



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- 20230564SW0000023971

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTD/401 & 402/2022 -APPEAL / 1582-92

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-18 to 19/2023-24**
दिनांक Date : **16-05-2023** जारी करने की तारीख Date of Issue : **17-05-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZR2405220352541 DT. 25.05.2022 & ZR2405220385730 DT. 27.05.2022** issued by The Assistant Commissioner, CGST, Division-IV, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-IV, Ahmedabad South	M/s. Kohinoor Creations Private Limited, Survey No. 338, Opp. Star Daying Factory, Near Chhipa Kuva, Danilimda, Ahmedabad-380028

(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.
	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

The Assistant Commissioner, CGST, Division IV, Ahmedabad South (hereinafter referred to as the 'Appellant/Department') has filed the following appeals offline in terms of Advisory No.9/2020 dated 24-9-2020 issued by the Additional Director General (Systems), Bengaluru against following Orders (hereinafter referred to as the *Impugned Orders*) passed by the Assistant Commissioner, CGST, Division IV, Ahmedabad South (hereinafter referred to as the *Adjudicating Authority*) sanctioning refunds to **M/s. Kohinoor Creations Pvt. Ltd.**, Survey No. 338, Opp. Star Daying Factory, Near Chhipa Kuva, Danilimda, Ahmedabad - 380 028 (hereinafter referred to as the 'Respondent').

Appeal No. & Date	Review Order No. & Date	RFD-06 Order No. & Date (<i>'impugned orders'</i>)
GAPPL/ADC/GSTD/402/2022- APPEAL Dated 22.11.2022	48/2022-23 Dated 16.11.2022	ZR2405220352541 Dated 25.05.2022
GAPPL/ADC/GSTD/401/2022- APPEAL Dated 22.11.2022	49/2022-23 Dated 21.11.2022	ZP2405220385730 Dated 27.05.2022

2. Briefly stated the fact of the case is that the Respondent registered under GSTN No.24AAECK5057G1ZN has filed following refund claims for refund of ITC accumulated due to Inverted Tax Structure.

Sr. No.	Period	Amount of Refund claims
1	May 2021	Rs.10,45,063/-
2	November 2020 to January 2021	Rs.20,99,743/-

After verification, the *Adjudicating Authority* found claims in order and accordingly has sanctioned refunds to the *Respondent*. However, during review of said refund claims it was observed by the department/appellant that -

- *There is no inverted tax structure in the refund claims filed by the claimant in accordance with the Rule 89(5) of the CGST Rules, 2017 read with Section 54(3) of the CGST Act, 2017.*
- ***In respect of refund claim of May'21*** it was noticed that as per Statement 1A [rule 89(2)(h)] filed by claimant, both inward supplies and outward supplies made by the claimant attract the same rate of tax i.e. 5% duty rate only.
- ***In respect of refund claim of Nov'20 to Jan'21*** it was noticed that claimant has included credit of input services in the inward supplies. Further, as per Statement 1A [rule 89(2)(h)] attached with refund claim, there were details of 6205 inward supply invoices, out of which 18 invoices pertains to other than 5% (duty rate). The claim amount is Rs.20,99,743/- and inverted higher tax amount is Rs.23,609/- only; which is miniscule amount compared to the said refund claim. It is also noticed from GSTR 1, that there is 1 outward supply



invoice other than 5%(duty rate), the details of outward supply invoice is as under :

GSTIN/UIN of Recipient	Invoice Details			Rate (%)	Taxable Value	IGST
	No.	Date	Value			
27AAECE2200M1ZV	S010933/2021	31.12.20	30751	0.1	30720	31

- The Adjudicating Authority has erred in passing the refund orders, as there is no inverted tax structure in the refund claims filed by the claimant in accordance with the Rule 89(5) of the CGST Rules, 2017 read with Section 54(3) of the CGST Act, 2017.

3. In view of above the appellant/department has filed the present two appeals on following grounds:

- As per Section 54(3) of the CGST Act, 2017, refund of accumulated ITC will be granted where the credit accumulation has taken place on account of inverted duty structure. This would include even those cases where supply has been made to merchant exporters under Notification No. 40/2017-Central Tax (Rate) dated 23.10.17 on Notification No. 41/2017 Integrated Tax (Rate) dated 23.10.17 or both. However, the Government also has the power to notify supplies where refund of ITC will not be admissible even if such credit accumulation is on account of an inverted duty structure. In exercise of the powers conferred by this section, the government has issued Notification No. 15/2017 – Central Tax (Rate) dated 28.06.2017 wherein it has been notified that refund of unutilized input tax credit shall not be allowed under sub-section (3) of Section 54 of the said CGST Act, 2017, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the CGST Act, 2017. The supplies specified under item 5(b) of Schedule II are construction services.
- Further, Rule 89(2) (h) of the CGST Rules, 2017 stipulate that refund claim on account of accumulated ITC (where such accumulation is on account of inverted duty structure) has to be accompanied by a statement containing the number and date of invoices received and issued during a tax period . Rule 89(3) of the CGST Rules, 2017 also provide that where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant in an amount equal to the refund so claimed.
- Para 53 of Circular No. 125/44/2109 – GST dated 18.11.2019 reproduced as under :
 - o Sub-section (3) of section 54 of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, sub-section (3) of section 2 of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the



course or furtherance of business. **Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods** as part of refund of unutilized input tax credit. It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted tax structure.

- Para 3.2 of Circular No. 135/05/2020 - GST dated 31.03.2020 (modified Circular No. 125/44/2019-GST) reproduced as under :

- o 3.2 It may be noted that refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby 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.

- Thus, it is noticed that the adjudicating authority has erred in passing the refund orders, as there is no inverted tax structure except the credit of input services in inward supplies which attract 18% duty rate as per Statement 1A [rule 89(2)(h)] filed by the claimant along with the refund application (RFD-01); thereby the refund amounting to Rs.10,45,063/- & Rs.20,99,743/- has been given erroneously as there is no inverted tax structure i.e. both input and output supplies attract the same rate of tax i.e. 5% duty rate except the credit of input services in inward supplies which attract 18% duty rate, which is required to be recovered along with interest and penalty as narrated above.

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

- i. To set aside the impugned orders, wherein, adjudicating authority has erroneously sanctioned Rs.10,45,063/- & Rs.20,99,743/-, under Section 54(3) of the CGST Act, 2017.
- ii. To pass an order directing the said original authority to demand and recover the amount erroneously refunded of Rs.10,45,063/- & Rs.20,99,743/- with interest and penalty
- iii. To pass any other order(s) as deemed fit in the interest of justice.

4. Personal Hearings in the matter were offered to the "Respondent" on 23.12.2022, 04.01.2023 and on 12.01.2023. However, no one appeared for the PH on the Scheduled dates and also not received any

communication from *Respondent* in this regard.

The Personal Hearings were informed through letters F. No. GAPPL/ADC/GSTD/401/2022/5874-75, 6430-31 & 6865-66 dated 15.12.2022, 23.12.22 & 04.01.23 respectively. The said letters were dispatched to the Respondent at their address at Survey No. 338, Opp. Star Daying Factory, Near Chhipa Kuva, Danilimda, Ahmedabad-28 through India Post. Further, said PH letters were also mailed on email id *aslamrangwala786@gmail.com*, as provided by the jurisdictional CGST division office based on details as fetched from AIO.

5. I have carefully gone through the facts of the case, grounds of appeal and documents available on record. I find that sufficient number of Personal Hearing were provided to the *Respondent*, before deciding the matter by this appellate authority, however, no one responded to the PH letters. Therefore, there is no other option to decide the matter except decide the same as ex-parte. I find that in this case both appeals are filed against impugned orders wherein refunds of accumulated ITC due to inverted tax structure amounting to Rs.10,45,063/- & Rs.20,99,743/- were sanctioned. The appellant mainly contended that there is no such inverted tax structure; however, refund claims filed by Respondent of accumulated ITC due to inverted tax structure have been sanctioned.

6. Further, the Appellant has referred the provisions of Section 54 (3) of the CGST Act, 2017 and contended that refund of unutilized ITC can be claimed "*where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies*". However, the appellant has contended in the present appeal proceedings that "*there is no inverted tax structure as both input and output supplies attract the same rate of tax i.e. 5% duty rate except the credit of input services in inward supplies which attracts 18% duty rate.*" In this connection, I find that the Appellant has referred the CBIC's Circular No. 125/44/209 - GST dated 18.11.2019 according to which "*Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit.*" Further, I find that the refund of accumulated ITC of 'Input Services' on the ground of Inverted Duty Structure is not admissible in light of Hon'ble Supreme Court's judgement in the case of UOI Versus VKC Footsteps India Pvt. Ltd. as reported at 2021 (52) G.S.T.L. 513 (S.C.)

7. The Appellant/Department is mainly disputing in the present appeal that there is no inverted duty structure i.e. both input and output supplies attract same rate of tax and therefore refund of unutilized ITC due



to inverted tax structure granted to Respondent is not proper and same required to be recovered with interest. Further, the Respondent is also neither responding to the Personal Hearing letters issued by this appellate authority nor furnishing any submission before this appellate authority in support of their refund claims so sanctioned vide impugned orders.

8. In view of above discussions, I find that as there is no inverted duty structure, accordingly I find that the adjudicating authority has wrongly sanctioned the refunds of unutilized ITC amounting to Rs.10,45,063/- & Rs.20,99,743/- to the Respondent on account of inverted tax structure. Therefore, I hold that the impugned orders passed by the adjudicating authority sanctioning refunds are not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned orders and allowed the appeals filed by the appellant/department.

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

The appeals filed by the *appellant/department* stands disposed of in above terms.


16/05/23
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 16.05.2023



Appellant

Respondent

Attested


(Dilip Jaday)
Superintendent (Appeals)

By R.P.A.D.

To,
The Assistant / Deputy Commissioner,
CGST, Division - IV, Ahmedabad South.

M/s. Kohinoor Creations Pvt. Ltd.,
Survey No. 338, Opp. Star Dying Factory,
Near Chhipa Kuva, Danilimda,
Ahmedabad - 380 028

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-IV, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File