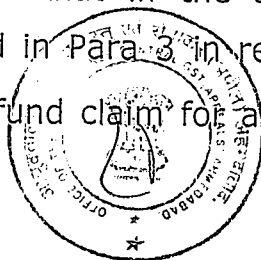
6. I have carefully gone through the facts of the case, grounds of appeal, submission made by the respondent and documents available



on record. I find that the main issue involved in the present matter is that the Respondent had filed a refund claim for the period December 2019 to March 2020 on 17.08.2021 and same was sanctioned by the proper officer on 26.08.2021. Thereafter, the Respondent has filed a refund claim for the period February 2020 on 01.09.2021 and same was sanctioned by the proper officer on 14.09.2021. It is pertinent to mention here that the Respondent had preferred both the refund claims on account of Refund by Recipient of deemed export. I find that though the refund for the period December 2019 to March 2020 has already been sanctioned to the Respondent, wherein period of February 2020 is covered, the Respondent has again filed the Refund for the period February 2020 under any other category; and same was sanctioned by the adjudicating authority and same is being challenged by the Department/Appellant in the present proceedings.

7. Further, I find that Respondent in the present matter contended that the refund for the separate invoices filed for February 2020 were not claimed in the refund filed for December 2019 to March 2020. The department has submitted that as the Respondent was not allowed to file claim for the same period again, the Respondent has filed the refund for February 2020 under any other category and accordingly, misstated and defrauded the department. In this regard, the Respondent has submitted that since both the refund are on account of different invoices there has not been any misstatement on their part in claiming refund. I find that the Respondent has filed the refund claim for Decmebr'19 to March'20 on the grounds "*On account of Refund by Recipient of deemed export*" and for February'20 on the grounds "*Any other (specify)*". However, on going through the aforesaid reply of Respondent I find that both the refunds are on account of Refund by Recipient of deemed exports only. Therefore, the department in the present appeal has rightly pointed out that the refund for the same period in same category has been sanctioned to the Respondent.

8. Further, I find that the appellant has referred the CBIC's Circular No. 110/29/2019-GST dated 03.10.2019 in the present appeal in grounds of appeal. I find that in the said Circular the detailed procedure has been specified in Para 3 in respect of cases where the assessee failed to file the refund claim for any period, which reads as under :



“3. It is now clarified that a registered person who has filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a given period under a particular category, may again apply for refund for the said period under the same category only if he satisfies the following two conditions:

- a. The registered person must have filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a certain period under a particular category; and
- b. No refund claims in FORM GST RFD-01A/RFD-01 must have been filed by the registered person under the same category for any subsequent period. It may be noted that condition (b) shall apply only for refund claims falling under the following categories:
 - i. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
 - ii. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
 - iii. Refund of unutilized ITC on account of accumulation due to inverted tax structure;

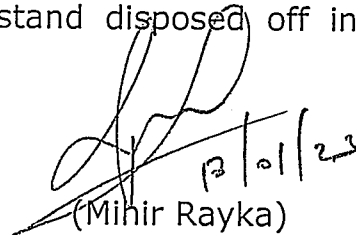
In all other cases, registered persons shall be allowed to re-apply even if the condition (b) is not satisfied.”

In the instant case the Respondent has not filed NIL refund claim for February 2020 and therefore, I find that the Respondent has not satisfied the condition (a) of the said Circular No. 110/29/2009-GST dated 03.10.2019. Accordingly, I do not find any force in the contention of the Respondent. The Respondent is not eligible for refund claim filed again for the period of February 2020.

9. In view of above discussions, I find that the *impugned order* is not legal and proper and therefore, require to be set aside. Accordingly, the appeal filed by the ‘Department’ is allowed and set aside the ‘*impugned order*’.

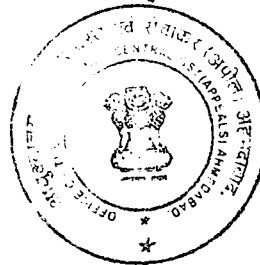
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


The Appeal filed by ‘Department’ stand disposed off in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 18.01.2023



Attested

(Dilip Jadav) 19.01.23
Superintendent (Appeals)
Central Tax, Ahmedabad

By R.P.A.D.

To,
The Assistant / Deputy Commissioner,
CGST, Division – IV, Ahmedabad South.

Appellant

M/s. Balkrishna Textile Pvt. Ltd.,
S. No. 267, 263, 264, 268, Bombay Highway,
Narol, Ahmedabad - 382405

Respondent

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, Division-~~III~~^{IV}, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File / ~~Guard File~~

