



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

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क फाइल संख्या : File No : GAPPL/ADC/GSTP/2359/2021 & GAPPL/ADC/GSTP/2360/2021 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-82/2022-23**

दिनांक Date : **22-07-2022** जारी करने की तारीख Date of Issue : **25-07-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZU2403210218560 DT. 15.03.2021 & ZS2403218660 DT. 15.03.2021** issued by Deputy Commissioner, Division IV, Narol, Ahmedabad South

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

Shri Prakashchandra Jayantibhai Vaghela (HUF) of M/s. Shreeji Polycoat, ShedNo. 6&7, Shree Ram Estate, near Kadmananla Textile Mills, Narol, Ahmedabad 382443

(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 .



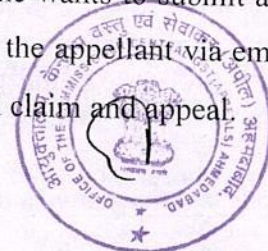
ORDER IN APPEAL

Shri Prakash Jayantibhai Vaghela (HUF) of M/s.Shreeji Polycot, Shed No.6 & 7, Shree Ram Estate, near Kadmanala Textile Mills, Narol, Ahmedabad 382 443 (hereinafter referred to as the appellant) has filed two appeals online on dated 15-5-2021 against Order No.ZU2403210218560 dated 15-3-2021 and Order No.ZS2403210218660 dated 15-3-2021 (hereinafter referred to as the impugned orders) passed by the Deputy Commissioner, CGST 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 24AALHP014282ZQ has filed refund claim for Rs.1,05,292/- and for Rs.49,193/- for refund of ITC accumulated on account of inverted tax structure for the month of August 2019 and September 2019. The appellant was issued show cause notice reference No.ZZ2403210136160 dated 9-3-2021 and No.ZP2403210136004 dated 9-3-2021 for rejection of refund on the reason of mis match of ITC and that ITC of input services and capital goods availed in Annexure B/A. The adjudicating authority vide impugned orders held that refund is inadmissible to the appellant on the ground of mis match of ITC and that ITC of capital goods and input services availed.

3. Being aggrieved the appellant filed the present appeals on the following grounds :
The contention made in the show cause notice is not acceptable. As per Circular NO.125/44/2019 at para No.36 'Guidance of refund of unutilized input tax credit' state that *Such applicant shall also upload the details of all the invoices on the basis of which ITC has been availed during the relevant period for which the refund is being claimed in the format enclosed as Annexure B along with application for refund claim.* On reading of above para it is clear that Annexure B need to include all the invoices on the basis of which ITC has been availed ie Annexure B need to include invoices of input, input services, capital goods and it need to be tallied with GSTR3B of respective period. In particular case refund application has been rejected on the ground that ITC of capital goods and input services availed. GST Law does not deny right to claim refund on turnover of inverted tax structure only due to availing credit of input services and capital goods. Its only that assessee cannot be claim refund of unutilised credit of input service or capital goods. Applicant denied to have contravened any Rule/provision of CGST Act 2017 or CGST Rules, 2017. In view of above submissions the appellant requested to allow the appeal, to set aside the impugned order and grant refund to them.

4. Personal hearing was held on dated 13-7-2022. Shri Jigar J Shah, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he wants to submit additional information for which three working days are granted. Accordingly, the appellant via email dated 14-7-2022 submitted copy of all relevant documents related to refund claim and appeal.

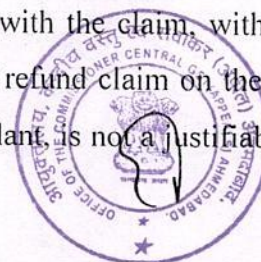


5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that the refund claim was rejected on the ground of mis match of ITC and due to availment of ITC on inputs services and capital goods.

6. Regarding mismatch of ITC, I find that the impugned order is silent with regard to documents in which the ITC amount is not matched. In the show cause notice also the documents in which mis match ITC was noticed was not mentioned. In this case there is no dispute with regard to value taken for turnover of inverted supply of goods, adjusted total turnover and tax payable on inverted supply of goods and dispute is only with regard to Net ITC taken for arriving the admissible refund. As per the documents made available to me, I find that the Net ITC is shown as under :

Claim Period	ITC as per refund application	ITC as per Annexure B	ITC on inputs as per Annexure B	ITC as per GSTR3B	ITC as per Statement 1A
August 2019	247422/-	248274/-	247423/-	248755/-	248290/-
September 2019	159073/-	162159/-/-	159073/-	162241/-	162159/-

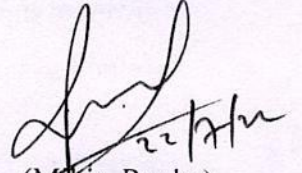
7. The above details shows that there is marginal mis match of ITC in above documents. I find that GST Law allow ITC of tax charged on inputs, input services and capital goods to a registered person for use in furtherance of business and GSTR3B and Annexure B reflect ITC availed on all such goods/services. However, as per Explanation (a) to Rule 89 (5) of CGST Rules, 2017 for the purpose of refund of ITC accumulated due to inverted tax structure, Net ITC is defined to mean ITC availed on inputs ie refund is admissible in respect of ITC availed on inputs only. It is clear from the above details that ITC as per refund applications is matched with ITC availed on inputs as per Annexure B. This show that in their refund application the appellant has claimed refund taking into account ITC availed on inputs only, which I find is in consonance with statutory provisions. In the subject case there is no dispute with regard to admissibility of refund of ITC availed on inputs and the claim was also made taking into account ITC availed on inputs only. As per Rule 92 of CGST Rules, 2017 the proper officer is empowered to sanction refund if found due and admissible to the claimant and reject the claim if found inadmissible. I also note that the appellant was issued deficiency memo multiple times pointing out mismatch in ITC amount and discrepancy in documents filed with claim. The appellant has rectified all the deficiencies and finally filed fresh refund application showing ITC taken on inputs towards Net ITC. Despite the same the entire claim was rejected without recording any findings or reasons for inadmissibility of refund of ITC availed on inputs but on the mere reason of mis match of ITC and availment of ITC on input services and capital goods. Therefore, it appears to me that claim was rejected in an arbitrary manner without properly examining the facts and documents filed with the claim, without applying the relevant statutory provisions. Hence, I find that rejection of refund claim on the reason that ITC on input services and capital goods was availed by the appellant, is not a justifiable and legally sustainable reason for rejecting the claim.



8. In view of above, I hold that impugned orders passed by the adjudicating authority is not legal and proper and deserve to be set aside. Therefore, I allow these appeals with consequential benefit to the appellant. I further order that any claim of refund made in consequence to this Order may be dealt with in accordance with CGST Act and Rules, framed thereunder. Accordingly, I set aside the impugned orders and allow these appeals.

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

9. The appeals filed by the appellant stands disposed of in above terms.

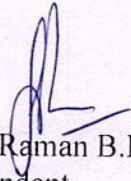


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



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



By RPAD

To,

Shri Prakash Jayantibhai Vaghela (HUF)
of M/s.Shreeji Polycot, Shed No.6 & 7,
Shree Ram Estate, near Kadmanala Textile Mills,
Narol, Ahmedabad 382 443

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

