



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/1276/2021 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-39/2022-23**

दिनांक Date : **09-06-2022** जारी करने की तारीख Date of Issue : **09-06-2022**

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. **ZR2405210317217 DT. 19.05.2021**

issued by Assistant Commissioner, Division I (Rakhial), Ahmedabad South

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

M/s. Usha Industrial Corporation, PO Box No. 6015, Near Ajit Mills,

Rakhial Road, Rakhial, Ahmedabad-380023

(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 .



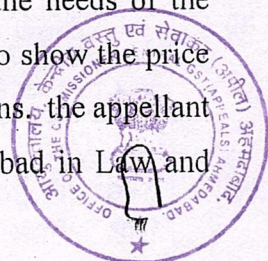
ORDER IN APPEAL

M/s.Usha Industrial Corporation, PO Box No.6015, Near Ajit Mills, Rakhial Road, Rakhial, Ahmedabad 380 023 (hereinafter referred to as the appellant) has filed the present appeal on dated 2-7-2021 against Order No.ZR2405210317217 dated 19-5-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Division I (Rakhial), Ahmedabad South (hereinafter referred to as the adjudicating authority)

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAAFU2299K1ZW has filed refund application for refund of Rs.10,80,558/- on account of ITC on export of goods and services without payment of tax. The appellant was issued show cause notice No.ZU2405210130439 dated 10-5-2021 for rejection of refund claim 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 order held that refund is inadmissible to the appellant for non compliance to show cause notice.

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

They are making outward supply both in local market and under zero rated supply through exports without payment of tax. The products manufactured are specialized products and thus the products are made to order basis. The said goods are not made for local markets and for export only. The only manufacturers who produce this type of commodities are situated in China. The goods are exported without payment of tax and are eligible to claim refund of the input tax. They had submitted all the documents as specified in the Circular online. As per Notification NO.16/2020-CT dated 23-3-2020 the maximum amount of claim can be the value which is 1.5 times the value of like goods domestically supplied by the same or similarly placed suppliers as declared by the supplier. They had filed reply to the show cause notice on 18-5-2021 wherein they had submitted the i) product bifurcation 2) invoice copy 3) like items invoice copy from open market and 4) reply stating that they don't make products which are easily available and are specially designed to meet customer need. These products are also not sold by us in India nor there anyone who deals in this type of products. They were not granted provisional refund in terms of Rule 91 of CGST Rules, 2017. The reasons given in the first deficiency letter and reasons of issue of show cause notice are on different grounds. They had substantiated the claim and also tried to the extent to get the prices of like goods. However, as the products is a prototype and there is no competition and are based on the needs of the purchaser. They also submitted a declaration to the same. If it is impossible to show the price comparison, then how can one adhere to this Rule. In view of above submissions the appellant submitted that the impugned order passed by the adjudicating authority is bad in Law and requested to grant refund along with interest.



4. Personal hearing was held on dated 27-5-2022. Shri Monish Shah, 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, submissions made by the appellant and documents available on record. In this case refund claim was rejected on the sole ground of non-compliance to show cause notice ie Notification NO.16/2020-CT inasmuch as the appellant has failed to substantiate their claim of supply of like goods domestically and in export. 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;".

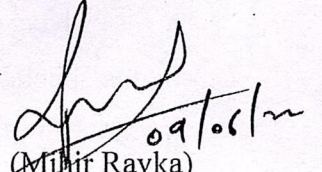
6. Thus, consequent to amendment made vide Notification No.16/2020, for the purpose of determining the admissible refund in case of zero rate supply of goods, the turnover of zero rated supply of goods in the formula prescribed under Rule 89 (4) is to be taken as lesser of value of zero rate supply of 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.

7. Ongoing through the statement of facts and grounds of appeal, I find several contradiction and inconsistency in the grounds inasmuch as at first the appellant stated that are manufacturing and selling the goods both in local market and under zero rated supply through exports without payment of tax but further stated that the products manufactured by them are specialized products and not made for local markets and no one market these products in India. However, in their reply to the show cause notice they had submitted invoice copy of like items from open market. During appeal also no documents/evidence showing value of like goods either domestically cleared by them or by similarly placed suppliers is brought on record in compliance to Rule 89 (4) of CGST Rules, 2017. In the absence of necessary documents and also due to inconsistency in their submissions, I am unable to accept the submission made by

the appellant in this appeal. Therefore, I do not intend to interfere with the impugned order passed by the adjudicating authority. Accordingly, I upheld the impugned order and reject the appeal filed by the appellant.

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

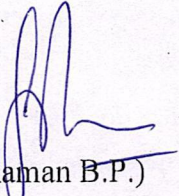
8. The appeal filed by the appellant stands disposed of in above terms.


(Mithir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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



By RPAD

To,

M/s.Usha Industrial Corporation,
PO Box No.6015, Near Ajit Mills,
Rakhial Road, Rakhial,
Ahmedabad 380 023

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 I (Rakhial) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

