



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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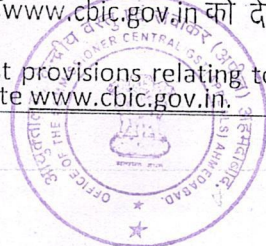
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रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/989/2021-APPEAL /357-361
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-06/2022-23**  
दिनांक Date : **12-04-2022** जारी करने की तारीख Date of Issue : **12-04-2022**
- श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित
- Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **ZY2403210379171 DT. 26.03.2021** issued by Assistant Commissioner, Division IV (Narol) Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**M/s. Weizmann Limited, Narol-Vatva 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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> .





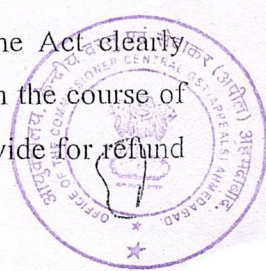
### ORDER IN APPEAL

M/s.Weizmann Limited, Narol-Vatva Road, Narol, Ahmedabad 382 405 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 27-5-2021 against Order No.ZY2403210379191 dated 26-3-2021 (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 GSTIN24AAACW1260H1ZO, has filed refund claim for Rs.63,99,704/- for refund of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No.ZO2403210316182 dated 22-3-2021 proposing rejection of claim asking the appellant to clarify the nature of business and also to clarify that the appellant was registered for supply of jute bags however claiming ITC of machine parts, conveyor belts. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that the tax payer is involved in job work/availment/pass on of the credit is not clear and clearly machine parts cannot be considered as input in the process of jobwork.

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

The adjudicating authority has violated the principles of natural justice by passing the impugned order on dated 23-6-2021 wherein the entire refund is rejected ; the adjudicating authority passed the order on 26-3-2021 without considering the principles of natural justice of giving an opportunity of being heard. The personal hearing was granted on 29-3-2021 vide Form RFD 08 ; the adjudicating authority passed the impugned order on dated 26-3-2021 which is before the hearing date ; hence it was not possible for them to attend the personal hearing and provide explanation regarding its nature of business and any other further explanation as might be required by the adjudicating authority ; the appellant was prevented from its right of personal hearing conferred upon them under the provisions of Section 54 of CGST Act, 2017 and provide explanation ; therefore without personal hearing to justify the claim, the rejection of entire claim is unjustifiable and unwarranted ; the adjudicating authority failed to appreciate that the entire application of refund complete as per provisions of Section 54 read with CGST Rules as evidenced by the acknowledgment in Form RFD 02 issued to them; the adjudicating authority has passed the rejection order against complete refund application without giving proper opportunity of being heard which is against the principles of natural justice; that the impugned order rejecting the entire refund claim was passed defeating the principle of intelligible differentia and not sustainable and liable to be set aside ; that the basic purpose behind bringing GST is to remove cascading effect of taxes by providing for ITC of all inputs and input service which can be used for payment of output tax to avoid unnecessary blockage of working capital, avoid double taxation and allowing free flow of credit in the system; The scheme of CGST Act makes aforementioned object very clear since Section 16 and Section 49 of the Act clearly provide for ITC on any supply of goods or services used or intended to be used in the course of furtherance of business which can be used for payment of tax; Section 49 (6) provide for refund



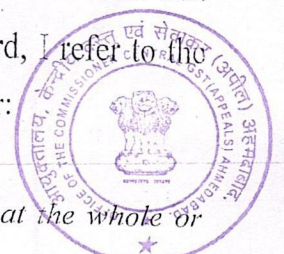


of balance in the electronic credit ledger after payment of tax, interest, penalty, fess etc in accordance with the provisions of Section 54 ; that they are engaged in the business of textile job work and sale of finished fabrics for which they required color chemicals; packing materials; spare parts of machinery and miscellaneous other inputs ; that the impugned order was passed without considering para 12 and 13 of Circular No.79/53/2018-GST dated 31-12-2018 ; From paragraph 13 of above Circular it is clearly clarified by the Government that Machinery parts and stores and spares are inputs for the purpose of refund ; that there is no change in business model of the appellant and similar type of refund applications for ITC were filed by them and sanctioned by the adjudicating authority for the period July 2017 to September 2020. That the previous claims were sanctioned after complete adjudication of the same ; for the subject refund application the adjudicating authority has passed the order without considering the earlier applications as well as the fact that there is no change in business model and order is passed based with prejudice and without application of mind ; that the appellant is a regular tax payer and filing returns as per applicable laws ; that the adjudicating authority erred in following the requirement of passing speaking order under Section 75 (6) of the Act ; that the impugned order is contrary to the facts on record and has been passed without considering the statutory provisions and without application of mind ; that the impugned order was passed on the basis of assumptions, presumptions, conjectures and surmises and without proper consideration of facts, records, opportunity of being heard and submissions therein and therefore liable to be set aside ; that the rejection of refund claim without providing sufficient opportunity of being heard is illegal, unjustified, bad in Law and hence needs to be summarily quashed to meet the ends of justice. In view of above submissions the appellant requested to quash and set aside the impugned order and grant refund along with interest.

4. Personal hearing was held on dated 7-4-2022. Shri Jaykishan K Vidhwani, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. The claim in this case was rejected on the ground that the appellant is involved in job work and availed ITC on machinery parts which cannot be considered as input in the process of job work. Before going into the merits of the case, I find that in their grounds of appeal, the appellant made strong submission that the impugned order was passed without granting personal hearing and without following the principles of natural justice. I find from the show cause notice issued in RFD 08 that personal hearing was fixed on dated 29-3-2021 at 5.22 pm. However, impugned order was issued on 26-3-2021 ie before the scheduled date of personal hearing. Therefore, it is very much clear that impugned order was passed without conducting personal hearing. 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,*



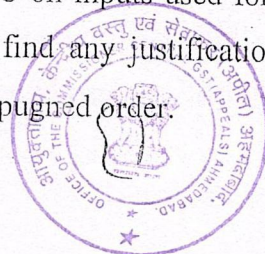


*he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting 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.*

6. As per proviso to sub rule (3) of Rule 92 of CGST Rules, it is mandatory requirement to give opportunity of personal hearing before passing order for rejection. Even otherwise, it is statutory requirement to pass an order observing the principles of natural justice. Since the opportunity of being heard is one of the principles of natural justice, it should invariably be provided before passing an adverse order. In the subject case the impugned order rejecting refund claim was passed before the scheduled date of hearing which indicate that the order was passed without granting opportunity of personal hearing. Accordingly, I find that the impugned order passed by the adjudicating authority is not only against the principles of natural justice but also without following the proviso to Rule 92 (3) of CGST Rules, 2017. Therefore I find strong force in the submissions made by the appellant that the impugned order passed without providing opportunity of personal hearing deserve to be set aside.

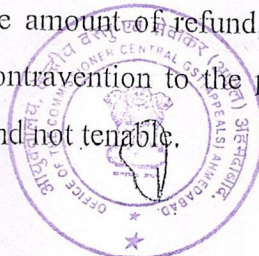
7. I find that first ground raised in the impugned order for rejection of refund is that the appellant is involved in job work availment/pass of the credit is not clear. It is apparent that the adjudicating authority has raised this objection on an indecisive and unsure view. In such a situation the adjudicating authority could have asked sought necessary clarification from the appellant either in writing or during personal hearing for clearing his doubt before rejecting the refund claim on an unclear ground. I find from the fact of the case that the appellant is engaged in dyeing and printing on fabrics as a job worker as well as on self goods also. This fact is also mentioned in the impugned order itself. It is not disputed that the appellant is not paying applicable tax on activity carried out by them and it is also not in dispute that the inputs on which ITC availed by the appellant was not used in furtherance of their business ie for job work. Further, the activity of job work is one of the business activities of the appellant. I find that CBIC vide Circular No.48/22/2018-GST dated 14-6-2018 has also clarified that textile job workers are also eligible for refund of ITC accumulated due to inverted tax structure under Section 54 (3) of CGST Act, 2017, which further implies that there is no restriction in availing ITC on the activity of job work. Since all these facts throw light on eligibility to avail ITC on inputs used for job work and eligibility to claim refund under Section 54 (3), I do not find any justification in rejecting the refund on uncertain and ambiguous ground raised in the impugned order.





8. The second ground raised in the impugned order is that the appellant has claimed ITC availed on machine parts which are not inputs for the process of job work. I find that as per definition of 'input' given under Section 2(59), "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Capital goods is defined under Section 2 (19) of CGST Act 2017 as "capital goods means goods, the value of which is capitalized 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." Thus, all the goods other than capital goods which are used for furtherance of business are notified as input. I also refer to para 12 of Circular No.79/53/2018-GST dated 31-12-2018 wherein in respect of goods viz.stores and spares, materials for machinery repair etc. the Board has clarified that GST paid on such inputs 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 CGST Act. It was also clarified that 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 of furtherance of business. Stores and spares, expenditure on which has been charged as a revenue expenses in the books of accounts cannot be held to be capital goods. The character and use of machine parts is similar to the aforesaid goods and hence clarification issued vide above Circular is squarely applicable to machine parts also. I further find that under Rule 89 (5) of CGST Rules, 2017 read with para 14 of Circular No.79/53/2018-GST dated 31-12-2018 for the purpose of refund under Section 54 (3), the ITC availed on inputs only need to be considered for Net ITC and ITC on inputs services and capital goods are not considered for Net ITC. Therefore for the purpose of refund under Section 54 (3) in order to consider the goods, 'not an input', it is imperative either to establish that the said goods are capital goods within the definition of capital goods given under Section 2 (19) or that the said goods are not used for furtherance of business. In other words merely on the basis of description of goods it is wrong to consider an item/goods 'not an input' and deny refund without considering the ITC availed on such goods.

9. I further notice from Annexure B filed with the claim that the appellant has taken only the ITC availed on inputs towards Net ITC for arriving the admissible refund amount. On further scrutiny I find that the appellant has availed ITC on various other inputs also including ITC on machinery parts. Therefore, in such a situation, as per Rule 92 (3) of CGST Rules, 2017 even if the adjudicating authority is of the view that ITC on machinery parts is not admissible for refund, he should have arrived the admissible refund taking into account ITC availed on other eligible inputs and sanctioned refund to such extent, instead of rejecting entire amount of refund. Therefore I find that rejection of entire amount of refund, without even considering the ITC availed on eligible inputs, is also in contravention to the provisions of Rule 92 (3) of CGST Rules, 2017 and hence not sustainable and not tenable.

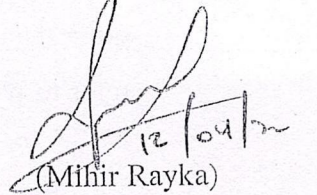




10. In view of above facts and discussions I hold that impugned order passed without following the principles of natural justice and on the grounds mentioned therein is not legal and proper and hence deserve to be set aside. Therefore I allow this appeal with consequential benefit in accordance with Section 54 (3) of CGST Rules, 2017 read with Rule 89 (5) of CGST Rules, 2017. 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।

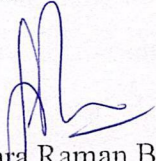
10. The appeal filed by the appellant stands disposed of in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested

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



By RPAD

To,  
M/s. Weizmann Limited,  
Narol-Vatva Road,  
Narol, Ahmedabad 382 405

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 Assistant Commissioner, CGST, Division IV (Narol ) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

