



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

07926305065-

टेलिफैक्स 07926305136



DIN- 20240464SW00002782C6

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1116/2023 -APPEAL / 4136-62

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 245 /2023-24

दिनांक Date : 27.03.2024 जारी करने की तारीख Date of Issue : 03.04.2024

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. 29/WS03/GST/AC/RSC/2023-24 dated 05.10.2023 issued by The Assistant Commissioner, CGST Div-III, Ahmedabad South.

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

Appellant	Respondent
M/s A S B Tubes, (Legal Name: Aniket Ashokkumar Bhansali), PLOT NO 2304/1, Phase-4, Nr Ramol Cross Road, GIDC, Vatva, Ahmedabad, Gujarat, 382445	The Assistant Commissioner, CGST Div-III, 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) 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](http://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](http://www.cbic.gov.in).



ORDER-IN-APPEAL

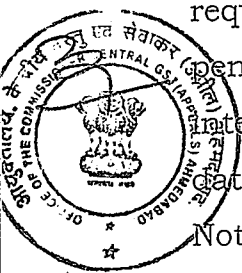
BRIEF FACTS OF THE CASE :

M/s. A.S.B. Tubes (Legal Name: Aniket Ashokkumar Bhansali, Plot No. 2304/1, Phase-4, Near Ramol Cross Road, GIDC, Vatva, Ahmedabad, Gujarat-382445, (hereinafter referred to as "the appellant"), holding GSTIN 24BAVPB8890D1ZE has filed appeal against Order-In-Original No. 29/WS03/GST/AC/RSC/2023-24 dated 05.10.2023 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division-III, Ahmedabad South Commissionerate (hereinafter referred to as the "adjudicating authority").

2. The facts of this case are that the Appellant had availed refund of IGST in contravention of Rule 96(10) of the CGST Rules 2017. Accordingly, Deputy Commissioner of Customs, Mundra, Kutch had issued letter F. No. S/01-77/PCA/IGST/IGST REFUND/2022-23, dated 20.03.2023 in which GST refund received against wrong claim of IGST Refund on the Exports made under Advance Authorization (AA) scheme amounting to Rs. 79,97,234/-, requested to reverse the said refund claim along with applicable interest and penalty. Against such letter, appellant had paid Rs. 1,05,81,939 along with interest worth Rs. 13,49,126, such was paid voluntarily by filing GST DRC 03 dated 22.04.2023, but the appellant not paid penalty. Therefore, Show Cause Notice was issued on 21.07.2023 by Deputy Commissioner(Preventive), CGST, Ahmedabad South Commissionerate on 21.07.2023 and Adjudicating Authority vide Order-In-Original No. 29/WS03/GST/AC/RSC/2023-24 dated 05.10.2023 confirmed the demand of Rs. 1,05,81,939 and appropriated, interest of Rs. 13,49,126/- and appropriated and **penalty of Rs. 1,05,81,939 under Section 74(1) of the CGST Act, 2017.**

3. Being aggrieved with the impugned order dated 05.10.2023, the appellant filed the present appeal on 07.12.2023 and submitted additional submission 06.03.2024 on the following grounds:-

- *The appellant submitted that on being pointed out by the Department, appellant has voluntary paid Rs. 1,05,81,939/- along with interest worth Rs. 13,49,126/- such voluntary payment is made through FORM GST DRC-03 under Section 73(5) of CGST Act, 2017;*
- *that while exporting the goods, taxpayer had mentioned Advance Authorization No. in Shipping Bill, Tax Invoice, and other necessary*



documents. Hence, there was no case of fraud or any willful- misstatement or suppression of facts, as all such things was in the knowledge of the department. Compelling an honest taxpayer to pay penalty under Section 74 of the GST Act is- against the spirit of justice delivery system;

- that Appellant had paid the amount along with interest even before issuance of Show Cause Notice, hence penalty u/s 73 should not be levied; that Since the appellant has voluntarily paid the IGST refund on exports with interest is covered under Section 73 (5) of CGST Act, 2017, appellant has not liable to pay penalty under Section 74(5) as alleged;
- that mere allegation of wrongly utilizing the ITC credit, the Department did not bring any material to prove that there was suppression and concealment of facts for wrongly utilizing the ITC credit and claiming and receiving the same as erroneous refund under Rule 96(10) of the CGST Rules, 2017. Consequently, the proposal of imposition of penalty under Section 74(5) is not justified and bad in law;
- The appellant submit that present case is not covered under section 74 (5) of CGST Act 2017 since this was an interpretational issue. There was a huge confusion due to various notifications issued by the authorities from time to time and frequent modification/ amendment to Rule 96(10). No fault of exporters. Refund issued under IGST which is a procedural mistake. There is a procedural lapse not only on part of exporters but also on part of revenue. Hence it is crystal clear that present case does not involve mens rea, fraud or any wilful-misstatement or suppression of facts and not covered under section 74(5) of CGST Act, 2017;
- That it is settled law that that until and unless there is willful or deliberate or intentional evasion of any tax or attempt to evade any tax is established, there cannot be any punishment under the provisions of the Section 74 of the-CGST Act. Mere omissions or bonafide error cannot be construed as an offence. In other words, intention on the part of the person to defraud the GST is sine qua 'non for penal action under Section 74 of the GST Act, 2017;

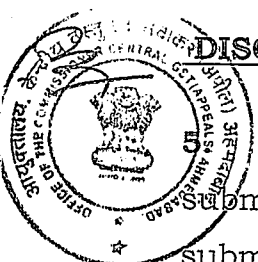
In view of the above the appellant prays to set aside the impugned order dated 05.10.2023.



**PERSONAL HEARING:**

4. Personal hearing in this case was held on 06.03.2024. Mr. Harshadbhai G. Patel, Advocate, Mr. Mahavir P. Jain, General Manager and Mr. Ashok Kumar Bansal attended the case on behalf of the appellant as authorised representatives. During the personal hearing they submitted that they have paid back the refund vide DRC-03 dated 27.04.2023 in response to Customs letter dated 20.03.2023 alongwith interest as directed in the said letter of Customs. SCN was issued on 21.07.2023. From above it is clear that the demand amount has already been paid before issue of SCN i.e. before initiations of proceedings under Section 73. This is a case of section 73(5). There is no suppression of fact or mis declaration and all details have been submitted before the respective authority ad SCN is also issued based on the facts and records available with respective authority. Thus provision of section 74 is not attracted. They further reiterated the written submissions and requested to allow appeal.

**DISCUSSION AND FINDINGS:-**



I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal, additional submission as well as at the time of personal hearing and find that the appellant is mainly contesting on the issue that whether the incidence of IGST refund claimed and received Rule 96 (10) of the CGST Rules, 2017 could be treated as Fraud or any wilful misstatement or suppression with deliberate attempt to evade tax and penalty could be imposed in terms of section 74 of CGST ACT, 2017;

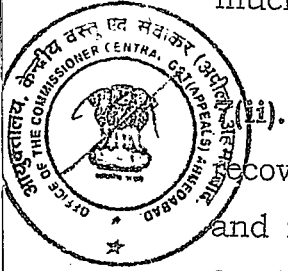
6. In the instant case, it is observed that the appellant had availed the refund of IGST paid on Zero Rated Supplies after availing benefit of Notification no. 79/2017-Customs dated 13.10.2017. Whereas, in terms of Rule 96(10) of the Central Goods and Service Tax Rules, 2017 the appellant availing refund of IGST paid on Zero rated Outward Supplies should not have availed the benefit of Notification no. 79/2017- Customs dated 13.10.2017. Accordingly, Deputy Commissioner of Customs, Mundra, Kutch had issued letter F. No. S/01-77/PCA/IGST/IGST REFUND/2022-23, dated 20.03.2023 in which GST refund received against wrong claim of IGST Refund on the Exports made under Advance Authorization (AA) scheme amounting to Rs. 79,97,234/-, requested to reverse the said refund claim along with applicable interest and penalty. In the letter F. No. S/01-77/PCA/IGST/IGST REFUND/2022-23,

dated 20.03.2023 it was not mentioned as under which Section's appellant is liable to pay tax, interest and penalty. However, against such letter, appellant had paid Rs. 1,05,81,939 along with interest worth Rs. 13,49,126, under Section 73(5) of the CGST Act, 2017 by filing GST DRC 03 dated 22.04.2023, however the appellant not paid penalty. Therefore, Show Cause Notice was issued on 21.07.2023 by Deputy Commissioner(Preventive), CGST, Ahmedabad South Commissionerate on 21.07.2023 and Adjudicating Authority vide Order-In-Original No. 29/WS03/GST/AC/RSC/2023-24 dated 05.10.2023 confirmed the demand of Rs. 1,05,81,939 and appropriated, as already paid, interest of Rs. 13,49,126/- and appropriated, as already paid and penalty of Rs. 1,05,81,939 under Section 74(1) of the CGST Act, 2017.

7(i). Now the issue to be decided is whether the incidence of IGST refund claimed and received Rule 96 (10) of the CGST Rules, 2017 could be treated as Fraud or any wilful misstatement or suppression with deliberate attempt to evade tax. In the instant case it is observed that on being pointed out by the Customs Department, vide letter dated 20.03.2023 appellant has voluntary paid Rs. 1,05,81,939/- along with interest worth Rs. 13,49,126/- vide DRC-03 dated 27.04.2023 under Section 73(5) of CGST Act, 2017 that is much before the issue of Show Cause Notice.

7(ii). In the instant case the adjudicating authority has issued order to recover the refunded IGST amount under Section 74(9) of the CGST Act 2017 and interest under Section 50(1) of the CGST Act, 2017 and Penalty under Section 74(1) of the CGST Act 2017. However it is observed that there was no case of fraud or any wilful- misstatement or suppression of facts, as all such things was in the knowledge of the department. The appellant while exporting the goods, had mentioned Advance Authorization No. in Shipping Bill, Tax Invoice, and other necessary documents and on the basis of all these documents department had issued refund amount. Further the Department did not bring any material to prove that there was suppression and concealment of facts for wrongly utilizing the ITC credit and claiming and receiving the same as erroneous refund under Rule 96(10) of the CGST Rules, 2017. Further in the instant case it is third party export and the goods have been procured by appellant on payment of IGST. In view of the above I find that the imposition of penalty under Section 74(1) is not justified.

8. In view of the above, I find that the demand of Rs. 1,05,81,939 alongwith interest of Rs. 13,49,126/- which has already been paid, confirmed



and appropriated by the adjudicating authority is legal and proper. Since the amount has already been paid before start of proceedings under Section 73 of the CGST Act, 2017, no penalty is imposable upon the appellant. Accordingly, the impugned order is modified and the appeal is allowed to the above extent.

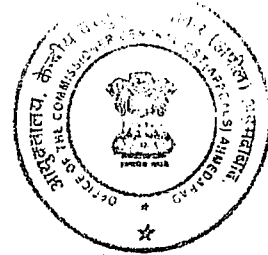
अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है |

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

*Adesh Kumar Jain*  
27/03/2024  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)  
Date: 27.03.2024

Attested

*Sandheer Kumar*  
27/03/24  
(Sandheer Kumar)  
Superintendent (Appeals).



By R.P.A.D.

M/s. A.S.B. Tubes,  
(Legal Name: Aniket Ashokkumar Bhansali,  
Plot No. 2304/1, Phase-4, Near Ramol Cross Road, GIDC,  
Vatva, Ahmedabad, Gujarat-382445.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad South.
4. The Deputy/ Assistant Commissioner, CGST & C. Ex, Division-III Ahmedabad South.
5. The Deputy/ Assistant Commissioner (RRA), CGST & C. Ex, Ahmedabad South Commissionerate.
6. The Superintendent [Systems], CGST (Appeals), Ahmedabad.
7. Guard File/ P.A. File.