



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- 20230664SW000000E1DD

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/147 to 150/2020 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-41 to 44/2023-24

दिनांक Date : 07-06-2023 जारी करने की तारीख Date of Issue : 07-06-2023

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित .

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

ग Arising out of Order-in-Original No. ZZ2404200142682 DT. 08.04.2020,

ZX2404200374560 DT. 20.04.2020, ZQ2404200143093 DT. 08.04.2020 &

ZY2404200374348 DT. 20.04.2020 issued by The Deputy Commissioner, CGST,
Division-I, Ahmedabad South

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

M/s. La-Gajjar Machineries P. Ltd., Plot No. 143, LGM House, Sukhrampura, Near
Ajod Dairy, Outside Gomtipur Darwaja, Sukhramnagar, Ahmedabad-380021

(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

The following appeals have been filed by **M/s. La-Gajjar Machineries P. Ltd.**, Plot No. 143, LGM House, Sukhrampura, Near Ajod Dairy, Outside Gomtipur Darwaja, Sukhramnagar, Ahmedabad - 380021 (hereinafter referred as '*appellant*') against RFD-06 Orders (hereinafter referred as '*impugned orders*') passed by the Deputy Commissioner, CGST & C. Ex., Division - I Rakhial, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

Sr. No.	Appeal No. & Date	RFD-06 Order No. & Date	Amount of Refund considered as Inadmissible
1	GAPPL/ADC/GSTP/147/2020-APPEAL Dated 19.08.2020	ZZ2404200142682 Dated 08.04.2020	Rs.52,56,386/-
2	GAPPL/ADC/GSTP/148/2020-APPEAL Dated 18.08.2020	ZX2404200374560 Dated 20.04.2020	Rs.74,32,443/-
3	GAPPL/ADC/GSTP/149/2020-APPEAL Dated 18.08.2020	ZQ2404200143093 Dated 08.04.2020	Rs.68,58,162/-
4	GAPPL/ADC/GSTP/150/2020-APPEAL Dated 19.08.2020	ZY2404200374348 Dated 20.04.2020	Rs.1,74,09,931/-

2. The '*appellant*' is holding GSTIN No.24AAACL3246N1ZG. As per the statement of facts mentioned in the appeal memo -

- the '*appellant*' is engaged in manufacture and supply of Pump Sets which attract GST @ 18%. They procure Inputs such as Casting, Stamping, winding wire, Stainless Steel round bars etc. and Input Services such as job work services, goods transport agency services etc. for use in course of business and avails Input Tax Credit of the GST paid thereon. Majority of the Inputs and Input Services attract GST @ 12%, 18% or 28%. Thus, GST paid on procurement of Input and Input Services is higher than the rate of tax payable on their outward supply, which resulted into accumulation of unutilized credit in electronic credit ledger.
- Accordingly, the '*appellant*' had filed refund applications for refund under category 'Refund on account of ITC accumulated due to Inverted Tax Structure'. After verifying the refund applications, the Adjudicating Authority has rejected partial amount of refund claims (as mentioned in table at para 1 above) on the ground of mismatch of ITC as well as for the reason that **ITC of Input Services is inadmissible as per Rule 89(5) of the CGST Rules, 2017 read with Notification No. 26/2018-Central Tax dated 13.06.2018.**

3. Being aggrieved with the *Impugned Orders* the *Appellant* has preferred the present appeals on the following grounds -

- The Respondent has passed *impugned orders* without considering principles of natural justice by not providing sufficient opportunity of personal hearing.

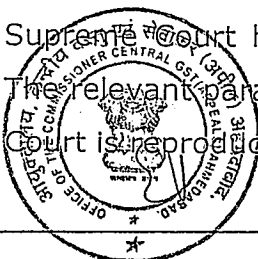


- Section 54(3) stipulates that a registered person can claim refund of "ANY" unutilized input tax credit if such unutilized input tax credit gets accumulated.
- Appellant has relied on the judgement of Hon'ble Gujarat High Court in the case of VKC Footsteps India Private Limite Vs. UOI (SCA Number 2792 of 2019). In the said judgement it was held that Explanation (2) to Rule 89(5) of the CGST Rules, 2017 is held to be contrary to the provisions of Section 54(3) of the CGST Act, 2017 and Net ITC should mean input tax credit availed on Inputs and Input Services as defined under the Act. The refund claim of unutilized input tax credit including Input Services as part of the Net Input Tax Credit is allowed.
- In view of above submissions, the Appellant has made prayer that Orders passed by Respondent may be quashed and set aside in the interest of justice and refund may be granted to them.

4. The 'Appellant' has submitted letters, in respect of present appeals on different dates i.e. on 05.04.2023, 28.04.2023 & 24.05.2023 to this Appellate Authority and informed that -

- They have filed appeals against impugned orders for the rejection of refunds to the extent of ITC accumulated on account of Input Services in case of refund claimed of accumulated ITC due to Inverted Duty Structure.
- The Similar issue was also under review by Hon'ble Supreme Court in case of VKC Footsteps India Pvt. Ltd. Vs. Union of India Civil Appeal : 4810 of 2021, wherein it is held that refund to the extent of ITC accumulated on account of input services in case of refund of total ITC accumulated on account of Inverted Duty Structure is not allowed.
- Hence, they want to withdraw the appeals filed by them.
- They undertake that they will not file any further appeal in this case.

5. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum. I find that the 'Appellant' had presented the refund applications of the ITC accumulated due to Inverted Duty Structure. The Adjudicating Authority has allowed the said refund of accumulated ITC except ITC of Input Services. The 'Appellant' has contended in the appeal memo about admissibility of refund of accumulated ITC of Input Services in terms of Hon'ble Gujarat High Court's judgement in case of VKC Footsteps India Private Limite Vs. UOI (SCA Number 2792 of 2019). The said judgement was however challenged before the Hon'ble Supreme Court by the Union of India ; and on 13.09.2021 the Hon'ble Supreme Court has disapproved the view of Hon'ble High Court of Gujarat. The relevant para 113 under "H - Conclusion" of the Order of Hon'ble Supreme Court is reproduced as under:



The Division Bench of the Gujarat High Court having examined the provisions of Section 54(3) and Rule 89(5) held that the latter was ultra vires. In its decision in *VKC Footsteps India Pvt. Ltd. (supra)*, the Gujarat High Court held that by prescribing a formula in sub-Rule (5) of Rule 89 of the CGST Rules to execute refund of unutilized ITC accumulated on account of input services, the delegate of the legislature had acted contrary to the provisions of sub-Section (3) of Section 54 of the CGST Act which provides for a claim of refund of any unutilized ITC. The Gujarat High Court noted the definition of ITC in Section 2(62) and held that Rule 89(5) by restricting the refund only to input goods had acted ultra vires Section 54(3). The Division Bench of the Madras High Court on the other hand while delivering its judgment in *Tvl. Transtonelstory Afcons Joint Venture (supra)* declined to follow the view of the Gujarat High Court noting that the proviso to Section 54(3) and, more significantly, its implications do not appear to have been taken into consideration in *VKC Footsteps India Pvt. Ltd. (supra)* except for a brief reference. Having considered this batch of appeals, and for the reasons which have been adduced in this judgment, we affirm the view of the Madras High Court and disapprove the view of the Gujarat High Court.

6. In view of above, I find that the 'Adjudicating Authority' has rightly not considered the ITC of Input Service in calculating the Net ITC while sanctioning the refund claims to the 'Appellant'. Accordingly, the 'Adjudicating Authority' has correctly sanctioned the amount of refund to the 'Appellant' without considering the ITC of Input Services. Since, the 'Appellant' has requested for withdrawal of appeals vide their letters dated 05.04.2023, 28.04.2023 & 24.05.2023, the appeals under consideration has become infructuous. Accordingly, considering the appellant's request for withdrawal of appeals, I dismiss the appeals as withdrawn.

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

The appeals filed by the 'Appellant' stand disposed off in above terms.

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 07.06.2023

Attested

(Dilip Jadav)

Superintendent (Appeals)



By R.P.A.D.

To,
M/s. La-Gajjar Machineries P. Ltd.,
Plot No. 143, LGM House, Sukhrampura,
Near Ajod Dairy, Outside Gomtipur Darwaja,
Sukhramnagar, Ahmedabad - 380021

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

