



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- 20230864SW000000A4C7

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/819/2023 -APPEAL / 18911 - 99

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-99/2023-24**  
दिनांक Date : **25.08.2023** जारी करने की तारीख Date of Issue : **25-08-2023**

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 **ZG2411220078070** DT. **09.11.2022** issued by The Deputy Commissioner, CGST, Division-IV, Ahmedabad South

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

Appellant	Respondent
M/s KTF Fashion Private Limited, S. No. 168, Opp Ranipur Patia, Narol Sarkhej Road, Narol, Ahmedabad, Gujarat-382405 (GSTIN 24AADCK2620E1Z5)	The Deputy Commissioner, CGST, Division-IV, 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 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



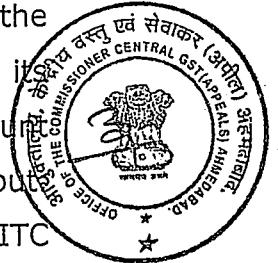
**ORDER-IN-APPEAL****Brief Facts of the Case:**

**M/s. KTF Fashion Private Limited** (GSTIN 24AADCK2620E1Z5), S. No. 168, Opposite Ranipur Patia, Narol Sarkhej Road, Narol, Ahmedabad, Gujarat - 382 405 (hereinafter referred as '*Appellant*') has filed the appeal against the following Refund Sanction/Rejection order (hereinafter referred as '*Impugned Order*') passed by the Deputy Commissioner, CGST, Range-III, Division -IVI, Narol, Ahmedabad South (hereinafter referred as '*Adjudicating Authority*').

Appeal Nos. (All Dated 11.11.2022)	RFD-06 Order Nos.	Amount of Refund Rejected	Refund Claim period
GAPPL/ADC/GSTP/819/2023	ZG2411220078070 dated 09.11.2022	Rs.2,54,753/-	October 2019 & November 2019

**2(i).** Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTN 24AADCK2620E1Z5 had filed the refund application on account of "*Refund on account of ITC accumulated due to Inverted Tax Structure*" for the period and amount as mentioned in above table under Section 54 of the CGST Act, 2017 (herein after referred to as the "*said Act*") read with Rule 89(5) of the CGST Rules, 2017 (herein after referred to as "*the CGST Rules*"). The *appellant* is engaged in the manufacturing and trading of dyed, knitted fabrics and garments to its customers domestically. The *appellant* has accumulated credit on account of rate of tax on inputs being higher than the rate of tax on output. *Appellant* filed the refund application under the category of ITC Accumulated due to inverted tax structure, in accordance with Rule 89(5) of CGST Rules, 2017 (herein after referred to as the "*said Rules*") read with Circular No. 125/44/2019-GST dated 18.11.2019, Circular No. 135/05/2020-GST dated 31.03.2020 for the period shown in the above table. After verification of said refund claim, SCN in Form GST-RFD-08 was issued to the *appellant*. Against the SCN issued, *appellant* filed defense reply in Form GST-RFD-09. Thereafter, the *adjudicating authority* rejected the above refund claim vide the *impugned order* on the following grounds:

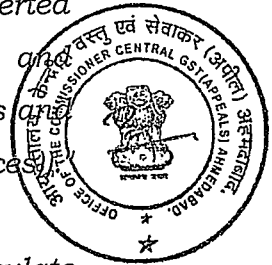
- The claim of Rs. 2,54,753/- has been inadmissible due to mismatch of ITC.
- The claim is verified in terms with the Notification No. 14/2022-CT dated 05.07.2022 wherein vide Para 8(d), the formula under Rule 89(5) of the CGST Rules, 2017 is revised, without any retrospective effect, and came into force on 05.07.2022 i.e. date of their publication in the Official



Gazette. Accordingly, for the tax period i.e. for the said period, the refund on input tax credit availed on input services appears to be inadmissible to them. Accordingly, claim of Rs. 674125/- appears to be admissible to them under Section 54(5) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017.

**2(ii).** Being aggrieved with the impugned order the appellant has filed the present appeal on dated 06.02.2023 on the following grounds:

- i. In accordance with sub rule (5) of Rule (89) of the CGST Rules, refund of ITC on account of inverted duty structure shall be granted as per the following formula: - "Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) X Net ITC+ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services."
- ii. On 05.07.2022 Notification No. 14/2022 -Central Tax was issued by the Central Board of Indirect taxes and Customs (CBIC) which amended the formula to calculate maximum refund amount for the purpose of Rule 89(5) of the CGST Rules. Relevant notified paragraph reproduced as under:  
 "in sub-rule (5), for the words "tax payable on such inverted rated supply of goods and services", the brackets words and letters "{tax payable on such inverted rated supply of goods and services X (Net ITC+ ITC availed on inputs and input services)" shall be substituted"
- iii. Given the above amendment, the revised formula to calculate maximum refund amount shall stand as under:  
 "Maximum Refund Amount= {(Turnover of inverted rated supply of goods and services) X Net ITC+ Adjusted Total Turnover} - "{tax payable on such inverted rated supply of goods and services X(Net ITC+ ITC availed on inputs and input services}."
- iv. The Ld. Officer has partially allowed refund by applying old formula before amendment but not considered the amendment taken place under Notification No. 14/2022 -Central Tax, dated 05.07.2022 issued by CBIC.
- v. The CBIC on 10.11.2022 issued a Circular No 181/33/2022-GST whereby clarifications in relation to implementation of Notification No 14/2022- Central Tax.
- vi. The amended formula for calculating refund under Rule 89(5) of the CGST Rule shall stand applicable to all refund applications filed on or after 05.07.2022. It is pertinent to note that the

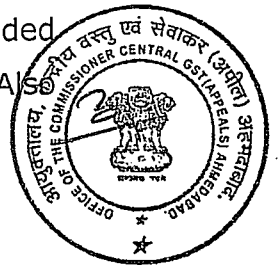


*Appellant has filed refund application on 14.09.2022 which is filed after 05.07.2022 and hence the formula adopted by the Appellant as per Notification No. 14 /2022 is valid and appropriate.*

- vii. *that the refund claim rejected by the Ld. Officer is not in accordance with the provisions of GST law, refund rejected is without any authority of law and hence, impugned order needs to be set-aside to the extent of the proportion of rejected refund claim.*
- viii. *Grant refund of Rs. 2,54,753/- as reduced in the impugned order no. F. No. CGST/WS04/Speaking order/ RFD-06/2022-23 dated 7.11.2022.*

**Personal Hearing:-**

3. Personal Hearing in the matter was held on 12.07.2023 wherein CA Mr. Rashmin Vaja, and Mr. Rahul Shah appeared on behalf of the 'Appellant' as authorized representatives. During P.H. they have submitted written submission and stated that the new formula is applicable as per Notification No. 14/2022 dated 05.07.2022. Clarification in this regard has also been issued by CBIC, Circular NO. 181/33/2022 dated 10.11.2022, wherein it has been clarified that all refund applications filed after the Notification No. 14/2022 dated 05.07.2022 shall be decided based on new formula, and therefore requested to allow appeal. AIS submitted synopsis of the case during P.H.



**Discussion and Findings :**

4. I have carefully gone through the facts of the case, grounds of appeal, submission made by the *appellant* and documents available on record. I find that *Appellant* filed the refund application under the category of ITC Accumulated due to inverted tax structure, in accordance with Rule 89(5) of CGST Rules, 2017 (herein after referred to as the "said Rules") read with Circular No. 125/44/2019-GST dated 18.11.2019, Circular No. 135/05/2020-GST dated 31.03.2020 for the period from October 2019 to November 2019.

5. I find that in the present case the adjudicating authority has stated that they have verified the claim in terms with the Notification No. 14/2022-CT dated 05.07.2022 wherein vide Para 8(d), the formula under Rule 89(5) of the CGST Rules, 2017 is revised, without any retrospective effect, and came into force on 05.07.2022 i.e. date of their publication in the Official Gazette.

Accordingly, for the tax period i.e. from October 2019 to November 2019, the refund on input tax credit availed on input services appears to be inadmissible to them. Accordingly, claim of Rs. 6,74,125/- only appears to be admissible to them under Section 54(5) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017.

*As per sub rule (5) of Rule (89) of the CGST Rules, refund of ITC on account of inverted duty structure shall be granted as per the following formula: - "Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) X Net ITC+ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services."*

The Notification No. 14/2022-CT dated 05.07.2022, Para 8(d) reads as under:

(a) .....

(b).....

(c).....

(d) in sub-rule (5), for the words "tax payable on such inverted rated supply of goods and services", the brackets, words and letters "{tax payable on such inverted rated supply of goods and services x (Net ITC / ITC availed on inputs and input services)}" shall be substituted.

**6(i).** I find that in the present matter the formula adopted by the Appellant for filing of refund claim is based on Rule 89(5) of the CGST Rules and in accordance with Notification No 14/2022- CT dated 05.07.2022. The revised formula as per Notification No 14/2022- CT dated 05.07.2022, to calculate maximum refund amount is as under:

*"Maximum Refund Amount= {(Turnover of inverted rated supply of goods and services) X Net ITC+ Adjusted Total Turnover} - "{tax payable on such inverted rated supply of goods and services X(Net ITC+ ITC availed on inputs and input services}."*

**6(ii).** Further CBIC on 10.11.2022 issued a Circular No 181/33/2022- GST whereby clarifications in relation to implementation of Notification No 14/2022- Central Tax.

The Circular No 181/33/2022- GST dated 10.11.2022 read as under:

*Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022. Accordingly, it is clarified that the said amended formula under sub-rule (5) of rule 89 of the CGST Rules, 2017 for*



calculation of refund of input tax credit on account of inverted duty structure would be applicable in respect of refund applications filed on or after 05.07.2022. The refund applications filed before 05.07.2022 will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated 05.07.2022."

7. In view of the above paras, I find that in accordance with clarification provided in the above circular, the amended formula for calculating refund under Rule 89(5) of the CGST Rule shall stand applicable to all refund applications filed on or after 05.07.2022. In the current case, the Appellant has filed refund application on 14.09.2022 which is filed after 05.07.2022 and hence the formula adopted by the Appellant as per Notification No: 14 /2022, dated 05.07.2022 read with Circular No 181/33/2022- GST dated 10.11.2022, is valid and appropriate. In view of above, the refund claim rejected by the refund sanctioning authority is not in accordance to provisions of Rule 89(5) of CGST Rules, 2017 and thus requires to be modified.

8. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is modified to above extent for being not legal and proper and accordingly direct that the refund amount of Rs. 2,54,753/- shall be granted. The appeal of the "Appellant" is allowed.


अपीलकर्ता 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)  
Joint Commissioner (Appeals)

Date: 25.08.2023

Attested

  
(Sandheer Kumar)  
Superintendent (Appeals)  
Central Tax, Ahmedabad  
By R.P.A.D.

To,  
M/s. KTF Fashion Private Limited  
S. No. 168, Opposite Ranipur Patia,  
Narol Sarkhej Road, Narol,  
Ahmedabad, Gujarat - 382 405.

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./Asst. Commissioner, CGST, Division-IV, Narol, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File

