



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1279/2021 -APPEAL 12087 20 2092

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-63/2022-23**
 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. **ZX2404210042749 DT. 05.04.2021**
 issued by Deputy Commissioner, Division IV (Narol), Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Rohitkumar Textile Mills LLP, Saijpur, Gopalpur Road,
Shahwadi, 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 .



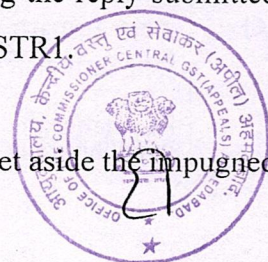
ORDER IN APPEAL

M/s.Rohitkumar Textile Mills LLP, Saijpur, Gopalpur Road, Shahwadi, Narol, Ahmedabd 382 405 (hereinafter referred to as the appellant) has filed the present appeal on dated 8-7-2021 against Order No.ZX2404210042749 dated 5-4-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division IV (Narol), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated that the fact of the case is that the appellant registered under GSTIN 24ABAFR 0823P1Z5, has filed refund claim for Rs.2,89,340/- for refund of ITC accumulated due to inverted tax structure under Section 54 (3) of CGST Act, 2017 for the month of June 2020. The appellant was issued show cause notice reference No.ZX2403210239660 dated 16-3-2021 for rejection of refund claim on the ground of wrong ITC claim and that as per Notification NO.26/2018-CT dated 13-6-2018, the ITC of input service is not admissible ; that certificate as per Rule 89 (2) (M) of CGST Rules, 2017 has not been uploaded and to clarify the difference of turnover in GSTR3B and GSTR1. The appellant filed reply to the show cause notice vide GST RFD 09 reference No.ZX2403210239660 DATED 1-4-2021. The adjudicating authority vide impugned order held that the entire refund amount is not admissible due to wrong ITC claim and that the claimant's contention submitted in reply to the SCN is not acceptable.

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

- i. The refund was rejected by not considering the reply to the SCN and without considering the CA certificate as per Rule 89 (2) (M) of CGST Rules, 2017 as per Notification No.26/18-CT dated 13-6-2018.
- ii. The refund claim was rejected by ignoring the judgment of jurisdictional Hon'ble High Court of Gujarat in the case of M/s.VKC Footsteps India Pvt.Ltd UOI and 2 others wherein it was held that the explanation (a) to Rule 89 (5) of CGST Rules, 2017 which denies the refund of unutilized ITC paid on input services as part of ITC accumulated on account of inverted duty structure is ultra vires the provisions of Section 54 (3) of CGST Act, 2017. The fact of the appellant's case is exact the same facts which are placed before the Hon'ble Gujarat High Court which leaves no further ground to reject the refund claim pertaining to the ITC services.
- iii. Regarding difference in turnover in GSTR3B and GSTR1 the appellant contended that the adjudicating authority has erred in Law and facts by not considering the reply submitted by the appellant that there is no difference between GSTR3B and GSTR1.
- iv. In view of above submissions, the appellant requested to quash and set aside the impugned order.

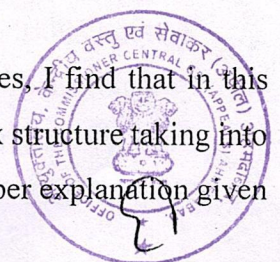


4. Personal hearing was held on dated 27-5-2022. Shri Kunal Agrawal, authorized representative appeared on behalf of the appellant on virtual mode. He stated that following VKC Footsteps Order his case may be considered for input credit. He was given three working days to give additional submission.

5. Accordingly, the appellant vide letter dated 16-6-2022 filed additional submission submitting Annexure A containing all details for which ITC claimed segregating the same as inputs, input services and capital goods, a summary of total ITC along with the above-mentioned segregation and copy of manual RFD 01 containing net ITC as 'inputs' only stating the revised amount of refund.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that the adjudicating authority has rejected the refund due to wrong ITC claim and non-acceptance of reply filed to the show cause notice. I find that in the show cause notice, the appellant was asked to furnish CA Certificate interms of Rule 89 (2) (m) and to clarify the difference in turnover in GSTR3B and GSTR1. In this regard I find that as per Rule 90 of CGST Rules, in case of discrepancy of such nature in refund application, the proper course of action to is issue a deficiency memo for necessary rectification and clarification rather than taking it as ground for rejection. I further find that as per 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, I find that the appellant has filed reply to the show cause notice, wherein they had attached CA certificate and provided clarification on remaining queries. which was not found acceptable to the adjudicating authority. However, neither any discussion on reply filed by the appellant nor any reason as to why the reply is not acceptable is recorded in the impugned order. Therefore, I find that the impugned order passed by the adjudicating authority without recording reasons for rejection is against the provisions of Rule 92 (3) of CGST Rules, 2017 and to that extent I find the impugned order is a non-speaking order. Regarding difference in turnover, I find from the copy of GSTR1 and GSTR3B returns for the claim period that in both the returns the net taxable value is shown as Rs.1,41,22,642/- and that there is no difference in turnover shown in the above returns. Further in this case dispute is with regard to refund of ITC availed on input services only and that there is no dispute with regard to refund of ITC availed on inputs. In such instances, in terms of Rule 92 (3) of CGST Rules, the adjudicating authority ought to have sanctioned refund to the extent of ITC availed on inputs which was admissible rather than the rejecting the entire amount of refund. In view of above, rejection of entire claim of refund on the above grounds, I find is unsustainable and untenable on merits.

7. Regarding inadmissibility of refund on ITC availed on input services, I find that in this case refund claim was filed for refund of ITC accumulated due to inverted tax structure taking into account ITC availed on inputs and input services for the relevant period. As per explanation given



under Rules 89 (5) of CGST 2017, for determining the admissible refund, the amount of input tax credit availed only on inputs is to be taken in account for arriving 'Net ITC' in the formula. In other words, ITC availed on input services and capital goods are kept out of the purview of the formula for arriving the Net ITC. However in SCA filed by M/s.VKC Footsteps P.ltd., Vs UOI and 2 Others, Hon'ble High Court vide its order dated 27-4-2020 held that the Explanation to Rule 89 (5) of CGST Rules, 2017 which denies unutilized input tax paid on input services as part of ITC accumulated on account of inverted tax structure ultra vires the provisions of Section 54 (3) of CGST Act, 2017 and directed the Department to allow claim of refund considering the unutilized ITC of input services as part of the Net ITC for the purpose of calculation of the refund of the claim as per Rule 89 (5) of CGST Rules, 2017 for claiming refund under sub Section 3 of Section 54 of CGST Act, 2017. Thus, the Order of Hon'ble High Court allows refund under Section 54 (3) of CGST Rules, 2017 taking into account the ITC availed on input services also. However, against the said Order of Hon'ble High Court, in appeal filed by the Department before Hon'ble Supreme Court, Hon'ble Supreme Court vide common Order dated 13-9-2021 allowed the appeal filed by the Department and set aside the judgment passed by the Hon'ble High Court of Gujarat. Thus, the vires of Rule 89 (5) of CGST Rules, 2017 vis a vis Section 54 (3) of CGST Act, 2017, its constitutional validity and legality were upheld by the Apex Court. Consequently, the Order of Hon'ble High Court of Gujarat, terming the explanation to Rule 89 (5) of CGST Rules, 2017 as ultravires Section 54 (3) of CGST 2017 has become void and inconsequential. Thus, as per decision of Hon'ble Apex Court the refund on account of ITC accumulated due to inverted duty structure is restricted to ITC availed and accumulated on inputs only and not allowed to ITC availed and accumulated on input services. Therefore, claim filed by the appellant relying on Hon'ble High Court's decision no longer sustainable and refund to the extent involved on ITC availed on input services is not admissible to the appellant.

8. During appeal, in pursuance to Hon'ble Supreme Court's decision in M/s.VKC Footsteps case, the appellant has submitted worksheet showing revised amount of refund for Rs.2,72,610/- taking into account the ITC availed on inputs as under:

Turnover of inverted rated supply of goods and services	Tax payable on such inverted rated supply of goods and services	Adjusted total turnover	Net ITC Inputs only	Maximum refund amount
14122643	706132	14122643	978742	272610

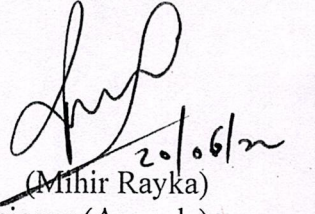
9. I further find that except on the ground that the appellant has availed ITC on input services and claimed refund for the same, there is no dispute with regard to the value taken towards turnover of inverted rated supply of goods and services, tax payable on such inverted rated supply of goods and services or adjusted total turnover or on any other grounds having bearing on admissibility of refund. Further as per Circular No.135/05/2020 – GST dated the 31st March, 2020, 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.

10. In view of above, I hold that in terms of Rule 89 (5) of CGST Rules, 2017 read with judgement of Hon'ble Supreme Court, supra, read with CBIC Circular dated 31-3-2020, the appellant is entitled for refund of ITC availed and accumulated on inputs only and not on input services. Accordingly, I pass the following order:

- i. I allow the appeal and set aside the impugned order to the extent it pertains to rejection of refund taking into account ITC availed on inputs;
- ii. I reject the appeal and upheld the impugned order to the extent it pertains to rejection of refund taking into account ITC availed on input services.

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

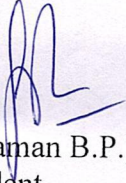
11. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



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

To,

M/s.Rohitkumar Textile Mills LLP,
Saijpur, Gopalpur Road,
Shahwadi, Narol,
Ahmedabd 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 Deputy Commissioner, CGST, Division IV (Narol) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

