



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20240264SW0000333CD5

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/3499/2023 -APPEAL / 1988 - 93

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 231 /2023-24

दिनांक Date : 28.02.2024 जारी करने की तारीख Date of Issue : 28.02.2024

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. ZI.2406230283821 dated 19.06.2023 issued by The Deputy Commissioner, CGST Division-V- Odhav, Ahmedabad South.

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

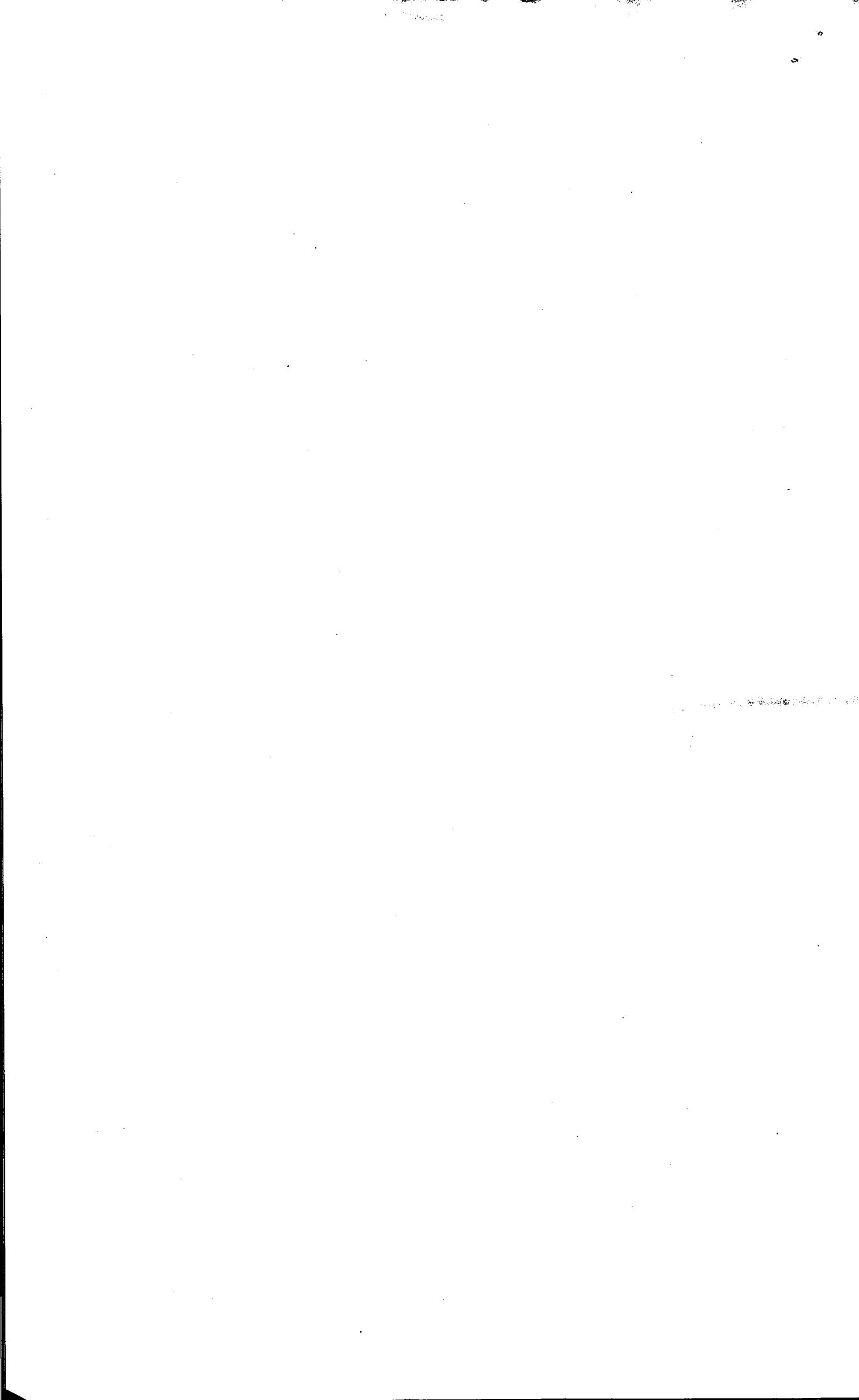
Appellant	Respondent
M/s Kinjal Gruh Udhyog, Plot No. 3, Gopalcharan Industrial Hub, Bakrol Bujrang, Ahmedabad, Gujarat, 382415	The Deputy Commissioner, CGST Division-V- Odhav, Ahmedabad South

(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 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. Kinjal Gruh Udhyog, Plot No.3, Gopalcharan Industrial Hub, Bakrol Bujrang, Ahmedabad, Gujarat - 382415, Gujarat, (*hereinafter referred as 'appellant'*) has filed the present appeal against the Order No. ZL2406230283821 dated 19.06.2023 passed in the Form-GST-RFD-06 (*hereinafter referred as 'impugned order'*) rejecting refund of CGST - 15,14,518/-, issued by the Assistant Commissioner of CGST & Central Excise, Division - V - Odhav, Ahmedabad South Commissionerate (*hereinafter referred as 'adjudicating authority'*).

2 The '*appellant*' is holding GST Registration No.24AAVFK3117F1ZD and had filed refund under RFD-01 vide ARN No.AA240423008278H dated 03.04.2023 under the category of Refund of ITC accumulated due to inverted tax structure for the tax period July'2021 to December'2022 for an amount of Rs. 15,14,518/-. A show cause notice dated 30.05.2023 was issued to the appellant as Tax payable on Inverted turnover and adjusted turnover found to be Rs.25,51,103/- and Rs.5,13,84,660/-. The appellant had claimed ITC of input services which is inadmissible in calculation of NET ITC and also was asked to submit HSN summary for calculation of inverted tax structure.

The appellant vide their reply to SCN dated 31.05.2023 in RFD-09, submitted that the Inverted Turnover is Rs.5,10,49,660/- and adjusted turnover is Rs.5,13,84,666/- has been rightly uploaded. The service value of Rs.40,72,270/- in this amount is out of GST Refund calculation which means this is the amount to not adjust turnover as per Notfn.14/2022 tax dated 05.07.2022 refund will be calculated of Service input of Rs.25,51,103/-.

4. On scrutiny of the submission and the HSNs of inward and outward supplies, it was observed that the classification adopted for their outward supply did not appear correct. Also the refund does not appear to fall under the category of ITS as it appears that the HSN of final product does not fulfil the conditions laid down in the Chapter Note-1 to the Chapter 25 of GST Tariff-Goods and therefore will be out of purview of classification from Chapter 25 which attracts 5% of GST rate.

5. Thereafter, the '*adjudicating authority*' has rejected the refund claim vide the '*impugned order*' dated 24.07.2020 in form RFD-06 as the refund claim filed by the appellant for an amount of Rs. 15,14,518/- as inadmissible on the following grounds.

- Chapter Note-1 to the Chapter 25 of GST Tariff-Goods clearly mentioned that mixing or processing of various substances are not allowed in the chapter and therefore the product of the claimant will be out of purview of classification from Chapter 25 which attracts 5% GST rate as the Chapter 25 includes crude products only and mixing of various pure substances is not allowed. The output product so formed after mixing of various raw materials is of edible grade and same is used along with tobacco &/or Supari (Beetle nut) for chewing purpose, hence, the outward supply is required to be classified under HSN 2104 and more specific under HSN 21069099 attracting GST @ 18% in view of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 as amended, under Sr.23 of Schedule-III of GST Tariff. Hence the refund of the outward product cannot be categories under Inverted Duty Structure, hence, the refund is not admissible.

6. Being aggrieved with the impugned order the appellant filed appeal on 19.07.2023 before the appellate authority on the following grounds:

- ❖ The allegation of the adjudicating authority is incorrect as the appellant has correctly classified its final product Hydraulic Lime under HSN 25223000 attracting 5% GST. Chapter 21 and HSN Code 21069099 as considered by the adjudicating officer is incorrect for the reason that Chapter 21 is for edible products, and the HSN code 21069099 per se is for other food preparations not elsewhere specified or included;

Their final product is Hydraulic Lime, which is neither meant for human consumption, nor is actually consumed as edible preparation. The final product Hydraulic Lime is used for mixing with chewing Tobacco for the purpose of reducing smell of the Tobacco as well as to rub the skin so that the Tobacco gets access to the blood, and neither the Tobacco nor the Hydraulic Lime is meant for eating. The raw material Quicklime and the final product Hydraulic Lime, both are different product and are specifically classified in Chapter 25 in Heading 2522. The adjudicating authority had taken an incorrect interpretation of Note.1

- ❖ The appellant has been classifying the final product Hydraulic Lime under HSN 25223000 undisputedly since beginning when they had taken GST registration i.e., since October 2019; they had earlier also have claimed refund for the period from October 2019 to June 2021 which has been sanctioned by the Refund Sanctioning Authority vide order dated 07.12.2021; At present there is no change in their business



or final product, nor there is any change in GST law or the HSN codes, but the adjudicating authority had taken a different view from a settled legal position taken by the department for an earlier period. Thus, the classification adopted by the Appellant is correct and they are entitled to refund under the Inverted Tax structure.

- ❖ With the above submission, the appellant has prayed to accept their appeal and grant refund.
- ❖ The appellant through their additional submissions dated 08.12.2023 submitted during personal hearing had given the usage/write-up of Hydrated lime, and why it is used with Tobacco. Hydrated lime also known as Calcium Hydroxide and traditionally called Slaked lime. It is an inorganic compound which has a white, powdery appearance in its solid state. It increases the pH and thus the proportion of unprotonated nicotine, leading to increased nicotine-dosing capability. It also causes epithelial abrasions in the oral mucosa that increase the penetration of chemical compounds released from tobacco is the reason that the people consuming it eventually suffer diseases like mouth cancer.
- ❖ Hence the Hydrated lime/Calcium Hydroxide/Slaked lime is neither an edible preparation, nor consumed as an edible preparation. It is used as an agent, which due to its chemical properties, first results in abrasions in the mouth to expose the inner skin and blood for contacting Tobacco, and secondly it increases the bonding or penetrating capability of Tobacco so that the consumer enjoys the highest level of performance.
- ❖ The department has never disputed the Tax rate of 5% GST till the present date, and the tax payer is supplying the above product under Ch.Heading 2522 at 5% GST rate, which is undisputedly accepted by the GST department.

Personal Hearing

7. Personal Hearing was scheduled on 08.12.2023 whereby Shri Vikash Agarwal, C.A. appeared before me as authorized representative on behalf of the appellant and reiterated the written submissions and also submitted additional submission during PH. He further stated that the slaked lime is not a food preparation and specifically classified under CTH 2522 attracting GST @ 5%. No demand @18% has been issued by the jurisdictional officer. Their refund is rejected without deciding the classification and rate of tax and requested to allow appeal.

Discussions & Findings

8. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. At the outset, I find that the impugned order was issued on 19.06.2023 and present appeal was filed on 18.07.2023 i.e. within the three months time limit as prescribed under Section 107 of the CGST Act, 2017.

9. The issue to be decided is whether the refund claim of Rs. 15,14,518/- on Inverted Duty Structure for the period July'2021 to December 2022 rejected by the adjudicating authority vide his impugned order is legal and proper or otherwise.

10. The appellant's refund claim has been rejected by the adjudicating authority on the grounds that the classification of the outward supply does not fall under the HSN 2522300 has claimed by the appellant but falls under the HSN 21069099 attracting GST @18% as, as per Chapter Note-1 to the Chapter 25 of GST Tariff-Goods clearly mentions that mixing or processing of various substances are not allowed in the chapter and therefore the product of the claimant will be out of purview of Chapter 25 which attracts 5% GST as Chapter 25 includes crude product only and mixing of various pure substances is not allowed. The extract of Chapter Note-1 to the Chapter 25 of GST Tariff-Goods is reproduced as under for better under standing:

1. *Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered levigated, sifted, screened, concentration by flotation, magnetic separation or other mechanical or physical processes (except crystallization); but not products that have been roasted calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.*

11. The primary dispute centers around the nature of the final product, Hydraulic Lime, which, as established, is used for industrial purposes and not for human consumption. Hydraulic Lime, classified under HSN 25223000, is not intended for edible purposes. The chemical properties and intended use of Hydraulic Lime align with its classification under Chapter 25. The appellant in their additional submissions made during personal hearing had given the usage/write-up of Hydrated lime which is the outward supply, and why it is used with Tobacco. Hydrated lime also known as Calcium Hydroxide and traditionally called Slaked lime. It is an inorganic compound which has a

white, powdery appearance in its solid state. It increases the pH and thus the proportion of unprotonated nicotine, leading to increased nicotine-dosing capability. It also causes epithelial abrasions in the oral mucosa that increase the penetration of chemical compounds released from tobacco is the reason that the people consuming it eventually suffer diseases like mouth cancer. From the write up submitted, I am of the opinion that a product which harms the human body cannot be construed as edible product. The appellant has provided substantial evidence that Hydraulic Lime is used with chewing tobacco to reduce smell and enhance penetration. This specific use aligns with industrial and non-edible purposes. Hydrated Lime as an industrial agent, enhancing the performance of chewing tobacco without being intended for consumption. While Chapter Note-1 to the Chapter 25 of GST Tariff-Goods is a relevant consideration, its application should be contextual and should not overshadow the actual characteristics and purpose of the product. In this case, Hydraulic Lime, when used with chewing tobacco, does not alter its primary classification under Chapter 25. The correct interpretation of the note, in this case, supports the classification of Hydraulic Lime under HSN 25223000, attracting a 5% GST rate.

12. According to the write up explained in the impugned order which was submitted by the appellant before the adjudicating authority, the main raw material of inward supply is Quick Lime which falls under HSN 25223000, the outward supply namely Siddhraj Chuna/Siddharaj Parcel by mixing PCC (Precipitated Calcium Carbonate), water and glycerine. Thus, as per the Chapter Note of Chapter 25 the products classified under Chapter 25 should be in crude form and should not contain any mixing of other products. The Chapter Note 25 of GST Tariff-Goods is reproduced hereunder:

1. *Except where their context or Note 4 to this Chapter otherwise requires the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the products), crushed, ground, powdered, levigated, sifted, screened, concentrated by, floating, magnetic separation or other mechanical or physical processes (except crustallisation), but not products that have been roasted calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.*

13. I observe from the grounds of appeal filed by the appellant that their Refund claim for the earlier period was sanctioned on 07.12.2021. They had not changed either their business or the final product and there was no change in the HSN codes. In the instant case, I observe, though the adjudicating authority had rightly rejected the refund claim on the grounds mentioned at

para 10 above, however, the adjudicating authority should have raised / issued demand notice in this regard.

14. The appellant has given the reference of the judgment of AAR order in the case of JAINISH ANANTKUMAR PATEL reported in 2022 (59) GSTL 111 (AAR-GST-Guj.) in their favour. The judgment, is related to determining whether the supply of a combo of Chewing Tobacco, Hydraulic/Slaked Lime, and Grated Supari constitutes a mixed supply or a composite supply and nowhere is relevant to the present case. However, I observe that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who has sought the advance ruling and on the concerned officer of the jurisdictional officer in respect of the applicant. This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State and it is only limited to the person who has applied for an advance ruling. Apart from which, the issue pertains to composite supply and does not have any relevance to the present issue.

15. In view of the above facts and discussions, I do not find any infirmity in the impugned order passed by the adjudicating authority, therefore the impugned O-I-O upheld.

अपीलकर्ताद्वारा दर्ज की गई अपील कानिपटाराउपरोक्त तरीके से किया जाता है।

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

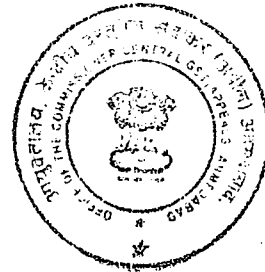
(Adesh Kumar Jain)
28/02/2024

Joint Commissioner (Appeals)

Date: .02.2024

Attested

Vijayalakshmi V
(Vijayalakshmi V)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

M/s. Kinjal Gruh Udhyog,
Plot No.3, Gopalcharan Industrial Hub,
Bakrol Bujrang, Ahmedabad,
Gujarat - 382415, Gujarat

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



