



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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रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/2305/2022 -APPEAL / 9685-80

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC- 260/2022-23**

दिनांक Date : **20-03-2023** जारी करने की तारीख Date of Issue : **20-03-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

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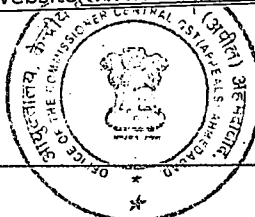
Arising out of Order-in-Original No. **ZY2406220351308 DT. 21.06.2022** issued by The Assistant Commissioner, CGST, Division-I, Ahmedabad South

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

Vakil Rasmikant Jayantilal of M/s. Gujarat Iron Works, 113/5/1, Sarbhai Wadi, Ghee Kanta Road, Ahmedabad, Gujarat-380001

(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**Brief Facts of the Case :**

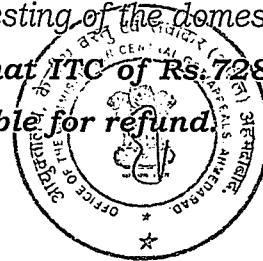
M/s. Gujarat Iron Works (Legal Name – Vakil Rasmikant Jayantilal), 113/5/1, Sarbhai Wadi, Ghee Kanta Road, Ahmedabad – 380 001 (hereinafter referred as '**Appellant**') has filed the present appeal against the Refund Sanction/Rejection Order in the form RFD-06 bearing No. ZY2406220351308 dated 21.06.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division – I Rakhial, Ahmedabad South (hereinafter referred as '**Adjudicating Authority**').

2(i). Briefly stated the facts of the case is that the '**Appellant**' is an HUF engaged in business of manufacturing of domestic house Flour Mill a.k.a. '**Gharghanti**'. The Appellant is holding GST Registration - GSTIN No.24AACHV0232R2ZX had filed the refund application of "**ITC accumulated due to Inverted Tax Structure**" for the Financial Year 2020-2021 on dated 11.04.2022 for Rs.4,73,953/-. In response to said refund claim a Show Cause Notice dated 19.05.2022 was issued to the '**Appellant**'. It was proposed that refund application is liable to be rejected for the reasons "**Other**" with Remark as "**The correct Inverted Turnover, tax paid on inverted turnover and adjusted turnover are Rs.7160053, 358002 and 7264898 against the claimed figures. Also ITC on invoices having HSN 8437 and 1101 seems ineligible for refund**".

Thereafter, the '**adjudicating authority**' has rejected the partial amount of refund claim of Rs.45,816/- vide '**impugned order**' wherein a Remarks mentioned as "**ITC of HSN code 8437 and 1101 not considered in NET ITC for refund calculation. The ARN was not reflecting in the task list for which Ticket No. 202206154161044 was issued earlier. Therefore, the claimed is being processed now**".

2(ii). Being aggrieved with the '**impugned order**' dated 21.06.2022 the '**Appellant**' has filed the present appeal on dated 05.07.2022 on the following grounds :

- **ITC on Invoice having HSN 8437 and 1101 not considered for refund.**
- **The HSN 1101 is for the flour used for testing of the domestic flour mills manufactured by them. They agreed that ITC of Rs.728/- availed on Invoices having HSN 1101 is not eligible for refund.**



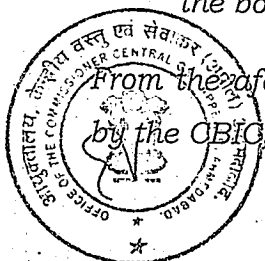
- HSN 8437 is for the spare parts and machinery purchased which are used as inputs for manufacturing of Flour Mill a.k.a. 'Gharghanti' and said inputs are correctly recorded as 'Purchases' in the books of the appellant. Hence, the ITC of Rs.45093/- is eligible for the refund.
- The Ld. Deputy Commissioner in his order did not consider their submission that they being manufacturer of flour mills is required to purchase goods under Chapter 84 i.e. motors used in manufacturing flour mills. The Ld. Deputy Commissioner erred in considering the motors as capital goods in their case, whereas indeed it is raw material for them as they are engaged in manufacturing of capital goods.
- Submitted the copy of ledger of parties from whom the motors are purchased. From the said ledger it is crystal clear that the goods purchased from the said parties are inputs in their case and purchase of said goods are recorded as direct expenses in the books of accounts by them and hence, they are eligible to claim refund under Section 54(3) of the CGST Act, 2017.
- Attention is drawn to CBIC Circular No. 79/53/2018-GST dated 31.12.2018, relevant para reproduced as under :

Misinterpretation of the meaning of the term "inputs" :

12. It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

13. In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

From the aforesaid facts of the case and clarification thereafter issued by the CBIC, the appellant submits that -



- *the order passed by the Ld. Deputy Commissioner is against the law, equity and justice ;*
- *the Ld. Deputy Commissioner has erred in law and facts by disallowing the refund of Rs.45092/- under Section 54(3) of the CGST Act, 2017 ;*
- *The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.*

In view of above submissions and grounds of appeal the appellant has made prayer as under :

1. *The refund of Rs.45092/- rejected by the Ld. Deputy Commissioner should be quashed and refund should be granted to the appellant*
2. *The appellant be accorded an opportunity bf being heard.*

3. Personal Hearings in the matter were offered to the "Appellant" on 25.11.2022, 07.12.2022 and on 16.12.2022. However, no one appeared for the Personal Hearing on the Scheduled dates and also not received any communication from *appellant* in this regard. The letters informing dates of Personal Hearings were communicated through post as well as mailed on the e-mail provided by them at the time of filing of present appeal.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the 'Appellant' has been given the sufficient number of Personal Hearings, before deciding the matter by this appellate authority however, no one responded to the PH letters. Therefore, there is no other option to decide the matter except decide the same as ex-parte. I find that the 'Appellant' had preferred the refund application for refund of "ITC accumulated due to Inverted Tax Structure" under Rule 89 of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017. Out of the total refund claim of Rs.4,73,953/-, the *adjudicating authority* has rejected refund of Rs.45,816/- by not considering the ITC pertains to HSN code 8437 and 1101 as eligible for refund. The *Appellant* in the present appeal has also agreed with rejection of refund claim of Rs.728/- pertains to HSN code 1101 being not eligible for refund. However, the *appellant* is mainly disputing in the present appeal proceedings about rejection of refund claim of Rs.45,092/- pertains to ITC of HSN code 8437.



4(ii). In the present appeal proceedings the *appellant* is mainly contended that the Input Tax Credit pertains to HSN 8437 are related to the purchase of spare parts and machinery, which are used as inputs for manufacturing of Flour Mill as known as 'Gharghanti' and purchase of said goods are recorded as direct expenses in their books of accounts ; that therefore, they are eligible to claim refund of said ITC of Rs.45,093/- under Section 54 of the CGST Act, 2017. Further, I find that the appellant has also referred the CBIC's Circular No. 79/53/2018-GST dated 31.12.2018 in support of their claim. The CBIC has clearly clarified in said Circular that ITC of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The CBIC has also clarified in the said Circular that the GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act.

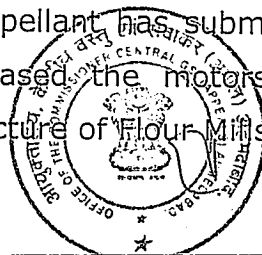
4(iii). Since, the appellant in the present appeal disputing that the refund pertains to HSN 8437 is rejected by the adjudicating authority by considering the same as ITC of capital goods, which are ineligible for refund under inverted tax structure, I hereby referred the definition of Capital Goods as defined under Section 2(19) of the CGST Act, 2017. The same is reproduced as under :

*** Section 2. Definitions.-**

(19) "*capital goods*" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

In view of above, it is clear that Capital Goods means the goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Further, it is also clarified by the CBIC in the aforesaid Circular dated 31.12.2018 that Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

In the present matter the appellant has submitted that they being manufacturer of flour mill purchased the motors falling under Chapter 84 and used the same in manufacture of Flour Mills; however, the



adjudicating authority has erred in considering the motors as capital goods though it is raw material for them and also the purchase of said goods are recorded by them as direct expenses in their books of accounts. Since, the appellant has not capitalized the value of said disputed goods in their books of accounts and in fact recorded as revenue expense in their books of accounts it cannot be held to be capital goods.

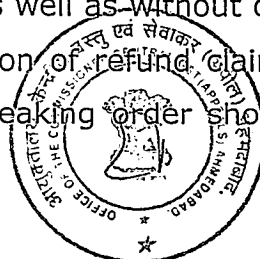
4(iv). Considering the foregoing facts, I find that in the present matter the refund claim is solely rejected on the ground that Input Tax Credit pertains to HSN 8437 do not qualify for Net ITC in the matter of refund of "*accumulated ITC due to Inverted Tax Structure*". However, as the appellant is manufacturer of Flour Mill and goods of HSN 8437 are in the nature of inputs for them, it is not proper to reject the refund claim without considering the reply/submission of the appellant. In this regard, I have referred the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under :

*(3) 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.

In view of above legal provisions, if the proper officer is of the view that whole or any part of refund is not admissible to the applicant he shall issue notice to the applicant and after considering the reply of applicant he can issue the order. However, in the present matter the appellant has contended that the *adjudicating authority* has issued the *impugned order* without considering their reply/submissions.

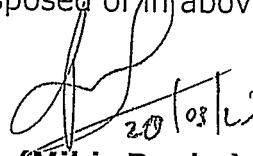
5. In view of above, I find that the *adjudicating authority* has passed the *impugned order* vide which rejected the refund claim without considering the *appellant's* reply to SCN as well as without communicating the valid or legitimate reasons for rejection of refund claim in question. Further, I am of the view that proper speaking order should have been



passed and detailing factors leading to rejection of refund claim should have been discussed. Else such order would not be sustainable in the eyes of law. Therefore, the *adjudicating authority* is hereby directed to process the refund application of the *appellant* by considering the submissions and documents/details submitted by appellant.

6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*" with a direction to the proper officer to consider the submissions of *appellant* and process the refund application after due verification of documents/details of *appellant*. The '*Appellant*' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

7. 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.

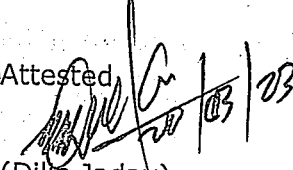

(Mihir Rayka)

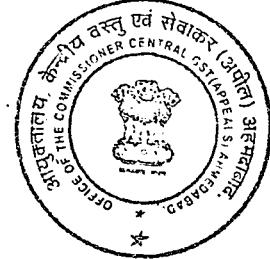
Additional Commissioner

(Appeals)

Date: 20.03.2023

Attested


(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad
By R.P.A.D.



To,
M/s. Gujarat Iron Works
(Legal Name - Vakil Rasmikant Jayantilal),
113/5/1, Sarbhai Wadi, Ghee Kanta Road,
Ahmedabad - 380 001

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 Dy/Asstt. Commissioner, CGST, Division-I Rakhial, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

