



सत्यमेव जयते

आयुक्तकाकार्यालय
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)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/2498-2501,2503/2024	5291 to 5296
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-001-APP-JC-39 to 43/2024-25 and 21.05.2024	
(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	24.05.2024	
(ङ)	Arising out of Order-In-Original No. ZG2402240024639, ZG2402240024517, ZG2402240024728, ZG2402240024817 and ZG2402240025139 all dated 02.02.2024 passed by The Assistant Commissioner, CGST, Division-V, Ahmedabad-South Commissionerate		
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Maya Steel Corporation (Legal Name: Lateben Jayantilal Gehalot) (GSTIN: 24BWVPG8051K1Z0) 47/A, Uday Industrial Estate, Odhav GIDC, Near Odhav Police Station, Ahmedabad, Gujarat-382415	

(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 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 .



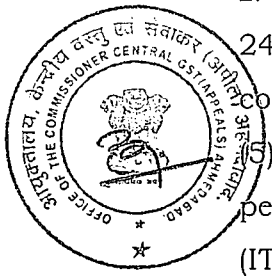
अपीलिय आदेश/ ORDER-IN-APPEAL**Brief Facts of the Case :-**

These orders arise on account of five (5) appeals filed by M/s. Maya Steel Corporation (Legal Name: Lataben Jayantilal Gehalot), 47/A, Uday Industrial Estate, Odhav GIDC, Near Odhav Police State, Ahmedabad-Gujarat 382415 (hereafter referred to as the 'appellant') against the following Orders-in-Original (in short 'impugned orders') passed by the Assistant Commissioner, CGST, Division-V (Odhav), Ahmedabad South (in short 'adjudicating authority') in respect of 5 refund claims filed by the appellant under the provisions of Section 54(3)(ii) of the CGST Act, 2017 (in short 'the Act') read with Rule 89(5) of the Central Goods & Services Tax Rules, 2017(in short 'the Rules'):

Sr No.	OIO No.& Date issued under - Form GST-RFD-06 all dated 02.02.2024	Period for which refund claimed	Amount of refund claimed (Rs.)	ARN No. & Date
1	ZG2402240024639	June'2022	19304	AA2412230103308 12.04.2023
2	ZM2402240024517	Aug.'2022 Sept.'2022	235955	AA241223010465T 12.04.2023
3	ZE2402240024728	Nov.'2022 Dec.'2022	298111	AA241223010693Q 12.04.2023
4	ZE2402240024817	Feb.'2023	186479	AA241223011776J 12.05.2023
5	ZG2402240025139	May'2023 to Sept.'2023	326490	AA241223016146T 12.06.2023

2. Brief facts of the case are that the appellant having GSTIN 24BWVPG8051K1Z0 for carrying over their business ie., process of conversion from Patta/Circle into S S Utensils. The appellant had filed five (5) refund claims as detailed in table above, under form RFD-01A for the period as mentioned above seeking refund of unutilized Input Tax Credit (ITC) accumulated contending the accumulation of ITC in their case being on account of inverted tax structure viz. rate of tax on input being higher than the rate of tax on output supplies. The refund claims referred above were filed by the appellant under the provisions of Section 54(3) of the Act read with Rule 89(5) of the CGST Rules, 2017. After scrutiny of the refund claims filed by the appellant, they were issued with Show Cause Notices all dated 08.01.2024 was issued proposing rejection of their claim for refund on the ground that the claimant has purchased and sold goods under same HSN 732393 at same rate of tax. Thus it appears that the appellant was involved in trading which cannot be considered in the refund of Inverted duty structure.

3. The adjudicating authority vide his impugned orders all dated



02.02.2024 rejected all the five (5) refund claims filed by the appellant on the grounds that on scrutiny of the applicant's reply and refund claims, it is noticed that the applicant is involved in trading under HSN 732393 which is not allowed in calculation of Net ITC. Therefore the refund claim is Rs.0/- which the appellant is eligible and same is found admissible under Section 54(5) of the CGST Act, 2017.

4. Being aggrieved with the impugned orders of the adjudicating authority, the appellant preferred appeal before the appellate authority on 06.04.2024 in respect of all the five (5) refund claims and furnished copy of the SCN as grounds of appeal, which is as follows:

(i) That the process of conversion from Patta/Circle into S S Utensils covered under inverted structure. As their inputs attract 18% while final products attracts 12% of Tax, that's how their ITC gets accumulated.

(ii) that as per Section 54(3) of the CGST Act, 2017 a registered person may claim refund of unutilized input tax credit on account of Inverted Duty Structure as per the formula below:

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)}

(iii) that only by relying on the HSN Code and tax rate are same, deemed as one and such sales be construed as Trading Sales by the adjudicating authority. Further the exclusion from "Net ITC" that ITC pertaining to trading sales without corresponding reduction of trading turnover from the "adjusted total turnover" is bad in law. It is hampering the over all essence of the formula prescribed under Rule 89(5) of the CGST Rules, 2017 and adding problem to disproportionate refund being sanctioned by adjudicating authorities.

that the formula adapted by adjudicating authorities is ;

Maximum Refund amount = {(Turnover of inverted rated supply of goods and services) x (Net ITC - ITC of Trading items) / Adjusted Total Turnover} - {tax payable on such inverted rated supply of goods and services x (Net ITC / ITC availed on inputs and input services)}

That even if we go by the above cited formula, once the ITC pertaining to deemed trading turnover is reduced, such deemed trading turnover is also required to be reduced from the "inverted duty turnover" and "adjusted total turnover" in order to compute refund of inverted turnover pertaining to manufacturing sales only.

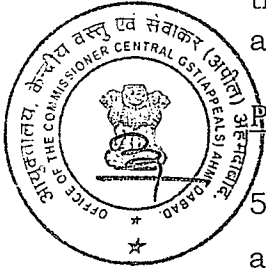
(v) that the tax payers may besides regular sales of manufactured items, at times when there is specific customer order, may undertake to supply the inputs as such with due payment of taxes under the GST Law and the same won't constitute the part of inverted duty turnover while

filing the refund application, however forms part of the “adjusted total turnover” and the “Net ITC” includes input tax credit pertaining to traded inputs while calculating the refunds as per the formula prescribed under the law.

(vi) that as per Circular No.125/44/2019 dated 18.11.2019 has clarified that where there are multiple inputs attracting different rates of tax (equal or lower rate of tax), in the formula provided in Rule 89(5) of the CGST Rules, 2017, the term “Net ITC” covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

(vii) that reducing the value of ITC of trading items while calculating “NET ITC” would result in reducing the proportionate benefit of refund to the taxpayer, thus defeating the object and purpose of refund of unutilized credit accumulated on account of inverted duty structure under Section 54(3)(ii) of the CGST Act, 2017. Thus if value of “Net ITC” is calculated by reducing the ITC of trading items then the value of “turnover of trading items” should also be reduced to determine “adjusted total turnover”. The appellant has relied upon the matter of Indian Oil Corporation LTd. vs. Commissioner of Central Goods and Service Tax of the Delhi High Court.

(viii) With the above submissions, the appellant has requested to allow their appeal and set aside the impugned order passed by the adjudicating authority.



PERSONAL HEARING

5. Personal hearing in the matter was held on 14.04.2024 in respect of all the five refund claims, whereby Shri Rajkumar Yadav, Chartered Accountant appeared before me as authorized representative on behalf of the appellant and submitted that if ITC on traded goods is not allowed while calculating total ITC, then Sales turnover shall also to be excluded. He further reiterated the written submissions and requested to allow appeal.

Discussion and Findings :

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that in this case of five (5) appeals filed against impugned orders wherein the refund claims amounting to Rs.19,304/-, 2,35,955/-, 2,98,111/-, 1,86,479/-, 3,26,490/- were held inadmissible and rejected by the adjudicating authority on the grounds that ITC on traded goods is not allowed for refund of inverted duty structure. I find that the main issue to be decided in the instant case is whether the impugned order passed by the adjudicating authority is legal and proper or not?

7. I find that the present appeal is filed to set aside the impugned order as the adjudicating authority has rejected the whole refund instead of sanctioning

the eligible amount of refund as per Section 54(3) of CGST Act, 2017 and Rule 89(5) of the CGST Rules, 2017.

8. In this regard, I find that the Appellant is involved in the business of manufacturing of Stainless Steel utensils and also provide some of the related products of SS like Patta/Circle on utensils as per the need of their customers. The process of converted from Patta/Circle into S S Utensils is covered under inverted duty structure. Their inputs attracts 18% while final products attracts 12% Tax rate. As per Section 54(3) of CGST Act, 2017 read with Rule 89(5) of CGST Rule, 2017 and Circular No.125/44/2019-GST dated 18.11.2019 Refund of ITC accumulated is permissible except for ITC on Capital Goods in case of Refund in the category "Inverted Duty Structure".

9. I find that the dispute in the present case is not with regard to sanction of whole refund claim filed by the Appellant. The Appellant has contended that in their claim, the adjudicating authority has deliberately reduced the NET ITC, by not including the entire ITC of the inputs citing that the appellant is involved in trading as some of the output supply HSN is same as inputs received which is not allowed in calculation of NET ITC. However, though the adjudicating authority had reduced the NET ITC, should have also considered the inverted rate of supply of goods turnover by reducing the traded turnover, which has not been done. Thus, it has created reducing the proportionate benefit of refund to the taxpayer.

10. As per Circular No.125/44/2019 dated 18.11.2019, while processing the refund of unutilized ITC on account of inverted tax structure, inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and clarified:

a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

11. As per the proviso to Rule 89(5) in the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

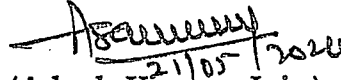
Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC / Adjusted Total Turnover} - [(tax payable on such inverted rated supply of goods and services x (Net ITC / ITC availed on inputs and input services))].

Accordingly, in the instant case, I observe that the appellant has not clearly given the basic details in their grounds of appeal, the working of the refund claims, such as details of trading turnover, overall turnover, details of the ITC pertaining to the inputs that were utilized for manufacturing and traded further etc., details of the ITC of input services if any, etc. etc.. In the absence of such details, it is not feasible to arrive at a conclusion whether the adjudicating authority has properly calculated the refund claims are not. Some illustrative examples have been given in Circular No.125/44/2019 dated 18.11.2019, as the appellant is having two kind of outward supplies ie., manufactured goods and traded goods, the subject case do not fall under any of the category of the examples cited in the aforesaid circular.

12. In view of the above facts and discussions, and due to lack of supporting documents and details submitted by the appellant in their grounds of appeal, I go with the opinion of the adjudicating authority. Therefore, as I find no infirmity in all the five (5) impugned orders all dated 02.02.2024 (as tabulated in para 1 above), I uphold them and reject all the five (5) appeals filed by the appellant.

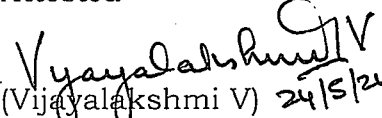
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

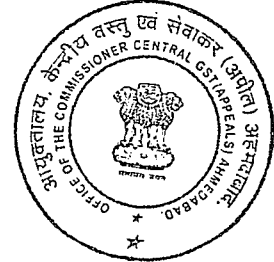
The appeal filed by the *appellant* stands disposed of in above terms.


(Adesh Kumar Jain)
Joint Commissioner (Appeals)

Date: .05.2024

Attested


(Vijayalakshmi V) 24/5/24
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,

M/s. Maya Steel Corporation
(Legal Name – Lataben Jayantilal Gehalot),
47/A, Uday Industrial Estate,
Odhav GIDC, Nr.Odhav Police Station
Ahmedabad, Gujarat 382415

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-V, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File



