



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/813/2022 -APPEAL / 3164 - 69

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-85/2022-23

दिनांक Date : 24-08-2022 जारी करने की तारीख Date of Issue : 24-08-2022

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

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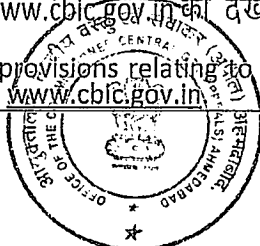
Arising out of Order-in-Original No. ZS2401210248902 DT. 28.01.2021 issued by Assistant Commissioner, Division I, Rakhial, Ahmedabad South

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

M/s. La Gajjar Machineries Private Limited, Plot No. 143, LGM House, Sukhrampura, Sukhramnagar, Ahmedabad-380021

(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 .



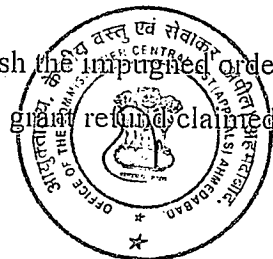
ORDER IN APPEAL

M/s.La Gajjar Machineries Private Limited, Plot No.143, LGM House, Sukhrampura, Sukhramnagar, Ahmedabad 380 021 (hereinafter referred to as the appellant) has filed the present appeal on dated 28-4-2021 against Order No.ZS2401210248902 dated 28-1-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN No.24AAACL3246N1ZG has filed refund claim for refund of Rs.55,90,498/- on account of ITC accumulated due to inverted tax structure under Section 54 (3) of CGST Act, 2017. The appellant was issued show cause notice dated 28-12-2020 for rejection of refund on the ground that *ITC of input services claimed-inadmissible-Notification 26/18-CT dated 13-6-2018 ITC of prior period claimed in ST1A availed during relevant period or otherwise? Not.No.49/19-CT dated 9-10-2019 is complied or otherwise?* The appellant filed reply to SCN in Form RFD 09 reference Number ZV2412200287891 dated 5-1-2021. The adjudicating authority vide impugned order sanctioned of Rs.14,96,821/- and rejected refund of Rs.40,93,677/- on the ground that the claimant contention not admissible and refund amount arrived after excluding ITC on input services is sanctioned.

3. Being aggrieved the appellant filed the present appeal wherein they interalia contended that

- i. Section 54 does not create a distinction between zero rated supplies and inverted tax structure for the purpose of refund of unutilized ITC. The amended Rule 89 (5) restricting refund of unutilized ITC on account of inverted tax structure only to the extent of such accumulation on account of inputs results in perpetual retention/appropriation of unutilized ITC on services which is contrary to the intention of the legislature as evidenced by the object and scheme of the Act. The appellant relied upon decision of Hon'ble High Court of Gujarat in the case of M/s.VKC Footsteps India Pvt Ltd Vs UOI in SCA No.2792 of 2019.
- ii. The adjudicating authority has not considered the submissions made by them in its right spirit of the fact wherein specific emphasis was made on the sanction of entire refund amount including services. The aforementioned request was done as the appeal was already preferred before Hon'ble Commissioner Appeals, CGST, Ahmedabad on the same matter to the extent of input services for the earlier months and the order of the same is awaited. They had not agreed to the sanction of refund of only Rs.14,96,821/- which is clearly evident from the personal hearing records.
- iii. In view of above grounds the appellant requested to set aside/quash the impugned order to the extent of rejection of refund amount of Rs.40,93,677/- and to grant refund claimed by them along with interest.



4. The appeal was transferred to Call Book on dated 21-6-2021 in terms of CBIC Circular No.162/73/1995-CX 3 dated 14-12-1995 on the ground that the issue of admissibility of refund of ITC availed on input services in refund claim filed for ITC accumulated due to inverted tax structure was challenged by the Department before Hon'ble Supreme Court against Order dated 24-7-2020 Hon'ble High Court of Gujarat in the case of M/s.VKC Footsteps India Pvt.Ltd Vs UOI allowing refund of ITC on input services. Hon'ble Supreme Court vide Order dated 13-9-2021 decided the Department's appeal and in pursuance to said Order, the present appeal was retrieved from call book on dated 12-10-2021.

5. Personal hearing was held on dated 13-7-2022. Shri Jaykishan Vidhwani authorized representative appeared on behalf of the appeal on virtual mode. He stated that he wants to submit addition submission for which seven working days are granted. Accordingly, the appellant vide letter dated 2-8-2022 filed additional submission as under:

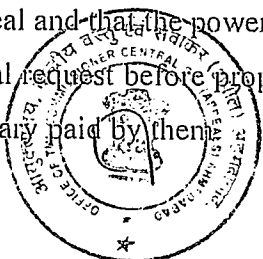
- i. They had claimed refund on account of ITC accumulated due to inverted tax structure on inputs and input services. Refund on account of ITC accumulated due to inverted tax structure on inputs comes to Rs. – 14,96,821/- ie 0. The adjudicating authority has sanctioned refund of Rs.14,96,821/- vide impugned order and sanctioned amount is also credited in their bank account.
- ii. At the time of filing subject appeal, they were eligible for entire refund of Rs.55,90,498/- relying upon judgment of Hon'ble High Court of Gujarat in the case of M/s.VKC Footsteps India Pvt.Ltd Vs UOI. However, the aforementioned judgment is reversed by Hon'ble Supreme Court on 13-9-2021 and it is held that refund of ITC on input services is not allowed in case of refund of inverted duty structure. They had voluntarily reversed the amount of refund received by them along with interest of Rs.3,60,221/- vide DRC 03 ARN No. AD240622002718B dated 7-6-2022 for Rs.14,58,951/- and vide DRC 03 ARN No.AD240722009180N dated 25-7-2022 for Rs.2,35,271/-. That they are eligible for re-credit of entire amount of Rs.55,90,498/- debited at the time of filing of refund application, which is also notified vide Notification No.14/2022-CT dated 5-7-2022 wherein new Rule 86 (4B) has been inserted.

6. 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 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 and capital goods for the relevant period. As per explanation given under Rule 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 an SCA filed by M/s.VKC Footsteps India Pvt.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. Thus, as per judgement 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, appeal 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 and capital goods is not admissible to the appellant. Accordingly I do not find any infirmity in the impugned order rejecting refund of Rs.40,93,677/- which pertains to ITC on input services and capital goods..

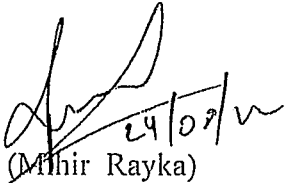
7. The appellant in their additional submission further contended that refund on account of ITC accumulated on inputs determined as per formula prescribed under Rule 89 (5) comes to (-) 1496821/-, whereas the adjudicating authority has sanctioned and paid refund of Rs.14,96,821/- to them. Therefore, they had voluntarily paid the refund of Rs.1496821/- wrongly sanctioned to them along with interest of Rs.3,60,221/- vide Form DRC-03 ARN No.AD240622002716F dated 7-6-2022 and ARN AD2407220091788 dated 25-7-2022 and requested to allow recredit of entire claim amount of Rs.55,90,498/- in terms of Rule 86 (4B) of CGST Rules, 2017. I find that vide Notification No.14/2022-CT dated 5-7-2022 Rule 86 (4B) was inserted under CGST Rules, 2017 wherein it was provided that *Where a registered person deposits the amount of erroneous refund sanctioned to him, – (a) under sub-section (3) of section 54 of the Act, or (b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96, along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.* Further vide Circular No. 174/06/2022-GST dated 6-7-2022 CBIC has prescribed the manner of re-credit in electronic credit ledger using FORM GST PMT-03A in such instances. In the light of above statutory provision and Circular the appellant requested to allow re-credit of entire refund amount of Rs.55,90,498/-. However, since the subject appeal was filed only against rejection of refund of Rs.40,93,677/- and re-credit of rejected amount is not subject matter of this appeal and that the power to allow recredit rest with 'proper officer', I direct the appellant to file formal request before proper officer for allowing re-credit of rejected refund amount and refund voluntarily paid by them.



8. In view of above, I find that the impugned order passed by the adjudicating authority rejecting refund of Rs.40,93,677/- which pertains to ITC availed on input services and capital goods is in accordance with statutory provisions and legally sustainable. Therefore, I do not find any infirmity in the impugned order passed by the adjudicating authority. Accordingly, I upheld the impugned order to above extent and reject the appeal filed by the appellant.

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

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


24/07/21

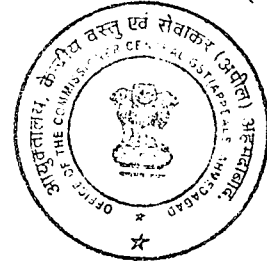
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :
Attested



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



By RPAD
To,

M/s.La Gajjar Machineries Pvt.ltd.,
Plot NO.143, LGM House, Sukhrampura,
Sukhramnagar,
Ahmedabad 380 021

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

