



आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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DIN- 20220664SW000000DFC7

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1979/2021-APPEAL

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ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-34/2022-23**

दिनांक Date : **31-05-2022** जारी करने की तारीख Date of Issue : **01-06-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZP2407210107231** dated **08.07.2021**
issued by Deputy Commissioner, CGST, Division IV (Narol), Ahmedabad South

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

**M/s. Mukesh Trends Lifestyle Limited National Highway No-08,
New Cloth Market, Narol- Naroda Road, 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.Mukesh Trends Lifestyle Ltd NH No.08, New Cloth Market, Narol-Naroda Road, Narol, Ahmedabad 382 405 (hereinafter referred to as the appellant) has filed the present appeal on dated 17-8-2021 against Order No.ZP2407210107231 dated 8-7-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, 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 24AABCM0500F1ZC has filed refund application for Rs.58,99,482/- for refund of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No.ZT2407210039775 DATED 5-7-2021 for rejection of refund of Rs.9,80,374/- due to wrong ITC claim and ITC accumulated due to ITC availed on input services which is inadmissible. The adjudicating authority vide impugned order sanctioned refund of Rs.43,72,984/- and held that refund of Rs.9,80,374/- is inadmissible due to wrong ITC claim.

3. Being aggrieved the appellant filed the present appeal on the ground that judgement of Hon'ble High Court in the case of M/s.VKC Footsteps India P.ltd Vs UOI was not discussed anywhere in the discussion and findings by the adjudicating authority and not provided any reasoning as to why the principle of judicial discipline shall not be followed in their case even though the decision of Hon'ble High Court was placed before the adjudicating authority at the time of personal hearing. That there are many decisions wherein the order is set aside on not following the principle of judicial discipline. Hon'ble High Court in the above case has held that explanation (a) to Rule 89 (5) which denies the refund of unutilized input tax paid on input services as part of ITC accumulated on account of inverted tax structure is ultra vires the provisions of Section 54 (3) of CGST Act, 2017 and thereby allowed the claim of the refund of unutilized ITC on account of input services as part of net ITC for the purpose of calculation of the refund. The appellant also relied upon judgments passed by Hon'ble High Court wherein strictures were passed for not following the orders of jurisdictional High Court. Therefore, impugned order passed by the learned adjudicating authority rejecting the refund amount relating to amount of accumulated input service portion is liable to be set aside in totality. The GST law does not distinguish which type of ITC is to be refunded and which should not be refunded. The proviso to Section 54 (3) is abundantly clear that a refund is to be given for accumulated or unutilized ITC. As per definition of terms ITC and Input tax it becomes apparent that any tax paid under the CGST, SGST or IGST act qualifies as input tax and consequently ITC. Thus, whatever the nature of ITC balance is accumulated should be refunded. That narrow interpretation of the adjudicating authority leads to inequality inasmuch as the Section 54 (3) provides for refund of all accumulated ITC may it be input tax credit of input services of input goods. The only pre-requisite to claim a refund is inverted duty structure. Section 54 (3) nowhere restricts the benefit of refund only to 'inputs' it only envisages the situation in which refund is allowed to be claimed. Thus, the impugned order that does not extend the benefit of refund of accumulated credit in respect of input service is bad in law and deserved to be set aside. In view of above the appellant requested to allow the appeal and set aside the impugned order and grant refund along with interest.

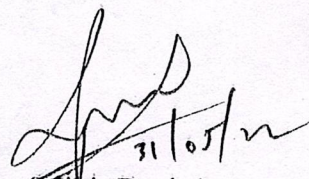


4. During appeal proceedings the appellant vide letter dated 14-12-2021 and letter dated 30-5-2022 intimated that they unconditionally withdraw the above appeal and requested to pass order to the said effect.

5. I have carefully gone through the facts of the case grounds of appeal and submission made by the appellant. In this case the refund of Rs.9,80,374/- rejected by the adjudicating authority pertains to ITC involved on input services. As per Rule 89 (5) of CGST Rules, the ITC taken in input services are excluded for computation of net ITC for arriving admissible refund. However, Hon'ble High Court of Gujarat vide its order dated 27-4-2020 in the case of M/s.VKC Footsteps India Pvt.Ltd. 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 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 under Rule 89 (5) of CGST Rules, 2017 for claiming refund under sub Section 3 of Section 54 of CGST Act, 2017. In appeal filed by the Department before Hon'ble Supreme Court, Hon'ble Supreme Court vide common Order dated 13-9-2021 has set aside the judgment passed by the Hon'ble High Court of Gujarat and upheld the vires and legality of Rule 89 (5) of CGST Rules, 2017. Consequently, in terms of Section 54 (3) of CGST Act, 2017 read with Rule 89 (5) of CGST Rules, 2017, refund is not admissible for ITC availed on input services. Therefore, impugned order passed by the adjudicating authority rejecting refund of ITC availed on input service is within the statutory provisions and appeal filed by the appellant relying on Hon'ble High Court's decision no longer sustainable. However, since the appellant has voluntarily and unconditionally withdrawn their appeal, I dismiss the appeal as withdrawn by the appellant.

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


5. 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.Mukesh Trends Lifestyle Ltd
NH No.08, New Cloth Market,
Narol-Naroda Road,
Narol, Ahmedabad 382 405



By RPAD,

To,

M/s. Mukesh Trends Lifestyle Limited
National Highway No-08,
New Cloth Market, Narol- Naroda
Road, Narol,
Ahmedabad-382405

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

