



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/2960/2022 -APPEAL

11005 - 1010

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-10/2023-24**

दिनांक Date : **28-04-2023** जारी करने की तारीख Date of Issue : **02-05-2023**

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. **ZT2407220049787 DT. 05.07.2022**, issued by The Assistant Commissioner, CGST, Division-VIII, Ahmedabad South

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

**M/s. Kewalram Textiles Private Limited, Anand Nagar Road, Eight Floor 803,**

**Shop Atlantis, Near Reliance Pump Prahalad Nagar Road, Satellite, Ahmedabad-380015**

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .

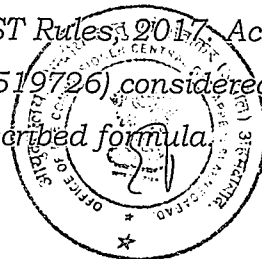


**ORDER-IN-APPEAL**

**M/s. Kewalram Textiles Private Limited**, Anand Nagar Road, Eight Floor 803 Shop Atlantis, Near Reliance Petrol Pump Prahalad Nagar Road, Satellite, Ahmedabad – 380 015 (hereinafter referred as '**Appellant**') has filed the appeal against the Order (in Form RFD-06) bearing No. ZT2407220049787 dated 05.07.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division-VIII, Ahmedabad South (hereinafter referred as '**adjudicating authority**').

**2(i).** Briefly stated the facts of the case is that the '**Appellant**' holding GST Registration - GSTIN No.24AACCK7917K1ZB had filed the refund application under category "*Export of Goods/Services without payment of Tax (Accumulated ITC)*" under ARN No. AA240622035281P dated 09.06.2022 for Rs.4,35,09,213/- for the period of February 2022. The '**Adjudicating Authority**' vide '**Impugned Order**' sanctioned the refund of Rs.3,77,51,776/- to the **Appellant** and rejected the refund claim of Rs.57,57,437/-. The reason for rejecting refund claim as mentioned in the **impugned order** are as under :

- *Claimant has not considered the value of zero rated turnover as per para 47 of Circular No. 125/44/2019-GST dated 18.11.19. On verifying the details on Icegate Portal and from Shipping Bills uploaded by the claimant, the lower of the two values i.e. Invoice Value and FOB Value of corresponding shipping bills is comes to Rs.62,95,31,307/-. Accordingly, said value considered as Zero rated turnover for calculate the admissible amount of refund.*
- *Claimant has taken value of Adjusted Turnover as Rs.67,47,34,707/-, however, as per GSTR 3B of February'22 it is Rs.72,89,20,894/-, accordingly, considered Rs.72,89,20,894/- as Adjusted Turnover to calculate the admissible amount of refund.*
- *Claimant has shown exempted supply/nil rated supply of Rs.10,87,19,963/- in GSTR 3B of February'22. However, not reversed the proportionate ITC of Rs.65,19,726/- commonly used for taxable as well as exempted/nil rated supply in terms of Section 17(2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017. Accordingly, Net ITC of Rs.4,37,11,978/- (50231704 – 6519726) considered for calculate the admissible amount of refund in prescribed formula.*

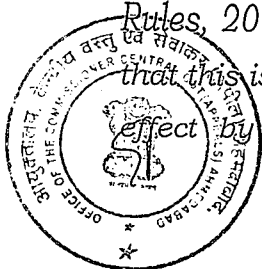


- In view of above, admissible refund amount calculated as under :

$$\begin{aligned} \text{Refund admissible as per formula} &= \frac{\text{Turnover of Zero Rated} * \text{Net ITC}}{\text{Total Adjusted Turnover}} \\ &= \frac{62,95,31,307 * 4,37,11,978}{72,89,20,894} \\ &= \text{Rs.3,77,51,776/-} \end{aligned}$$

**2(ii).** Being aggrieved with the impugned order dated 05.07.2022 the 'Appellant' has filed the present appeal online on dated 04.10.2022 on the following grounds :

- They have shown exempted supply/nil rated supply amounting to Rs.10,87,19,963/- in GSTR 3B of February'22 is relating to Supply of Duty Credit Scrips. This issue is settled by GST Council by recommending an insertion of clause in Explanation 1 of Rule 43 of CGST Rules and accordingly they are not liable to reverse proportionate credit of Rs.65,19,726/-.
- Learned Adjudicating Authority has mentioned in para 18.2 that based on recommendations of 47<sup>th</sup> Meeting of the GST Council, Chandigarh held on 28<sup>th</sup> and 29<sup>th</sup> June 2022 no relevant Circulars/Notifications/Law amendments has been issued. Further, the claimant has not provided any supporting documents in respect of Supply of Duty Credit Scrips. Therefore, benefit of non-reversal of ITC cannot be given at this stage until the Board Circular/Notification is issued.
- Attention is invited that based on recommendation of GST Council, CBIC has issued Notification No. 14/2022-Central Tax dated 05.07.22, and inserted clause (d) in Explanation 1 to Rule 43 which says that the value of supply of Duty Credit Scrips shall be excluded from the aggregate value of exempt supplies. Hence, for the supply of Duty Credit Scrips reversal of Input Tax Credit under Rule 42 & 43 not required.
- Rejecting partial refund amount considering all purchase of goods as a common inputs despite the fact that goods which are purchased are exported entirely and hence such goods are exclusively used for taxable/zero rated supply and no reversal of it required.
- Rejecting partial refund claim of Rs.57,57,437/- on the ground that appellant is required to reverse proportionate input tax credit as per Section 17(2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017 in relation to supply of Duty Credit Scrips despite the fact that this issue is very well settled in 47<sup>th</sup> GST Council Meeting and given effect by way of issuing Notification No. 14/2022-Central Tax on



05.07.22 by inserting clause (d) in Explanation 1 of Rule 43 of the CGST/SGST Rules, 2017.

- *Rejecting partial refund claim on the grounds that appellant has not provided any supporting documents in respect of Duty Credit Scrips, which can be easily cross checked by learned adjudicating authority by visiting ICEGATE website wherein details of scrips available.*
- *As per Rule 42 of CGST/SGST Rules, 2017 proportionate credit reversal is required to be done of common credit amount which is  $C2=C1-T4$ , while learned adjudicating authority asks for proportionate credit reversal on the entire net ITC amount.*

In view of above, the *appellant* has made prayer as under :

- *Impugned Order be quashed and set aside on the above stated grounds.*
- *To grant remaining refund amount along with applicable interest.*

**3.** Personal Hearing in the matter was held on 20.12.2022 wherein Mr. Punit Prajapati, C.A. & Mr. Keyur Kamdar, C.A. Were appeared on behalf of the '*Appellant*' as authorized representatives. During PH they have stated that they have nothing more to add to their written submissions till date.

#### **Discussion and Findings :**

**4(i).** 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 *Appellant* had filed a refund claim of Rs.4,35,09,213/- for the month of February'22 on account of accumulated ITC due to export without payment of tax. The *Adjudicating Authority* has sanctioned the refund of Rs.3,77,51,776/- and rejected the refund claim of Rs.57,57,437/-. I find that the refund of Rs.57,57,437/- is mainly rejected for the reasons that *(i) declared zero rated turnover was not according to para 47 of Circular No. 125/44/2019-GST dated 18.11.19, (ii) declared Adjusted Turnover was not as per GSTR 3B of February'22 and (iii) There was exempted supply as per GSTR 3B of February'22, however proportionate ITC not reversed in terms of Section 17(2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017.*

**4(ii).** The Section 17(2) of the CGST Act, 2017 is reproduced as under :

***Section 17. Apportionment of credit and blocked credits.-***



(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

The *appellant* in the present appeal proceedings mainly contended that the exempted supply/nil rated supply of Rs.10,87,19,963/- shown in GSTR 3B of February'22 is relating to Supply of Duty Credit Scrips. The *appellant* has further contended that on the subject matter the CBIC has issued Notification No. 14/2022-Central Tax dated 05.07.22, and inserted clause (d) in Explanation 1 to Rule 43 which says that the value of supply of Duty Credit Scrips shall be excluded from the aggregate value of exempt supplies. The relevant provisions of Rule 43 is reproduced as under :

[ **Explanation 1**]:-For the purposes of Rule 42 and this rule, it is hereby clarified that the **aggregate value of exempt supplies shall exclude**: -

(a) [\*\*\*\*]

(b) the value of services .....

(c) the value of supply of services .....

(d) the **value of supply of Duty Credit Scrips** specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13<sup>th</sup> October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13<sup>th</sup> October, 2017.]

Accordingly, the *appellant* has contended that for the supply of Duty Credit Scrips, proportionate Input Tax Credit is not require to be reversed by them under Rule 42 & 43 of the CGST Rules, 2017.

4(iii). Further, the *appellant* has explicitly contended that regarding non reversal of proportionate ITC on account of exempted/nil rated supplies, the *Adjudicating authority* has given findings that no Circular/Notifications/Law amendments has been issued in connection with recommendations of 47<sup>th</sup> Meeting of the GST Council. Further, the



*appellant* has also disputed about the finding of *adjudicating authority* that “*the claimant has not provided any supporting documents in respect of Supply of Duty Credit Scrips. Therefore, in the present case, benefit of non-reversal of ITC cannot be given at this stage until the Board Circular/Notification is issued.*” The *appellant* has contended that the CBIC has issued the Notification No. 14/2022-Central Tax dated 05.07.22 vide which inserted the clause (d) in Explanation 1 to Rule 43 and accordingly, they are not liable to reverse the proportionate Input Tax Credit in connection with exempted/nil rated supply mentioned in GSTR 3B related to Duty Credit Scrips. The *appellant* has also produced the details of Duty Credit Scrips and copies of Bill of Supply in the present appeal proceedings.

5. In view of above, I find that in the present appeal proceedings the *appellant* is not disputing about the rejection of refund claim on the grounds of Zero rated turnover not found as per Circular 125/44/2019-GST and the Adjusted Turnover not found as per relevant GSTR 3B. However, I find that the *appellant* is mainly disputing about the rejection of refund claim on the grounds of non reversal of proportionate ITC in terms of Section 17(2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017. The *appellant* has contended that the exempted supplies mentioned in the relevant GSTR 3B is relating to supply of Duty Credit Scrips and the CBIC has issued the Notification No. 14/2022-Central Tax dated 05.07.22 vide which inserted the clause (d) in Explanation 1 to Rule 43 and accordingly, they are not liable to reverse the proportionate Input Tax Credit in connection with exempted/nil rated supply mentioned in GSTR 3B related to Duty Credit Scrips.

6. However, I find that while rejecting the refund claim on said grounds the *adjudicating authority* has held that “*claimant has not provided any supporting documents in respect of Supply of Duty Credit Scrips. Therefore, benefit of non-reversal of ITC cannot be given at this stage until the Board Circular/Notification is issued.*” Now, since the CBIC has issued the Notification as discussed in foregoing paras and the *appellant* is also in a position to produce the details of Duty Credit Scrips and copies of relevant bill of supply it is not proper to reject refund on such ground. In fact, in view of the considerate view that the substantial benefit of refund claim should not be rejected on the basis of incomplete documents.

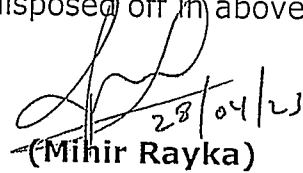


before rejecting the refund claim, proper opportunity should have been provided to the claimant to justify their claim with documentary evidence. Therefore, in view of above, I find that the *impugned order* is not legal and proper. Needless to say, since the claim was rejected on the ground of non production of required documents and in absence of relevant Circular/Notification, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequence to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with the provisions of the CGST Act, 2017 and rules made thereunder.

7. In view of above discussions, I hereby set aside the '*impugned order*' to the extent of refund rejected on account of non production of required documents related to reversal of proportionate ITC in terms of Section 17(2) of the CGST Act, 2017 read with Rule 42 of the CGST Rules, 2017 and allowed the appeal of the *Appellant* to that extent only.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

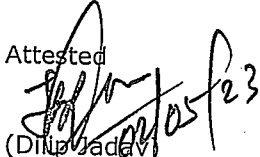
The Appeal filed by '*Appellant*' stand disposed off in above terms.

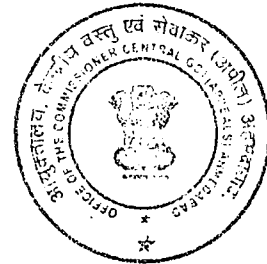
  
28/04/23  
(Mihir Rayka)

**Additional Commissioner (Appeals)**

Date: 28.04.2023

Attested

  
(Dipu Badani)  
Superintendent (Appeals)  
Central Tax, Ahmedabad.



By R.P.A.D.

To,

M/s. Kewalram Textiles Private Limited,  
Anand Nagar Road, Eight Floor 803 Shop Atlantis,  
Near Reliance Petrol Pump Prahalad Nagar Road,  
Satellite, Ahmedabad - 380 015

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Dy/Asstt. Commissioner, CGST, Division-VIII, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

