



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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DIN- 20231064SW0000494293

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTD/142/2023 -APPEAL / 7646-51
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-137/2023-24**
दिनांक Date : **25.10.2023** जारी करने की तारीख Date of Issue : **27.10.2023**
- श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित
- Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **ZM2409220198789 DT.15.09.2022** issued by The Assistant Commissioner, CGST, Division-V, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant	Respondent
The Assistant Commissioner of CGST, Division-V, Ahmedabad South	M/s. Thakore Exports, 72-73, GIDC Industrial Estate, Odhav GIDC, Odhav, Ahmdebad-382415 (GSTIN24AAGFT2266H1Z7)

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 information relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in



ORDER IN APPEAL**Brief Facts of the Case :**

The Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the appellant/department) has filed the following appeal offline in terms of Advisory No.9/2020 dated 24.09.2020 issued by the Additional Director General (Systems), Bengaluru against following Order (hereinafter referred to as the "Impugned Order") passed by the Assistant Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the "Adjudicating Authority") sanctioning refund to M/s. Thakore Exports, 72-73, GIDC Industrial Estate, Odhav GIDC, Odhav, Ahmedabad - 382415 (hereinafter referred to as the Respondent).

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date ('Impugned Orders')
GAPPL/ADC/GSTD/142/2023 Dt. 14.03.23	72/2022-23 Dated 19.03.2023	ZM2409220198789 Dated 15.09.2022

2. Briefly stated the fact of the case is that the respondent registered under GSTIN No. 24AAGF2266H1Z7 has filed the following refund claim on account of refund by supplier of deemed export for the month of April 2022 to June 2022 for supply to EPCG authorization:

ARN No. / Date	Period of Refund Claim	Refund Claim Amount
AA240922000517J 01.09.2022	April 2022 to June 2022	Rs.22,50,000/-

After verification the Adjudicating Authority has sanctioned the refund to the respondent. During review of refund claims it was observed by the department that Adjudicating Authority has erroneously sanctioned refund of Rs. 22,50,000/- to the Respondent, what is actually admissible to them in accordance with Section 54 (3) of CGST Act, 2017. However, on going through the refund claim, it is noticed that the respondent had not submitted sufficient documents required for claiming refund as per Notification No. 49/2017-CGST dated 18.10.2017, further it is noticed that all four invoices related to deemed export are showing in the relevant month's GSTR2A, and the recipient M/s. Deepshikha Exim Pvt Ltd has availed ITC in the GSTR 3B more than GSTR 2A for the month of June 2022.

Thus the Adjudicating Authority has erroneously sanctioned refund to the Respondent which is required to be recovered along with interest and penalty.

3(i). In view of above, the appellant/department filed the present appeal on the following grounds:

- that the claimant has not followed the Notification 49/2017-CGST dated 18.10.2017;

- the Adjudicating Authority has erroneously sanctioned refund of Rs. 22,50,000/- to the respondent without considering the fact that the respondent has not furnished any declaration to the effect that the recipient is not availing ITC for the supplies received under deemed export and recipient shall not claim the refund in respect of such supplies and the respondent may claim the refund and also the respondent has not submitted the acknowledgment of the jurisdictional Tax officer.
- that all four invoices related to deemed export are showing in the relevant month's GSTR 2A, and the recipient has availed ITC in the GSTR 3B more than GSTR 2A for the month of June 2022. The details are as under:

Period	ITC available in GSTR 2A (CGST+SGST)	ITC available in GSTR 3B (CGST+SGST)	Difference
June-2022	Rs. 24791316 (12395658+12395658)	Rs. 26756136 (13378068+13378068)	Excess Rs. 1964820/availed in GSTR 3B as compared to GSTR 2A

3(ii). Accordingly, the Appellant/Department has made prayer in the present appeals as under:-

(i) To set aside the Order No. ZM2409220198789 dated 15.09.2022 (RFD 06) Passed by the Assistant Commissioner, Central GST, Division -V, Ahmedabad South in the case of M/s. Thakore Exports, wherein he has erroneously sanctioned Rs. 22,50,000/- under section 54(3) of the CGST Act, 2017;

(ii) to pass an order directing the said original authority to recover and appropriate the amount erroneously refunded of Rs. 22,50,000/- with the interest and penalty;

(iii) to pass any other order(s) as deemed fit in the interest of justice.

4. The respondent has submitted the Cross-Objection on 27.07.2023 in respect of Appeal No. GAPPL/ADC/GSTD/142/2023 dated 14.03.2023. The respondent has submitted that -

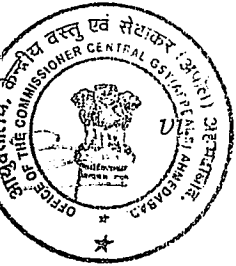
- i. that they have claimed and received refund of Rs. 22,50,000/- as a supplier to sales of deemed exports to EPCG license holder recipient M/s. Deepshikha Exim Pvt. Ltd.
- ii. they have submitted all necessary documents online and also submitted hardcopy to department including indemnity bond which received from recipient M/s. Deepshikha Exim Pvt. Ltd.
- iii. Their recipient i.e. M/s. Deepshikha Exim Pvt. Ltd. has submitted declaration that they have received the goods supplied under invoice No and dated as below. Their recipient further submitted that they have not availed input tax credit involving CGST Rs. 11,25,000/- and SGST Rs. 11,25,000/- and also



- iii. Their recipient i.e. M/s. Deepshikha Exim Pvt. Ltd. has submitted declaration that they have received the goods supplied under invoice No and dated as below. Their recipient further submitted that they have not availed input tax credit involving CGST Rs. 11,25,000/- and SGST Rs. 11,25,000/- and also they have not filed refund claim against the said 04 tax invoice. The details of 04 tax invoices are as under:

Sr. No.	Invoice No.	Invoice date	Invoice Value (Rs.)	Rate	Taxable Value	CGST	SGST
1	23	01.06.2022	3776000	18.00	3200000	288000	288000
2	24	02.06.2022	4130000	18.00	3500000	315000	315000
3	25	04.06.2022	4720000	18.00	4000000	360000	360000
4	27	09.06.2022	2124000	18.00	1800000	162000	162000
Total			1,47,50,000		1,25,00,000	11,25,000	11,25,000

- iv. Their recipient i.e. M/s. Deepshikha Exim Pvt. Ltd. has submitted screenshot of GSTR 3B Vs GSTR 2B which explained that they have not taken ITC of said 04 tax invoice.
- v. As per the comparison of GSTR 3B Vs GSTR 2B for the financial year, recipient i.e. M/s. Deepshikha Exim Pvt. Ltd. has excess ITC available in GSTR 2B, which they have not claimed.



That they have got payment without of tax by recipient M/s. Deepshikha Exim Pvt. Ltd. and total of CGST of Rs. 11,25,000/- and SGST of Rs. 11,25,000/- has been claimed as refund;

- vii. that while issuing show cause notice department has failed to consider effect of credit note and debit note issued in the month of June 2022. Hence, actual ITC as per GSTR 2A is as under:

ITC as per B2B invoice	2,47,91,316
Add: ITC of debit note issued by supplier	4968087
Less: ITC of credit note issued by supplier	(305222)
Net ITC as per GSTR 2A	2,94,54,181

Comparison of ITC after considering effect of debit and Credit note is as under:

ITC as per GSTR 2A	ITC as per GSTR 3B	Excess ITC not claimed
2,94,54,181	2,67,56,137	26,98,044

- viii. *Excess ITC of Rs. 26,98,044/- not claimed by M/s. Deepshikha Exim Pvt Ltd in the month of June 2022, that includes ITC shown in GSTR 2A of bills of M/s. Thakore Export of Rs. 22,50,000/-*
- ix. *They have provided ITC register of M/s. Deepshikha Exim Pvt Ltd for the financial year 2022-23 to prove that in the following months also M/s. Deepshikha Exim Pvt Ltd have not claimed ITC pertain to bills of Thakore Export.*

In view of above, the Respondent has submitted that the refund claimed by them is duly in compliance of provisions of GST mentioned in foregoing paras. Therefore, the appeals filed by appellant/department may be set aside.

Personal Hearing:

5. Personal Hearing in the matter was held on 27.07.2023 wherein Mr. Shaival R. Dalal, Employee appeared on behalf of the 'respondent' as authorized representative. During PH he has stated that M/s. Deepshikha Exim Pvt. Ltd., their purchaser have not availed ITC, although it is reflected in GSTR 2A. It is further submitted that whenever we issue invoice and file GSTR-1, it will be reflected in GSTR 2A. But their purchaser have not availed the credit which is clear from GSTR2B evidencing that same has not been availed. A fresh declaration is also submitted alongwith their reply during P.H., which may be verified from portal. In view of above they submitted to reject the departmental appeal.

Discussion and Findings :

6. I have carefully gone through the facts of the case, grounds of appeal and also gone through the submissions made by the respondent and documents available on record. I observed that the present appeal is filed to set aside the impugned order on the ground that the Adjudicating Authority has erroneously sanctioned refund of Rs. 22,50,000/- to the respondent and to order recovery of the same along with interest and penalty. The grounds in appeal is that the respondent has not followed the Notification 49/2017-CGST dated 18.10.2017 and adjudicating authority has erroneously sanctioned refund of Rs. 22,50,000/- to the respondent without considering the fact that the respondent has not furnished any declaration to the effect that the recipient is not availing ITC for the supplies received under deemed export and recipient shall not claim the refund in respect of such supplies and the respondent may claim the refund. Also the respondent has not submitted the acknowledgment of the jurisdictional Tax officer. Further, all four invoices related to deemed export are showing in the relevant month's GSTR-2A, and the recipient (M/s. Deepshikha Exim Pvt. Ltd.) has availed ITC in the GSTR 3B more than GSTR 2A for the month of June 2022.

7. In view of above facts, I refer to provisions of CGST Act, 2017 relating to subject case which is as under:

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1) Any person, except the persons covered under notification issued under section 55 claiming refund of 13[any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or] any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or 10[subject to the provisions of rule 10B,] an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

[Provided further that] in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund]

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

Notification No.49/2017-Central Tax, dated 18.10.2021

As per Notification 49/2017-CGST dated 18.10.2017 following evidences are required to be produced by supplier of deemed export supplies for claiming refund:

- (i) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
- (ii) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
- (iii) An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

Circular No. 125/44/2019 - GST dated 18/11/2019

As per Para 41 of Circular No. 125/44/2019 - GST dated 18/11/2019 Guidelines for refund of tax paid on deemed exports:

41. *Certain supplies of goods have been notified as deemed exports vide notification No.48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 58 for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from OTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / software Technology Park (STP) Unit/ Bio-Technology Parks (BTP) Unit under deemed export laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.*

While going through the provisions of CGST Act, 2017 relating to subject case which is as mentioned above, I find that CBIC has clearly clarify that in case of claim made for refund of on account of refund by supplier of deemed export certain documents/ evidence are required that is to be produced by respondent of deemed export supplies for claiming refund.

8(i). In this connection I observed that the respondent have claimed that they have submitted all necessary documents online and also submitted hardcopy to department including indemnity bond which received from recipient M/s. Deepshikha Exim Pvt. Ltd. Further while filing GST APL-01 and during the course of personal hearing the respondent has submitted declaration issued by their recipient i.e. M/s. Deepshikha Exim Pvt. Ltd. stating that they have received the goods supplied under said invoices. They further submitted that they have not availed input tax credit involving CGST Rs. 11,25,000/- and SGST Rs. 11,25,000/- and also they have not filed refund claim against the said 04 tax invoice. As per bank statement of the respondent they have only received

taxable value of said 04 invoices from their recipient i.e. M/s. Deepshikha Exim Pvt. Ltd. Further they have also submitted copy of the tax invoices under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.

8(ii). On perusal of screenshot of GSTR 3B Vs GSTR 2B provided by the recipient i.e. M/s. Deepshikha Exim Pvt. Ltd., it is observed that in the month of June 2022, M/s. Deepshikha Exim Pvt. Ltd. have total ITC balance in available in GSTR 2B is Rs. 2,97,66,579/- and total ITC availed in GSTR 3B is Rs. 2,67,56,137/-. Further the appellant stated that while issuing show cause notice department has failed to consider effect of credit note and debit note issued in the month of June 2022. Hence, actual ITC as per GSTR 2A is as under:

ITC as per B2B invoice	2,47,91,316
Add: ITC of debit note issued by supplier	4968087
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Net ITC as per GSTR 2A	2,94,54,181

Comparison of ITC after considering effect of Debit note and Credit note is as under:

ITC as per GSTR 2A	ITC as per GSTR 3B	Excess ITC not claimed
2,94,54,181	2,67,56,137	26,98,044

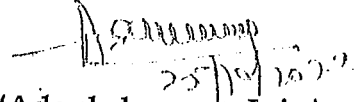
So I observed that in the month of June 2022, M/s. Deepshikha Exim Pvt. Ltd. has excess ITC balance of Rs. 26,98,044/- in GSTR 2A as compared to GSTR 3B.

9. They further stated that they have not taken refund of said 04 invoices received from M/s. Thakore Exports. Further I observed that during personal hearing authorized representative has stated that M/s. Deepshikha Exim Pvt. Ltd., their purchaser, have not availed ITC, although it is reflected in GSTR 2A. They further submitted that whenever they issue invoice and file GSTR-1, it will reflected in GSTR 2A. But their purchaser have not availed the credit which is clear from GSTR 2B, evidencing that same has not been availed. In this regard the respondent has also submitted ITC register of M/s. Deepshikha Exim Pvt. Ltd.

10. In view of above, I allow the appeal filed by the "Appellant/Department", with direction to respondent to submit the documents before the Refund Sanctioning Authority who shall verify the documents submitted by the

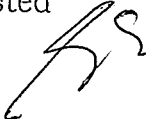
respondent in the light of Circular No. 14/14/2017 dated 06.11.2017 and pass the order accordingly and recover the erroneous amount of refund, paid if any.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stands disposed of in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: 23.10.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)



Appellant

By R.P.A.D.
To,
The Assistant / Deputy Commissioner,
CGST, Division - V, Ahmedabad South.

Respondent

M/s. Thakore Exports, 72-73,
GIDC Industrial Estate,
Odhav GIDC, Odhav,
Ahmedabad - 382415

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/Assistant Commissioner, CGST, Division-V, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. P.A. File
7. Guard File



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