



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- 20240464SW000050725D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1201/2024 -APPEAL / 3623 - 30ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC- 247 /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. 01/WS03/GST/Supdt-AR-III/2023-24
(ZD241223035393S) dated 05.12.2023 issued by The Superintendent, CGST Div-III,
Ahmedabad-South.

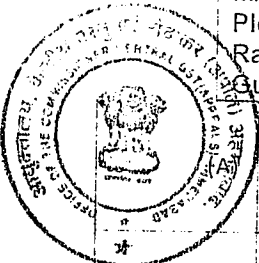
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant	Respondent
M/s J.J. Nitro Products Private Limited, Plot No.288/1, Phase II, G.I.D.C., Nr Vatva Railway Station, Vatva, Ahmedabad, Gujarat, 382445	The Superintendent, CGST Div-III, Ahmedabad-South

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**Brief Facts of the Case :**

M/s. J.J. Nitro Products Private Limited, Plot No. 288/1, Phase II, G.I.D.C., Nr. Vatva Railway Station, Vatva, Ahmedabad, Gujarat-382445 (hereinafter referred as '*appellant*') has filed the present appeal against Order-In-Original No. 01/WS03/GST/Supdt-AR-III/2023-24(ZD241223035393S), dated 05.12.2023 (hereinafter referred as '*impugned order*') passed by the Superintendent, CGST, Division - III, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

2(i). The appellant is engaged in the manufacturing of Sulphoric Acid, Sulphonated or nitrated hydrocarbon etc, falling under HSN 2904 & 2807 and registered with GSTN 24AAECJ2813PIZF since 14.06.2018. They mainly manufactures Sulphoric Acid, Sulphonated or nitrated hydrocarbon for which they have imported raw materials i.e para nitro toluene and exported para nitro toluene orthro sulphonic acid under duty exemption scheme "Advance Authorization" under Notification No.79/2017-Customs dated 13.10.2017 without payment of Integrated Tax/IGST. Advance Authorization is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, Oil, catalyst which is consumed/utilized in the process of production of export product, may also be allowed.

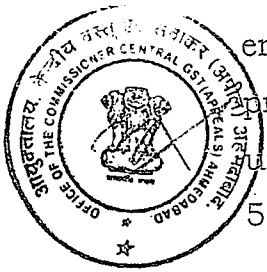
2(ii). Specific intelligence was received that a number of exporters, including M/s. J.J. Nitro Products Private Limited, are fraudulently claiming refund of IGST paid on the zero-rated export supplies even when the goods are exported towards fulfillment of their export obligations, by filing shipping bill in the manner as provided under Rule 96(1) of the CGST Rules, 2017. Rule 96(10) of the CGST Rules, 2017 states that the person claiming refund of integrated tax on export of goods or services should not have received the supplies against an advance authorization, EPCG, EOUs, merchant exports etc. in terms of Notification No.79/2017-Customs dated 13 October 2017; Notification No.78/2017-Customs dated 13 October 2017, Notification No. 48/20171 CT dated 18.10.2017, No. 40/2017-CT (Rate) or No. 41/2017-1T(Rate) both dated 23.10.2017, as the case may be. Most of the exporters who had received supplies against Advance Authorization are fraudulently claiming refund of IGST paid on their zero-rated export supplies even when the goods are exported towards fulfillment of their export obligation, by filing shipping bill in the manner as provided under Rule 96(1) of the CGST Rules, 2017.



2(iii). In the instant case, the appellant had imported the raw material and used for manufacturing/exported final products by availing the benefit of Notification No. 79/2017-Customs dated 13.10.2017 without payment of IGST. However, the appellant exported the final product manufactured out of the imported dyes intermediates by availing the benefit of Notification No. 79/2017-Customs dated 13.10.2017 on payment of IGST and erroneously claimed refund of IGST paid on said export (Zero Rated supply) under the provisions of Section 16 of IGST Act, 2017 violating the above mentioned provisions of Rule 96(10) of CGST Rules, 2017 as amended. As per the details submitted during the statements by the appellant for the period from 2018-19, they had exported the goods on payment of IGST only for the period 2018-19 and claimed IGST refund involving Rs. 5,30,934/-. However, under the provisions of Rule 96(10) of CGST Rules, 2017 as amended, the appellant was not eligible to claim refund of IGST, paid on export of goods being manufactured out of raw material imported availing the benefit of Notification No. 79/2017-Customs dated 13.10.2017, without payment of IGST, during the period 2018-19. Therefore, the ITC utilized by the appellant to Rs. 5,30,934/- does not appear to be proper and appears to have been wrongly utilized. The encashment of this wrongly utilized ITC by way of erroneous refund, therefore, needs to be recovered from them under the provisions of Section 74(1) of CGST Act, 2017 along with applicable interest under the provisions of Section 50 of CGST Act, 2017 and penalty of Rs. 5,30,934/- under the provisions of Section 74(1) of CGST Act, 2017.

3. Therefore, show causes notice No. Supdt/Prev/WS/73/2023-24 dated 07.08.2023 was issued to the 'appellant'. Thereafter, vide impugned order dated 05.12.2023 was issued to the 'appellant' and confirm the demand of (IGST (refund) amounting to Rs. 5,30,934/- alongwith interest and penalty on the following grounds:

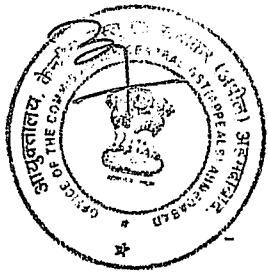
- that they had procured imported raw materials under Advance Licence without payment of integrated tax. Advance licences issued in the year 2018 was used for procurement of duty free imports in month of July 2018. Refund was credited to their account during the month of August 2018. It therefore, appeared that the refund of integrated tax claimed was in contravention of rule 96 (10) of the CGST Rules, 2017;
- Since the Hon'ble High Court has ordered that in effect, Notification No. 39/2018, dated 4th September, 2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub-rule (10) of Rule 96 of CGST Rules, with retrospective effect from 23rd October, 2017, it naturally follows that persons claiming refund of integrated tax paid on



export of goods should not have received supplies on which the benefit of Advance Authorization is taken. In the present case the Noticee has availed the benefit of Advance Authorization scheme and hence, the refund of Rs 5,30,934/- was not admissible and for the same reasons, refund of Rs 59,30,934/- taken on exports as a manufacturer/exporter is also not admissible and requires to be demanded;

- Since the fact of receiving inputs under Advance Authorization and consequent ineligibility from claiming IGST refund are known to the Noticee and yet, in the anonymity of online processing of refund claims which is automatic in nature, the Noticee has claimed refund which amounted to suppression of facts and at the same time, willful misstatement also. Further, it was possible to import under Advance Authorization by claiming exemption of only the Customs duties and IGST could have been paid in which case, the exporter would be eligible for refund of IGST. Therefore, a mere indication of "Advance Authorization" in the Shipping Bill would not be a sufficient disclosure. It should have been specifically indicated that IGST exemption was claimed while importing inputs under Advance Authorization. Such a submission was not mentioned in the export documents and it amounted to suppression of facts. In view of the above, the proposal to recover the erroneously sanctioned refund under Section 74 of the CGST Act, 2017 is correctly made and requires to be sustained;
- the noticee is a company and dealing in exports/imports business and it is quite obvious that they were aware of the provisions of Rule 96 (10) of Central GST Rules, 2017 which prohibits double benefit i.e. exemption of IGST on the input materials imported under Advance Authorisation and refund of IGST paid on the goods exported by using such inputs;
- Despite having knowledge that the refund of IGST paid on export of goods is subject to the conditions as laid down in Rule 96(10) of the CGST Rules, 2017, they have neither informed the department about their erroneously claimed IGST refund of Rs. 5,30,934/- nor did they make payment of such IGST on their own. Had the department not initiated the investigation, the said facts would not have come to light;
- That the subject refunds involve suppression of facts with an intention to claim undue benefit. In view of these facts, I find that extended period under Section 74 is liable to be invoked for demanding the integrated tax refund wrongly claimed by them alongwith interest and penalty.

4. Being aggrieved with the impugned order, the appellant preferred appeal of the order before the appellate authority on 18.12.2023 on the following grounds:-



- that the restrictions under Rule 96(10) can apply only on and after 09.10.2018 as restricted by Notification No. 54/2018 CT dated 09.10.2018 Notification No. 03/2018-Central Tax dated 23.01.2018;
- That the restriction in claiming the refund shall apply only if the supplier has availed the benefit. Since in the case of imports under Advance Authorization the benefit of IGST exemption has been availed by the importer and not the supplier (who is located outside India), the given restriction would not apply;
- That Notification No. 53/2018 dated 09.10.2018, substituted rule 96(10) restricting refund of IGST paid, on exports shall not be available where the supplier to the exporter has availed benefit of Notification No. 78/2017-Cus. or Notification No. 79/2017-Cus.;
- that the language of Rule 96(10), wherein the restriction applied only if the supplier (who is located outside India) has availed the benefit. The same also made applicable retrospectively from 23.10.2017 but only to supplier (who is located outside India) and not to exporter who import goods;
- that even Circular No. 125/44/2019-GST dated 18.11.2019 clarifies that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 – Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018 – Central Tax dated 09.10.2018, would not be eligible to claim refund of Integrated tax paid on exports;
- that appellant being exporter was eligible for refund of IGST paid on export of final product under the provisions of Section 16 of IGST Act 2017 which was manufactured out of raw material imported availing the benefits of exemption notification No. 79/2017-Customs dated 13.10.2017 without payment of IGST during the relevant period July 2018 and appellant was also eligible to utilize the ITC for payment of IGST and claim the refund of IGST, during the period July 2018;
- that the appellant had exported the final product manufactured out of the raw material imported by availing the benefit of notification no. 79/2017-Customs dated 13.10.2017 without payment of IGST and claimed refund of IGST paid on said export (zero rated supply) during the period July 2018. The



restrictions substituted under Rule 96(10) was not applicable to export made during the relevant period December 2017 to July 2018;

- the restrictions under Rule 96(10) as envisaged under Notification No. 54/2018-Central Tax dated 09.10.2018 only came into force from the date of the publication of the said notification (i.e. 09.10.2018). Therefore the restriction under Rule 96(10) cannot apply to the period prior to 09.10.2018;
- that Notification 54/2018-CT never intended to amend the rule 96(10) retrospectively,, on the contrary, the said notification No. 54/2018 replaced amendments brought in by Notification No. 39/2018 and notification 53/2018 specifically to remove retrospectively;
- that in the case of Zaveri and Co. Pvt. Ltd. vs Union of India dated 18.12.2020. Wherein petition was filed challenging findings of High Court in Cosmo ruling (SCA 15833/2018). In this case, basis Cosmo Films Limited ruling (SCA 15833/2018), the department issued notice to the Petitioner. The court has admitted writ petition and stayed notice till next date of hearing;
- In view of the above facts and law, the findings made by respondent authority to the effect that the refund of integrated tax claims was in contravention of rule 96(10) of the CGST Rules, 2017 and appellant was not entitled to the refund of Integrated tax paid on goods exported during the period July 2018 as they had utilized inputs imported under Advance Authorization which are not sustainable and maintainable end the impugned order is ban in law, without jurisdiction and liable to be quashed and set aside.

Personal Hearing :

5. Personal Hearing in the matter was held on 14.03.2024. Shri Harshadbhai G. Patel, Advocate appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted that the restriction imposed vide Notification 54/2018 is effective from 09.10.2018. In the instant case both import and Export completed before 09.10.2018 therefore the refund sanctioned is legal and proper. Circular No. 125/44/19 GST, it was clarified that the effect of Notification will be from 09.10.2018 prospectively and the exporter will be eligible for refund of IGST paid. Details of two invoices included are also submitted during personal hearing. Further reiterated written submission and additional submission and requested to allow appeal.

Discussion and Findings :

6(i). I have carefully gone through the impugned order and the reply submitted by the appellant and the additional written submissions and the documents / records in the matter and therefore I proceed to adjudicate the said demand. The appellant is engaged in the manufacturing of Sulphoric Acid, Sulphonated or nitrated hydrocarbon etc, falling under HSN 2904 & 2807 and registered with GSTN 24AAECJ2813PIZF since 14.06.20 18. They mainly manufactures Sulphoric Acid, Sulphonated or nitrated hydrocarbon for which they have imported raw materials i.e para nitro toluene and exported para nitro toluene orthro sulphonic acid under duty exemption scheme "Advance Authorization" under Notification No.79/2017-Customs dated 13.10.2017 without payment of Integrated Tax/IGST. As per the specific intelligence it was revealed 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 for the exports affected during 2018-19 and 2019-20. Whereas, in terms of Rule 96(10) of the Central Goods and Service Tax Rules, 2017 the taxpayer 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.

6(ii). In this connection, I refer Rule 96(10) of CGST Rules that was substituted on 04.09.2018 with retrospective effect from 23.10.2017. Rule 96(10) as substituted on 04.09.2018 (with retrospective effect from 23.10.2017) and further amended on 09.10.2018 reads as follows:-

" (10)The persons claiming refund of integrated tax paid on exports of goods or services should not have-

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme [Deemed Exports] or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320(E), dated the 23rd October, 2017 [0.1 % scheme/ or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017 (0.1 % scheme) has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272 (E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.]

6(iii). It is observed that Rule 96(10) of CGST Rules was substituted on 04.09.2018 with retrospective effect from 23.10.2017. The amendment made under Notification No.16/2020- Central Tax dated 23.03.2020 was made effective from 23.10.2017 wherein the option for claiming refund in terms of clause (b) of sub-rule (10) to Rules 96 of the CGST Rules is restricted to those exporters who avail the exemption of BCD only and have paid IGST on the Inputs, at the time of import. The effective date has been given as 23.10.2017 which is made retrospective, though the Explanation was inserted in the notification only on 23.03.2020. In the instant case I find that all the invoices on which appellant had claimed IGST refund are after the date of 23.10.2017, hence not eligible for IGST refund as per refund Rules 2017.

7(i). The Hon'ble High Court of Gujarat, in SCA No.15833 of 2018 in the case of Cosmo Films Ltd Vs Union of India and 3 other(s), in para 8.15, has held that-

“Recently, vide Notification No.16/2020-CT dated 23.03.2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from 23.10.2017)

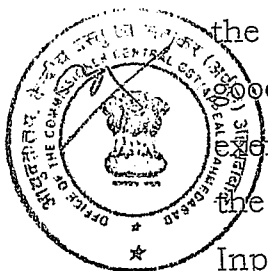
“Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”

By virtue of the above amendment, the option of claiming refund under option as per clause (b) is not restricted to the Exporters who only avails BCD exemptions and pays IGST on the raw materials thereby exporters who wants to claim refund under second option can switch over now. The amendment is made retrospectively thereby avoiding the anomaly during the intervention period and exporters who already claimed refund under second option need to payback IGST along with interest and avail ITC.”

7(ii). In view of the above, when exemption of IGST is being availed on the goods imported under Advance Authorization, as no IGST is paid on the imported goods, there is no question of taking credit either. Therefore, the IGST, which is being paid on the goods exported towards discharge of export obligation under the respective scheme, is on account of the accumulated input tax credit (ITC) that has accrued on account of procurement of other input materials, Capital Goods & services. However, refund of such IGST paid on the goods exported is not admissible since by doing so, the said notice has availed benefit of exemption of IGST on imported goods, and at the same time encashing the accumulated ITC accrued on account of other goods & services. This simultaneous availment of benefit of refund as well as exemption under the aforementioned Customs notifications is contrary to the provisions of law. This is to ensure that the exporter does not utilise the Input Tax Credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.

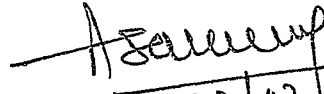
7(iii). In the instant case the appellant had claimed IGST refund of Rs. 5,30,934/- which has been taken into account for this demand in terms of Notification No.16/2020-CT dated 23.03.2020. Therefore, the appellant is not eligible to the refund claim on which they have not paid IGST during the time of procurement of raw material. The amount of erroneously taken refund is Rs. 5,30,934/- and the same is required to be reversed/paid back along with applicable interest and penalty.

8. Further, considering the facts of the present case and the evidences produced by the appellant, the case laws relied upon by the appellant would not be applicable in the present case. In the instant case none of the case laws relied upon are on Rule 96(10) of the CGST Rules and therefore not relevant. Hence, the contention of the appellant is not legally sustainable as per existing provisions of law.

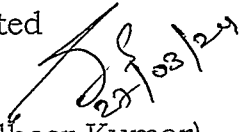


9. In view of the above discussions, I do not find any infirmity in the in the impugned order passed by the adjudicating authority. Accordingly, I find that the impugned order of the adjudicating authority is legal and proper and hence upheld.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the 'Appellant' stand disposed off in above terms.


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

Attested


(Sandheer Kumar)
Superintendent
CGST (Appeals)
Ahmedabad



By R.P.A.D.

To,
M/s. J.J. Nitro Products Private Limited,
Plot No. 288/1, Phase II, G.I.D.C.,
Nr. Vatva Railway Station, Vatva,
Ahmedabad, Gujarat-382445.

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