



सत्यमेव जयते

आयुक्तका कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५,
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(क)	फाइल संख्या / File No.	GAPPL/ALC/GSTP/1020/2024 / 4360-66
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM CGST-001-APP-JC-07/2024-25 and 19.04.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	19.04.2024
(ङ)	Arising out of Order-In-Original No. 01/WS03/GST/AC/RC/2023-24 dated 01.08.2023 (GST DRC-07 Ref No. 3CIEEWS0304A082300017) passed by The Assistant Commissioner, CGST Div-III, Ahmedabad South.	
	Name of the Appellant	Name of the Respondent
(च)	M/s Ascent Finechem Private Limited, Plot no. 273 A&B/ 272/5/P/I &2, Phase 2, G.I.D.C, Ahmedabad. Vatva, Gujarat 382445	The Assistant Commissioner, CGST Div-III, Ahmedabad South



इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल कर सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- 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.
- 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
- 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.
- 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.
- Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying
 - Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and
 - 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.
- 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.
- उच्च अपीलार्थी प्राधिकारी को अपील दाखिल करने में संबंधित व्यापार, विस्तृत और मदीकाय प्रदधानों 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. Ascent Finechem Private Limited, Plot No. 273 A&B/272/5/P/1 & 2, Phase II, GIDC, Vatva, Ahmedabad-382445 (hereinafter referred as 'appellant') has filed the present appeal against Order-In-Original No. 01/WS03/GST/AC/RC/2023-24, (Order No. 3CEEWS0304A082300017 passed in Form GST DRC-07)) dated 01.08.2023 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division - III, Ahmedabad South (hereinafter referred as 'adjudicating authority').

2(i). The appellant is engaged in the manufacturing of Organic Chemicals like aldehydes, Nitrile function compounds etc. falling under HSN 2909, 2912, 2914, 2918 and 2926, and registered with GSTN 24AABCA6349QIZA since 01.07.2017. They mainly manufactures specialty chemicals like Para ainsic aldehyde etc and its derivates for which they have imported raw material viz. Para Cresol for manufacturing the same, under duty exemption scheme "Advance Authorization" under Notification No.79/2017-Customs dated 13.10.2017 without payment of duty/tax. 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. Ascent Finechem 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). The appellant had procured imported raw materials under Advance License without payment of integrated tax. The Advance licences issued in the year 2017 and 2018 were used for procurement of duty-free January 2017 to April 2018. Refund was credited to their account during the period from June 2018 to January 2019. It therefore appeared that the refund of integrated tax claims was in contravention of rule 96 (10) of the CGST Rules, 2017 and for that they are liable to recovered the ITC amounting to Rs. 78,43,323/- under Section 74(9) of the CGST Tax Act, 2017 read with Section 20 of the IGST Act 2017 alongwith interest under Section 50(1) of the CGST 2017 and SGST Act, 2017 read with section 20 of the IGST Act, 2017 and penalty under Section 74(1) of the CGST Tax Act, 2017.

3. Therefore, a show cause notice No. 08/2023-24 dated 29.05.2023 was issued to the 'appellant'. Thereafter, impugned order dated 01.08.2023 was issued to the 'appellant' and confirm the demand of (IGST (refund) amounting to Rs. 78,43,323/-, and appropriate the amount of Rs. 15,91,427/-, as paid vide DRC-03 dtd. 23.03.2021. However, the appellant has not paid the remaining demand of Rs. 62,51,896/- (Rs. 78,43,323 minus 15,91,427) alongwith interest and penalty, accordingly impugned order has been issued on the following grounds:

- that they had procured imported raw materials under Advance Licence without payment of integrated tax. The Advance licences issued in the year 2017 and 2018 were used for procurement of duty-free January 2017 to April 2018. Refund was credited to their account during the period from June 2018 to January 2019. It therefore appeared that the refund of integrated tax claims was in contravention of rule 96 (10) of the CGST Rules, 2017;
- that import under Advance license and export with payment of IGST for IGST refund is equal to avail double benefit. Hence, The Provision under rule 96(10) of the CGST Rules, 2017 is brought to prevent exporters from availing of the IGST exemption and subsequently refunding IGST for exports that lead to the liquidation of unrelated ITC;



- *the mechanism to get IGST refund on filing of Shipping Bill is meant for speedy and hassle-free refund process for the exporter to ease of doing business, which has been exploited to get double benefit by some exporters. If there is a loophole in any system, even then it does not permit any one to get illegal benefit from that loophole;*
- *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 person: 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 78,43,323/-, was not admissible and requires to be demanded;*
- *Since the fact of receiving inputs under Advance Authorization, an 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, wilful mis-statement also. Further, it was possible to import under Advance Authorization by claiming exemption of only the Customs duties and IGSI could have been paid in which the exporter would be eligible for refund of IGST;*
- *a mere indication of "Advance Authorization" in the Shipping Bill would not be a sufficient disclosure, unless it has been specifically indicated that IGST exemption was claimed while importing inputs under Advance Authorization. Such a submission was not mentioned in the export documents therefore, tantamount to suppression of facts;*
- *they have willfully and purposely filed erroneous refund claim and availed refund of IGST with the sole intention to encash their accumulated Input Tax Credit which they were otherwise prohibited in GST law. 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;*



- Since, Section 74 is invoked for the demand which is found to be just and proper, I conclude that they are liable for penalty, equivalent to the tax demanded, in terms of Section 74(1) read with Section 122(2)(b) of the Central GST Act, 2017. Further, the Noticee is also liable to pay the interest leviable, in terms of Section 50 of the CGST Act, 2017.

4. Being aggrieved with the impugned order the appellant preferred appeal for the remaining demand of Rs. 62,51,896/- (Rs. 78,43,323 minus Rs. 15,91,427) alongwith interest and penalty portion of the order before the appellate authority on 27.10.2023 on the following grounds:-

- The impugned order is vague, non-speaking and has been passed without dealing with the submissions made by the Appellant;
- the Hon'ble High Court in Para 8.10 of the order notes that Notification No. 54/2018 is made applicable retrospectively from the date when Rule 96(10) of the CGST Rules came into force and not with effect from 23rd October, 2017 as was amended in the previous Notifications;
- that the authority has not withheld any refund of the appellant since the authority did not find any violation of GST law in the refund application i.e., Shipping Bill filed for the period concerned. Therefore, the authority cannot demand refund without challenging the refund claimed vide shipping bills filed, even though there is a power given in the GST provision under Rule 96(4);
- that Appellant is duly entitled for refund in terms of Rule 96A of CGST rules, for refund of accumulated ITC, in case if goods were exported without payment of tax, under Bond/LUT. Thus, demand to that extent is not sustainable being "Revenue Neutral", as Appellant is duly entitled for refund under Rule 96A of CGST Rules;
- that Without prejudice to other submissions, it is submitted that demand of IGST of Rs. 62,51,896/- for the period Prior to 09.10.2018 is not sustainable, as Notification No. 54/2018-CT, is effective from 09.10.2018 and not from 23.10.2017. Therefore, for the period 09.10.2018 till 31.03.2020, Appellant has availed the refund of IGST of Rs. 15,91,427/- only, in violation of Rule 96(10);
- that Notification Number 54/2018 CT dated 9.10.2018 has specific effective date for implementation as the date of publication in Official Gazette which is 09.10.2018. Thus Notification 54/2018 would not be



retrospective effective, and therefore demand for the period prior to 09.10.2018 would not be sustainable in law;

- *that effect of changes in Notifications for Rule 96(10) of CGST Rules, 2017, has also been revalidated by Circular No. 125/44/2019-GST, dated 18.11.2019, wherein vide Para No. 52, CBIC has clarified that "The net effect of these changes is 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.";*
- *that Circulars and Notifications issued under GST, are binding upon the revenue authorities. Therefore, the demand proposed of IGST refund of Rs. 78,43,323/-, in the impugned notice DRC-01, in contrary to the Circular No. 125/44/2019-GST, dated 18.11.2019, and Notification No., 54/2018-Central tax, dated 9th October 2018, is Void-ab-Initio and therefore, liable to be set aside;*

that in the case of Hon'ble Gujarat HC in case of Zaveri and company Vs UOI. SCA No. 15091 of 2018, the Hon'ble court has held that Notification No. 54/2018 dated 9.10.2018 is prospective. The said judgement has been overlooked by the authority before passing order, and with the pre-mind sets, passed the order without considering the earlier submissions filed by the appellant;

- *No suppression of facts from the department, thus demand under Section 74 of CGST Act, 2017, is not sustainable in the present case. For this reason, penalty under Section 122 is also not, imposable;*
- *that Interest is not applicable in the present case, as Appellant is duly eligible to claim refund in terms of Rule 89(4) of CGST Rules, 2017, if export is made under Bond/LUT, without payment of IGST, instead of export of goods with payment of IGST;*

In view of the above the appellant pray that the order passed by the learned assessing authority dated 01.08.2023 may please be set aside or modified.



Personal Hearing :

5. Personal Hearing in the matter was held on 05.03.2024. Smt. Madhu Jain, Advocate appeared on behalf of the 'Appellant' as authorized representative. During P.H. she referred the provision of Section 54/2018 dated 09.10.2018. She submitted that the refund claimed after 09.10.2018 paid back, amount prior to 09.10.2018, refund was admissible, so the taxpayer has complied the Circular No. 125/44/2019 GST dated 18.11.2019. She further reiterated the written submission. In view of above no interest is payable and penalty should also be waived 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 documents / records in the matter and therefore I proceed to adjudicate the said demand. The appellant is engaged in the manufacturing of Organic Chemicals like aldehydes, Nitrile function compounds etc. falling under HSN 2909, 2912, 2914, 2918 and 2926, and registered with GSTN 24AABCA6349QIZA since 01.07.2017. They mainly manufactures specialty chemicals like Para ainsic aldehyde etc and its derivates for which they have imported raw material viz. Para Cresol for manufacturing the same, under duty exemption scheme "Advance Authorization" under Notification No.79/2017-Customs dated 13.10.2017 without payment of duty/tax. 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. 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 by Notification no. 54/2018-Central Tax dated 09.10.2018. 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.

8(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.”

8(ii). In view of the above, it is observed that 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.

9. 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.

10. In view of the above, appellants are liable to pay the IGST refund of Rs. 78,43,323/- under the provisions of Sections 74(1) of the CGST Act 2017 alongwith interest under the provisions of Sections 50 of the CGST Act read with the provisions of Section 20 of the IGST Act and penalty of Rs. 78,43,323/- under the provisions of Sections 74(1) of the CGST Act read with the provisions of Section 122(2)(b) of the CGST Act and Section 20 of the IGST Act. However, appellant has paid the amount of Rs. 15,91,427/- vide DRC-03 dated 23.03.2021, hence they are liable to pay interest from the refund sanctioned date to refund reversal date i.e. till 23.03.2021 on the said amount. Further it is observed that the appellant has paid the amount of Rs. 15,91,427/- before the issuance of SCN, however they have not paid the interest and penalty under the provisions of Section 74(5) of the CGST Act, 2017, therefore they are liable to pay penalty under the provisions of Sections 74(1) of the CGST Act read with the provisions of Section 122(2)(b) of the CGST Act and Section 20 of the IGST Act on the said amount also.

12. 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.

(Adesh Kumar Jain)
19/04/2024

Joint Commissioner (Appeals)
Date: 19.04.2024

Attested

(Sandheer Kumar)
19/04/24
(Sandheer Kumar)
Superintendent, CGST (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Ascent Finechem Private Limited,
Plot No. 273 A&B/272/5/P/1 & 2,
Phase 2, GIDC, Vatva, Ahmedabad-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./Asstt. Commissioner, CGST, Division-III, Ahmedabad South.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad.
7. Guard File. / P.A. File.

