



## 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

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1934/2021-APPEAL /1537 -1542

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-43/2022-23**

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)

ग Arising out of Order-in-Original No. **ZX2407210026608 DT. 02.07.2021**  
issued by Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South

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

**M/s. Ashutosh Fibre Private Limited 11-B, New Cloth Market,**

**O/S. Raipur Gate, Ahmedabad-380002**

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



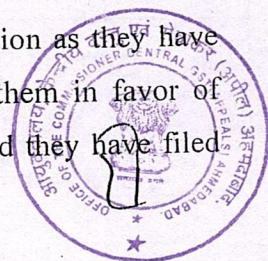
## ORDER IN APPEAL

M/s.Ashutosh Fibre Private Ltd 11-B, New Cloth Market, O/S Raipur Gate, Ahmedabad 380 002 (hereinafter referred to as the appellant) has filed the present appeal on dated 25-8-2021 against Order NO.ZX2407210026608 dated 2-7-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, 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 24AABCA8054E1Z1 has filed refund claim for refund of Rs.4,56,030/- for refund of tax paid on capital goods procured against invalidation of EPCG Licence No.0830011762 dated 13-3-2020. The appellant was issued show cause notice No.ZV2406210284585 dated 23-6-2021 for rejection of claim on the ground of 'Other' and on the reason that proof of documents regarding intimation of supply/receipt of goods to be jurisdictional tax office has not been uploaded. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that claimant's contention submitted in reply to the show cause notice is not satisfactory and not acceptable. Accordingly, the claim is rejected.

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

- i. The impugned order rejecting refund claim is wholly and totally erroneous and liable to be set aside.
- ii. The impugned order has not considered the submissions made by them and simply stated that the appellants contention is not satisfactory and not acceptable. The order does not discuss the relevance of submissions made by them and so the order turnover to be a non speaking order which is not tenable in the eyes of Law and deserves to be set aside.
- iii. The appellant relied upon the following case laws : State of Himachal Pradesh Vs Sardara Singh (2008 TIOL 160 SC NDPS) and CCE Bangalore Vs Srikumar Agencies (2008 (232) ELT 577 (SC).
- iv. In view of above judgments the impugned OIO is a non speaking order as it has failed to discuss and distinguish the submissions made by the appellant. Therefore the impugned order is not tenable in the eyes of Law and is liable to be quashed and appeal should be allowed.
- v. They had filed refund claim of tax paid on capital goods procured against invalidation of EPCG Licence NO.0830011767 dated 13-3-2020. As per Notification NO.48/2017-CT dated 18-10-2017 the supply of capital goods by a registered person against EPCGA have been declared as deemed exports. That they are covered said Notification as they have procured capital goods by invalidating the EPCG Licence issued to them in favor of M/s.Deepak Poly Plast Pvt.Ltd. They are recipient of deemed export and they have filed





refund claim by complying with all the formalities as required under Point No.7 of CBIC Circular NO.125/44/2019-GST dated 18-11-2019.

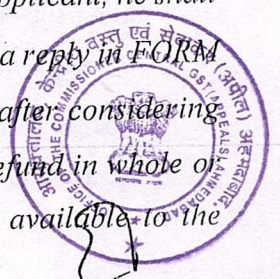
- vi. The documents required under Circular NO.14-14/2017-GST dated 6-11-2017 are not be uploaded by them as the Circular prescribes procedure regarding procurement of supplies from DTA by EOU/EHTP/STP/BTP unit under deemed export benefits. However in the present case they have filed refund of tax paid by the supplier of goods against invalidation letter issues in pursuance to EPCG Licence which is not covered by the said Circular.
- vii. Moreover they have already furnished the statement 5 (B) under Rule 89 (2) (g), declaration under Rule 89 (2) (g) and undertaking in relation to Section 16 (2) (c) and Section 42 (2). The appellant submit that they have also uploaded NOC by the supplier of goods that they will not claim refund of tax charged from the appellant. The appellant submit that as they have complies with all the procedural requirements needed for claiming refund of tax paid by them, the refund claim should be granted to them.
- viii. Regarding allegation that proof of documents regarding intimation of supply/receipt of goods to the jurisdictional tax office has not been uploaded by them, the appellant submit that there is no such requirement in the present case. However in order to establish that they have duly received the capital goods they enclose copy of invoice along with e-way bill and transportation bills. As it has been established that the goods were received by them and were under invalidation scheme of EPCG licence, they are entitled for refund claim and the allegation of the impugned order deserves to be quashed.

4. Personal hearing was held on dated 2-6-2022. Shri Pradeep Jain authorized representative appeared on behalf of the appellant on virtual mode. He stated that he has no additional submission to make and requested to decide the appeal on the basis of grounds of appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. In this case refund claim was rejected due to unsatisfactory reply and unacceptability of reply filed to the show cause notice. Apparently, the order does not contain any discussion on reply made by the appellant or contain reasons as to why the reply is unsatisfactory and unacceptable for rejection of refund.

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 neither any discussion was recorded on the reply filed to the show cause notice nor any reason as to why the reply filed by the appellant is unsatisfactory and unacceptable was recorded by the adjudicating authority but rejected the claim due to above ground. Therefore, I find that the impugned order passed by the adjudicating authority against the provisions of Rule 92 of CGST Rules, is a non-speaking order and hence bad in Law and not tenable and not sustainable.

8. In this case the appellant has filed refund claim for refund of tax paid on capital goods procured against invalidation of EPCG licence, which is notified as deemed export under Notification No 48/2017. In the show cause notice issued to the appellant, the claim was proposed for rejection due to non-uploading of proof of documents regarding intimation of supply/receipt of goods to the jurisdiction tax office. At the outset I find that in terms of Rule 90 of CGST Rules, 2017 the proper course of action for such requirement is by way of issue of deficiency memo for necessary rectification and submission of documents and not by way of issuance of show cause notice.

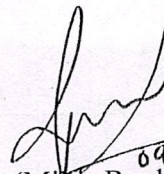
9. In this regard I refer to Circular No.125/44/2019-GST dated 18-11-2019, wherein various documents required to be furnished for each type of refund claims was specified in Annexure A. I find that in respect of claim made by recipient for refund of tax paid on deemed export supply in addition to declaration/statement/undertaking/certificates to be filled online, the documents required under Circular No. 14/14/2017-GST dated 06.11.2017 also need to be uploaded as supporting documents. I have also gone through Circular No.14/14/2017-GST dated 6-11-2017 and find that vide said Circular, procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export benefits under section 147 of CGST Act, 2017 was prescribed, wherein proof regarding supply/receipt of goods by EOU is made a mandatory document for claiming refund of tax paid on such supplies. In the subject case neither the appellant nor the supplier of the goods is not a unit covered under above Circular. Therefore, I find force in the submission of the appellant that the above proof is not required to be uploaded in their case. Further, even though the supply made in this case falls under the category of deemed export, non-uploading of proof of documents regarding intimation of supply/receipt of goods, I find is not a justifiable reason to reject the refund, if refund is otherwise admissible and other supporting documents establish supply and receipt of goods by the appellant.



10. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting refund to the appellant on the grounds mentioned therein is not legal and proper and deserve to be set aside. Therefore, I allow this appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequent to this Order may be dealt with in accordance with Section 54 of CGST Act, 2017 and Rules made thereunder. Accordingly, I set aside the impugned order and allow this appeal.

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

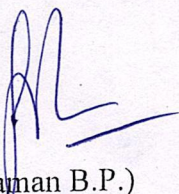
11. The appeal filed by the appellant stands disposed of in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



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



By RPAD

To,

M/s.Ashutosh Fibre Private Ltd,  
11-B, New Cloth Market,  
O/S Raipur Gate,  
Ahmedabad 380 002

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





