



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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क फाइल संख्या : File No : GAPPL/ADC/GSTP/1296/2021-APPEAL / 1524 - 1529

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-24/2022-23**

दिनांक Date : **23-05-2022** जारी करने की तारीख Date of Issue : **24-05-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZO2403210428559 DT. 30.03.2021** issued by Deputy Commissioner, CGST, Division IV(Narol), Ahmedabad South

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

Shri Devesh Goyal Proprietor of M/s. Jagdamba Industries, Plot No. 64, Common Plot No. 108, Ajmeri Farm No Khancho, Suex Farm, Behrampur, Ahmedabad-380022

(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

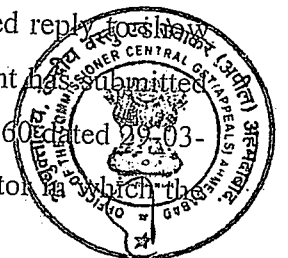
Shri Devesh Goyal Proprietor M/s.Jagdamba Industries, Plot No.64, Common Plot No.108, Ajmeri Farm No Khancho, Suex Farm, Behrampura, Ahmedabad 380 022 (hereinafter referred to as the appellant) has filed the present appeal on dated 23-6-2021 against Order No.ZO2403210428559 dated 30-3-2021 (hereinafter 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 the fact of the case is that the appellant registered under GSTIN 24AMLPG1170G1ZE, has filed refund application for refund of ITC accumulated due to inverted tax structure for Rs.3,51,940/-. The appellant was issued show cause notice reference No.ZN2403210334560 dated 23-3-2021 for rejection of the claim on the ground that there is no such inverted duty structure case of application of refund due to inverted duty structure. It was also asked the appellant to clarify the inversion of duty and to provide whether goods are cleared under job work challan and how is instance of tax is being passed on along with certain sample invoices and other documents. The adjudicating authority vide impugned order held that refund is inadmissible as there is no such inverted duty structure case of application of refund due to inverted duty structure. It was also mentioned in the remarks portion of the order that reply to SCN not made/not visible.

3. Being aggrieved the appellant filed the present appeal on the following grounds:
As per Circular No.48/22/2018-GST it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under Section 54 (3) of CGST Act, 2017 even if the goods (fabrics) supplied to them are covered under Notification NO.5/2017-CT (Rate) dated 28-6-2017. They are eligible to receive refund under refund on account of ITC accumulated due to inverted tax structure. They are purchasing color chemical under 18% GST rate and doing grey dyeing job work under 5% GST rate and hence they are eligible for refund under Circular NO.48/22/2018-GST.

4. Personal hearing was held on 12-5-2022. Shri N.S.Tirmizi, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he has 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. I find that refund claim was filed by the appellant for refund of ITC accumulated due to inverted duty structure but the adjudicating authority has rejected the claim on the ground that there is no inverted duty structure. It was also mentioned in the impugned order that reply to show cause notice not made and not visible. Thus, it is apparent that the without considering or even looking into the reply filed by the appellant the adjudicating authority has reached to the conclusion that there is no inverted duty structure. Besides, the findings itself is contradictory inasmuch as it is not specific as to whether the appellant has not filed reply to show cause notice or filed reply but it is not visible in portal. During appeal the appellant has submitted reply filed by them in Form GST RFD 09 under reference number ZN2403210334560 dated 29-03-2021, wherein they stated that they are independent fabric processors in textile sector in which the



credit has accumulated on account of rate of tax on inputs being higher than the rate of output supplies of job work service. Circular No.48/22/2018-GST dated 14th June clarifies that the independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under Section 54 (3) of CGST Act, 2017, even if the goods (fabrics) supplied are covered under Notification No.5/2017-CT (Rate) dated 28-6-2017. They had also attached copy of delivery challan, purchase bill, sales bill along with their reply. In view of above, it is amply clear that the appellant has filed reply to the show cause notice but the adjudicating authority without considering the reply filed by the appellant has rejected the claim. Incidentally, it also transpires that no personal hearing was held before rejecting the refund claim.

6. 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. I further notice that in the show cause notice issued to the appellant the appellant was asked to clarify inversion of duty along with documents viz. job work challans, samples invoices and other documents were called for from the appellant. As per Rule 90 (3) of CGST Rules, 2017 the proper course of action for such requirement is by way of issuance of deficiency memo and not by way of issuance of show cause notice. I also notice the appellant has also submitted the aforesaid documents along with reply to show cause notice but none of the documents was examined or verified by the adjudicating authority before rejecting the refund claim. Thus, I find that the adjudicating authority has passed impugned order without following the statutory provisions and without following the principles of natural justice denying the appellant the substantive benefit due to them. Therefore, I find that impugned order is bad in Law and legally untenable and unsustainable.

8. In their reply to the show cause notice and grounds of appeal, the appellant submitted that they are engaged in grey dyeing job work and relying on CBIC Circular No.48/22/2018-GST dated 14-6-2018 contended that they are eligible for refund of ITC accumulated due to inverted



structure. I have gone through the said Circular and find that at para 3 it was clarified that fabrics processors (job workers) in textile industry supplying job work services are eligible for refund of ITC accumulated due to inverted duty structure even if the goods (fabrics) supplied are covered under Notification No.5/2017-CT (Rate) dated 28-6-2017. Therefore, subject claim calls for proper examination and verification of documents filed by the appellant with refund claim and in reply to show cause notice so as to determine the admissible refund.

9. In view of above, I firmly hold that impugned order passed by the adjudicating authority rejecting the refund claim without following the statutory provisions and CBIC Circular above and without following the principles of natural justice is not legal and proper and deserve to be set aside. Therefore, I allow this appeal with consequential benefit subject to the provisions of CGST Act and Rules framed thereunder after properly examining and verifying the documents submitted by the appellant. Accordingly, I set aside the impugned order and allow the present appeal filed by the appellant.

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

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

Date :

Attested

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

By RPAD
To,
Shri Devesh Goyal
Proprietor M/s.Jagdamba Industries,
Plot No.64, Common Plot No.108, Ajmeri Farm No Khancho,
Suex Farm, Behrampur,
Ahmedabad 380 022

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 (Appeals), Ahmedabad South
- 6) Guard File
- 7) PA file

Additional Commissioner (Appeals)

