



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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क फाइल संख्या : File No : GAPPL/ADC/GSTP/2361/2021 & GAPPL/ADC/GSTP/2363/2021 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-83/2022-23**

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. **ZX2403210217560 DT. 15.03.2021 & ZV2403210217837 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 jayantilal Vaghela of M/s. Akshar Chemicals, Ground Floor, Shed No. 4, Shree Ram Estate, Shrinath Estate Part-3, Nr. Kadmawala process, B/H Cargo, Narol- Vatva Road, Ahmedabad, Gujarat, 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

Shri Prakashchandra Jayantilal Vaghela of M/s.Akshar Chemicals, Ground Floor, Shed NO.4, Shree Ram Estate, Near Kadmawala Process, Narol Vatva Road, Ahmedabad 382 405 (hereinafter referred to as the appellant) has filed two appeals on dated 15-5-2021 against Order No.ZX2403210217560 dated 15-3-2021 and Order No.ZV2403210217837 dated 15-3-2021 (hereinafter referred to as the impugned orders) 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 24ADJPV2133K1ZE has filed refund claim for refund of Rs.13,335/- and Rs.63,017/- on account of ITC accumulated due to inverted tax structure for the month of October 2019 and September 2019. The appellant was issued show cause notice reference No.ZZ2403210097604 dated 5-3-2021 and reference No.ZP2403210097559 dated 5-3-2021 for rejection of refund on the reason of 'Other' and due to i) Wrong inverted turnover 2) Inward and outward supplies both at 18% and 3) Latest rent agreement of principal place of business not uploaded. The appellant filed reply to show cause notice in Form GST RFD 09 reference No.ZZ2403210097604 dated 12-3-2021 and reference No.ZP2403210097559 dated 12-3-2021. The adjudicating authority vide impugned order No. ZX2403210217560 held that refund of Rs.13,335/- is inadmissible to the appellant on the ground that compliance to SCN not made and vide Order No.ZV2403210217837 held that refund of Rs.63,107/- is inadmissible on the ground that registered for supplies taxable at 18%. Both inward and outward supplies are at 18%.

3. Being aggrieved the appellant filed the present appeals wherein they interalia contended that the first reason to reject refund application in the show cause notice is not acceptable because the total turnover for the period of October 2019 was Rs.941652/- and for September 2019 was Rs.839372/- which was matched with filed return form GSTR3B. The second reason is not acceptable because inward supply of raw material for manufacturing procured at 18% and after that finished product outward supplies at 12% as per purchase register and sales register and hence the case is fit for refund under Section 54 (3) (ii) of CGST Act, 2017 ie for refund of unutilized tax credit due to inverted tax structure. In respect of third reason the appellant has attached copy of rent agreement and further denied to have contravened any Rule/Provisions of CGS Act, 2017/CGST Rules, 2017. In view of above submissions, the appellant requested to set aside the impugned order and grant refund to them.

4. Personal hearing was held on dated 12-7-2022 for both the appeals. Shri Jigar Jagdishbhai Shah, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he has nothing more to add to their written submission till date.

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 the refund claim for Rs.13,335/-

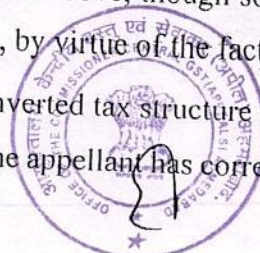


was rejected on the sole reason that reply to SCN not made and refund claim for Rs.63,017/- was rejected on the ground that both the inward and outward supplies attract tax rate of 18%.

6. I have gone through the documents available on record and find that the appellant has filed reply to SCN No.ZZ2403210097604 dated 5-3-2021 issued against claim for Rs.13,335/- in Form GST RFD 09 under reference No.ZZ2403210097604 dated 12-3-2021 ie before issuance of impugned order. Therefore, findings that compliance to show cause notice not made by the appellant is factually wrong. 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 apparent that the adjudicating authority has not even verified as to whether the appellant has filed reply or not but straightway rejected the claim due to non-filing of reply. Therefore, rejection of refund without considering reply filed by the appellant and without recording reasons for rejection, I find is against the provisions of Rule 92 of CGST Rules, 2017. Accordingly, I find that the impugned order passed by the adjudicating authority rejecting refund of Rs.13,335/- is bad in Law and hence not legally sustainable and tenable.

7. I further find that in both the claims the show cause notice was issued on the same grounds. During appeal the appellant filed compliance to each points along with supporting documents. Regarding the first ground of wrong adjusted turnover, on scrutiny of GSTR3B and GSTR1 returns I find that the taxable value of outward supply of goods was Rs. 9,41,652/- for the month of October 2019 and Rs.8,39,371/- for the month of September 2019. In the refund application filed for the month of October 2019 and September 2019 the adjusted total turnover was shown as Rs.9,41,652/- and Rs.8,39,371/- respectively. Similarly copy of sales register also show the above value of supply. Therefore, I find that the adjusted total turnover as per GSTR3B //GSTR1 returns and refund application are same and hence the findings that the adjusted total turnover is wrong is not correct.

8. Regarding the second ground that inward and outward supplies both at 18%, the appellant contended that inward supply of goods was procured at tax rate of 18% and outward supply of goods was made at tax rate of 12% and hence there is inverted duty structure. In this regard I have verified the purchase and sale register submitted by the appellant and find that in respect of claim made for Rs.13,335/- the appellant has procured various inputs on which tax was charged @ 18% and @ 5% and in respect of claim made for Rs.63,017/- all the inputs procured were charged to tax @ 18%. In respect of output supply, most of goods were charged tax @ 12% and the goods viz Toluene and Normal Butanol were supplied charging tax @18%. I have also verified the refund application and find that the value for turnover of inverted supply of goods was taken in respect of goods attracting tax @12% only. In view of above, though some of the input and output supply of goods attracts equal rate of tax @ 18%, by virtue of the fact that since the claim was made considering only the value of goods having inverted tax structure and excluding value of goods attracting equal rate of tax @ 18%, I find that the appellant has correctly filed the refund



claim which is in accordance with statutory provisions. Therefore, I find this reason is also not a justifiable and sustainable reason for rejection of refund.


9. I also refer to CBIC Circular No.135/05/2020 – GST dated 31-3-2020, wherein at Para 3 it was clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same. However, in the subject case except Tolune and Normal Butanol, the inward and outward supply of goods were different and not same and also the claim was made excluding the value of supply of Tolune and Normal Butanol. Further at Para 5 it was also 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.

10. Regarding third reason, the appellant has submitted copy of rent agreement. However, as the present matter involve refund of ITC under Section 54 (3) of CGST Act, 2017, I could not find any relevance of rent agreement for determining admissibility of refund. Further no such document was specified under CBIC Circular No. Circular No. 125/44/2019 – GST dated 18—11-2019 either as a primary document or supporting document for claiming refund in such cases.

11. In view of above, I hold that the impugned orders passed by the adjudicating authority rejecting refund on the grounds mentioned therein is not legal and proper and deserve to be 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 by the appropriate authority in accordance with the provisions of CGST Act 2017 and Rules framed thereunder and in terms of CBIC Circular referred above. Accordingly, I set aside the impugned orders and allow the appeals filed by the appellant.

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

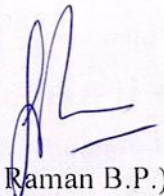
12. The appeals filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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



To,

Shri Prakashchandra Jayantilal Vaghela
of M/s.Akshar Chemicals,
Ground Floor, Shed NO.4, Shree Ram Estate,
Near Kadmawala Process,
Narol Vatva Road,
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 Deputy Commissioner, CGST, Division IV (Narol) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

