



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



07926305065-

टेलिफैक्स 07926305136



DIN-20220664SW000000E577

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1845/2021 -APPEAL

/2102 70 2108

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-62/2022-23

दिनांक Date : 20-06-2022 जारी करने की तारीख Date of Issue : 20-06-2022

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZQ2405210320717 DT. 19.05.2021

issued by Deputy Commissioner, Division IV (Narol), Ahmedabad South

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

M/s. Foram Textile Mills, 167, Balaji Process Compound,
Near Cozy Hotel, Ranipur Patiya, 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.Foram Textile Mills, 167, Balaji Process Compound, Near Cozy Hotel, Ranipur Patiya, Narol, Ahmedabad 382 405 (hereinafter referred to as the appellant) has filed the present appeal on dated 2-8-2021 against Order No.ZQ2405210320717 dated 19-5-2021 (hereinafter referred to as the impugned order) passed by the Deputy 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 24AAFFF2912F1ZX has filed refund claim for refund of Rs.4,52,888/- on account of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No.ZO2404210242050 dated 21-4-2021 for rejection of claim due to mis match of ITC and that GSTR2A as mandated in Notification NO.135/2020, not submitted and to clarify the ITC available in GSTR2A. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground of mis match of ITC and that reply to SCN nor made/not visible in portal.

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

They had filed reply to the show cause notice online. They had attached GSTR2A as supporting documents however it was reflected that 'no supporting documents found' in GSTR RFD 09.

They through their authorized representative again submitted requisite documents that are GSTR2A at the office of the adjudicating authority.

The adjudicating authority has erred in failing to consider the reply submitted and passing the order with the remark that no reply has been submitted and hence the same is liable to be quashed and set aside.

The adjudicating authority has erred in failing to give due consideration to the fact that the appellant had provided due evidence.

4. Personal hearing was fixed on dated 31-5-2022. No one appeared on behalf of the appellant on 31-5-2022. Personal hearing was again fixed on dated 8-6-2022. The appellant via email dated 8-6-2022 requested for adjournment. The next date for personal hearing was fixed on dated 16-6-2022 in which Shri Khilan B Patel, authorized representative appeared on behalf of the appellant. He stated that they have nothing more to add to their written submission till date. However, the appellant vide letter dated 16-6-2022 filed additional submission wherein they interalia contended that the adjudicating authority has further erred in failing to consider their reply submitted and passing the order with the remarks that no reply has been submitted and hence the same is liable to be quashed and set aside ; that the adjudicating authority has erred in failing to give due consideration to the fact that the appellant had provided due evidence. The appellant relied upon various case laws in support of their above contentions.

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 the adjudicating authority has rejected the refund due to mis match of ITC and that compliance to SCN not made/not visible on the portal.

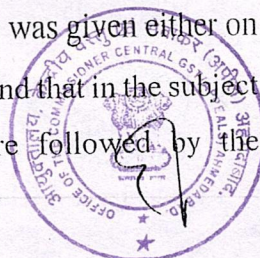
I find the findings itself is very contradictory inasmuch as it does not indicate as to whether or not the appellant has filed reply to SCN. However, I find that the appellant has filed reply to SCN in Form GST RFD 09 under Ref No.ZO2404210242050 dated 11-5-2021, wherein they had attached GSTR2A. However, under head supporting documents it was shown that 'no supporting documents ground. Therefore, it is clear that the appellant has filed reply to SCN but due to invisibility of reply to the adjudicating authority in the portal the refund was rejected. In such a situation as an alternative mode the adjudicating authority could have obtained a physical copy of the reply uploaded in the portal and verified the same. The appellant vide their letter dated 14-5-2021 has also submitted physical copy of GSTR2A as they could not upload the GSTR2A in portal. However, instead of verifying the GSTR2A submitted by the appellant, the adjudicating authority rejected the entire claim without even looking into the reply and GSTR2A filed by the appellant. I further notice that in the show cause notice, mis match of ITC was given as reason for rejection of refund. As per Rule 90 of CGST Rules, for discrepancy of such nature, the proper course of action is by way of issue of deficiency memo for necessary rectification and not by way of issue of show cause notice for rejection of refund.

6. I now 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 the rejection of refund was ordered without considering the reply filed by the appellant and without recording reason in writing for rejection of refund. Regarding personal hearing, I find that personal hearing was fixed on 28-4-2021. However, since the reply itself was not considered, it does not appear to me that opportunity of personal hearing was given either on the said date or any other date before rejecting refund claim. Accordingly, I find that in the subject case, except issuance of show cause notice, no other procedures were followed by the adjudicating authority before rejecting the refund claim.

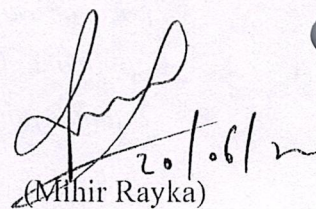


8. I further find that in this case refund claim was filed for refund of ITC accumulated on account of inverted tax structure. As per Circular No.135/05/2020 – GST dated the 31st March, 2020, it was clarified that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Further as per Rule 89 (5) of CGST Rules, ITC availed on input services and capital goods are kept out of purview of 'Net ITC' in the formula prescribed for determining the admissible refund. Accordingly, so far as refund of ITC accumulated due to inverted tax structure cases is concerned, specific statutory provisions and clarification is in force. However, the adjudicating authority without applying the provisions of Rule and clarifications rejected the entire claim of refund. As per Rule 92 of CGST Rules, 2017 the adjudicating authority is empowered to sanction refund admissible and due to the claimant. Therefore, even if there is mis match in ITC shown in the documents filed with the claim, the adjudicating authority ought to have sanctioned refund to the extent admissible in accordance with CGST Act, Rules and Circulars issued by Board rather than rejecting the whole amount of refund. Therefore, I find that the impugned order passed for rejection of entire amount of refund on the ground of mis match of ITC and without following the statutory provisions is a non-speaking order and hence not legally sustainable and tenable.

9. In view of above, I hold that impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside. Therefore, I allow the present appeal with consequential benefit to the appellant. I further order any claim of refund made in consequent to this order may be examined and processed in accordance with CGST Act and Rules made thereunder and also on the basis of Circulars issued by the Board. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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

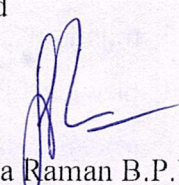
10. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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

By RPAD
To,
M/s.Foram Textile Mills,
167, Balaji Process Compound,
Near Cozy Hotel, Ranipur Patiya,
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 Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) The Asst./Deputy Commissioner, CGST, Division-IV, Ahmedabad South
- ~~6) Guard File~~
- 7) PA file