



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
 : 07926305065- टेलिफैक्स 07926305136



DIN- 20220664SW0000111C2B

रजिस्टर्ड डाक एं.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1251/2021-APPEAL / 1298 - 1303

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-35/2022-23**
 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. **ZQ240421035661 DT. 30.04.2021, ZW2404210357605 DT. 30.04.2021, ZW2404210357749 DT. 30.04.2021, ZN2404210188205 DT. 15.04.2021 & ZO2404210357705 DT. 30.04.2021** issued by Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South

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

Shri Kedar Nath Bathwal of M/s. Pashupati Marketing 1st Floor, D/327, Sumel Business Park 2, B/H Vanijya Bhavan, Kankaria, Diwan Balubhai Rd., 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 Kedar Nath Bathwal of M/s.Pashupati Marketing, I Floor, D/327, Sumel Business Park, 2, B/H Vanijyabhavan, Kankaria, Ahmedabad 380 022 (hereinafter referred to as the appellant) has filed the following appeals on dated 12-7-2021 against Orders passed by the Assistant Commissioner, Division I (Rakhial), Ahmedabad South rejecting refund claims filed by the appellant.

Sr No.	Appeal File No.	Impugned order number and date	Amount of refund	Period of claim
1	GAPPL/ADC/GSTP/1251/2021	ZQ2404210357661/30-4-2021	138550/-	October 2019 to December 2019
2	GAPPL/ADC/GSTP/1252/2021	ZW2404210357605/30-4-2021	127217	January 2020 to March 2020
3	GAPPL/ADC/GSTP/1253/2021	ZO2404210357705/30-4-2021	341829/-	July 2019 to Sept 2019
4	GAPPL/ADC/GSTP/1254/2021	ZN2404210188205/15-4-2021	185130/-	February and March 2019
5	GAPPL/ADC/GSTP/1256/2021	Zo2404210357705/30-4-2021	289574/-	April 2019 to June 2019

2. Briefly stated the fact of the case is that the appellant registered under GSTIN. 24AGUPB5319D1ZM has filed refund claim for refund of ITC on export of goods/services without payment of tax under Section 54 (3) of CGST Act, 2017. In all the cases, the appellant was issued show cause notice for rejection of refund on the reason 'Other' on the ground that zero rated turnover cannot be quantified as per Notification No.16/2020-CT dated 23-3-2020. The adjudicating authority vide impugned orders held that refund is inadmissible to the appellant on the reason that the appellant has not submitted any submission to the SCN and hence claim is rejected under section 54 of CGST Act, 2017.

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

- The entire refund has been rejected by wrongly calculating the turnover of zero rated supplies as per Notification No.16/2020-CT dated 23-3-2020. The adjudicating authority has erred in Law and facts of the cases by ignoring the basic fact that the appellant is merely the merchant exporter and all the goods that are exported were purchased from domestic market only and no further substantial value addition were made after such procurement. Further in order to justify that the export value is less than 1.5 time of value of goods supplied in domestic market a copy of sample invoices of both the sale and purchase transaction is attached showing that the export value is just 1.02 times of the value of goods

ii. The Orders were passed rejecting the entire refund without is erroneous. The adjudicating authority has erred in Law and facts of the cases by ignoring documents available with him as the declaration has already been submitted by the appellant along with refund application stating that the value of zero rated supply of goods without payment of tax under Bond or LUT was not pricing more than 1.5 times the value of like goods domestically supplied by them or similar suppliers and leading to order completely erroneous and bad in Law. The adjudicating authority has erred in Law and facts of the case by not considering the documents already available thereby causing sheet inconveniences in this unprecedented situation of Covid 19.

iii. Ignoring all the provisions of the Act, the adjudicating authority delayed the entire procedure of refund and failed to extend the support during the unprecedented times of pandemic of Covid. The adjudicating authority has erred in interpreting the Law, erred in calculating the turnover and failed to consider the documents submitted along with application and therefore the entire refund shall be allowed.

iv. In view of above the appellant requested to allow refund and quash and set aside the impugned orders.

4. Personal hearing was held on dated 24-5-2022. Shri Kunal Agrawal, authorized representative appeared on behalf of the appellant on virtual mode. He has asked for additional submissions for which three working days are granted. Accordingly, the appellant vide letter dated 26-5-2022, submitted copy of sample copies of export sales invoice, sample copies of domestic sales invoice for each of the following period for which appeal was filed by them. They further stated that on going through the same, they had not exported goods without payment of tax under LUT for the value exceeding 1.5 times the value of like goods domestically supplied by them.

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 in all these claims refund was rejected due to non-submission of reply to show cause notices. In their grounds of appeal, except in respect of claim made for the period February and March 2019, the appellant's submission is silent to this ground which imply that they had not filed any reply to the show cause notices. I have also verified the refund application status in GST portal and find that except in respect of claim made for the period February and March 2019, the appellant has not filed any reply to the show cause notices in remaining cases. Regarding, claim made for the period February and March 2019, the appellant has filed reply in Form GST RFD 09 under reference number ZZ2403210333893 dated 27-3-2021 but the adjudicating authority vide Order No.ZN2404210188205 dated 15-4-2021 rejected the

claim without considering the reply to the show cause notice and without recording reasons for rejection of claim. Therefore, except in respect of claim for the period February and March 2019, I do not find any infirmity in the findings of the adjudicating authority in other claims. During appeal the appellant has made submissions challenging the impugned orders and also submitted documents in support of their submissions. Therefore, I proceed to record my finding as under;

6. In all these claims, the claims were proposed for rejection due to non-quantification of zero rated turnover in terms of Notification No.16/2020-CT dated 23-3-2020. I find that as per Notification No.16/2020, amendment was made under Rule 89 (4) of CGST Rules, 2017 as under :

8. *In the said rules, (Central Goods and Services Tax Rules, 2017) in rule 89, in sub-rule (4), for clause (C), the following clause shall be substituted, namely:- „ (C) “Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;“.*

7. Thus, consequent to amendment made vide Notification No.16/2020, for the purpose of determining the admissible refund in case of zero rate supply of goods, the turnover of zero rated supply of goods in the formula prescribed under Rule 89 (4) is to be taken as lesser of value of zero rate supply of goods or 1.5 time of value of like goods domestically supplied by the same or similarly placed supplier as declared by the suppliers. Therefore, it is statutory requirement to submit details to arrive the turnover of zero-rated supply of goods in terms of amended Rule 89 (4) of CGST Rules, 2017 and to determine admissible refund amount. In the subject case it transpires that the appellant has not submitted any documents in compliance to above Notification and Rule 89 (4) which resulted in consequent rejection of refund claims. In other words, the appellant has not submitted any evidence/documents to determine the lower value between value of zero rated supply of goods or 1.5 time of value of like goods domestically supplied by the same or similarly placed supplier as declared by the suppliers to arrive the admissible refund.

8. During the current proceedings in compliance to Rule 89 (4) and Notification No.16/2020, the appellant has furnished copy of invoices issued for zero rated supply and some of invoices issued for domestic supply in the same period. On scrutiny I find that the appellant has supplied dress materials under zero rated supply as well as in domestic market. On further scrutiny I find that the value of dress materials supplied for export was either equal to or less than the 1.5 times the value of dress materials supplied in domestic market. Further on scrutiny of GSTR3B returns for the claim period I find that the appellant has made outward taxable supplies (other than zero rated) and outward taxable supplies (zero rated) which indicate that the appellant has supplied

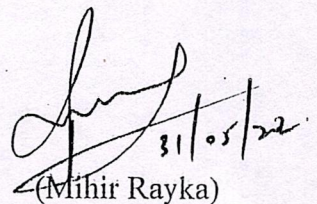
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GAPPL/ADC/GSTP/1253/2021,
GAPPL/ADC/GSTP/1254/2021,
GAPPL/ADC/GSTP/1256/2021

goods both under zero rated and in domestic market. Since the appellant is engaged in supply of dress materials for zero rated supply and also supply like goods in domestic market, the documents/invoices issued for export supply and domestic supply of like goods will be suffice for quantification of zero-rated supply of goods in terms of Notification No.16/2020 read with Rule 89 (4) of CGST Rules, 2017 and for arriving admissible refund which I find substantially fulfils the requirement raised in these claims.

9. In view of above, I find that in these cases, except the ground of non-quantification of turnover of zero rated supply of goods no other reason or ground was raised on inadmissibility of refund which shows that refund is otherwise admissible to the appellant. As per copy of some of the invoices issued for zero rate supply and domestic supply of like goods made during the claim period and submitted in appeal, I find that the value of zero-rated supply of goods was lower than the 1.5 times the value of like goods domestically supplied by the appellant. Therefore, in the interest of justice and fairness, I allow the appeals with consequential benefit to the appellant. I further order that in case of any claim of refund made for the above claim period, in consequent to this Order, the admissible refund should be based on turnover value of zero-rated supply of goods determined in terms of Notification No.16/2020 read with Rule 89 (4) of CGST Rules, 2017 as per documents/invoices issued for export supply and domestic supply of like goods. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

10. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

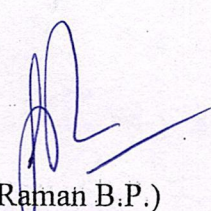
The appeals filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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

To,

Shri Kedar Nath Bathwal
of M/s.Pashupati Marketing,
I Floor, D/327, Sumel Business Park, 2,
B/H Vanijyabhavan,
Kankaria, 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 Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) The Asst./Deputy Commissioner, CGST, Division-I, Ahmedabad South
- 6) Guard File
- 7) PA file

