

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- 20230964SW0000424257

रजिस्टर्ड डाक ए.सी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1847/2023 -APPEAL / १९७०१

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-002-APP-JC-48/2023-24
दिनांक Date : 24-08-2023 जारी करने की तारीख Date of Issue : 05-09-2023

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. ZI2404230177818 DT. 13.04.2023 issued by The Assistant Commissioner, CGST & C. Ex., Divison-VI, Ahmedabad North Commissionerate.

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

M/s. Simmi Gurpal Singh Dua,
Aishwarya Bunglows part-I, Science City Road,
Sola, Ahmedabad, Gujarat - 380060

(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 API 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 API 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.

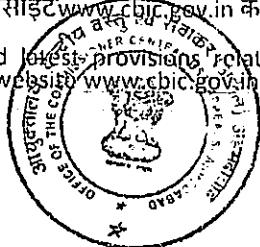
(ii)

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.



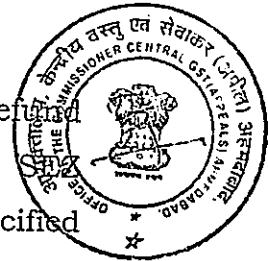
ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

This appeal has been filed by M/s. Simmi Gурpal Singh Dua, Aishwarya Bungalows Part-1, Science City Road, Sola, Ahmedabad Gujrat- 380060 [hereinafter referred to as "the appellant"] against RFD-06 Order No. Z12404230177818 dated 13-04-2023 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST & C.Ex., Division-VI, Ahmedabad-NORTH [hereinafter referred to the "adjudicating authority"]

2. Facts of the case in brief, are that the appellant is registered under the Central Goods and Service Tax Act, 2017 vide GST registration number 24ABLPD2706L1ZT. The appellant is engaged in the business of supply of woven fabrics. The appellant has applied for a refund amounting to Rs.1,51,674/- on 06.03.2023 before the adjudicating authority, under Section 54 of CGST Act, 2017, on account of Supplies to SEZ unit / SEZ Developer without payment of Tax for April to Dember-2022. The adjudicating authority vide impugned order rejected the refund claim on the ground that:

(i) Invoice No. 23 dated 16-08-2022 valued at Rs.1,92,970/- (SB No.6047530 dated 20-08-2022 is not reflecting on the website of SEZ and hence could not be verified and is required to be deducted from the calculation of the Refund Claim.

(ii) as per Circular No.125/44/2019-GST dated 18-11-2019, in case of refund application under the category "On account of Supplies made to UNIT/SEZ Developer without payment Tax", endorsement from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to Rule 89(1) of the GST Rules, 2017 have to be provided/uploaded, However, none of the export documents, uploaded by the claimant, is endorsed by the specified officer of the SEZ.



3. Being aggrieved with the impugned order, the appellant preferred appeal on the following grounds:

"The appellant has received RFD-06(Rejection Refund order) and reason in not liable refund as per Circular No.125/44/2019-GST dated 18-11-2019 and the reason is not follow condition of circular"

"And the appellant has provided copy of SEZ-DTA Procurement in GST refund is "specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to Rule 89(1)"

"SEZ-DTA Procurement, and this copy is digitally signed & approved by SEZ authorised officer".

Further, the appellant has prayed to set aside the 'order' of rejected refund claim and allow the appeal in full.

PERSONAL HEARING:

4. Personal hearing in this case was held on 31.07.2023. Shri Akshay Thakkar, Consultant appeared in person, on behalf of the appellant as authorized representative. He reiterated the written submissions and submitted that online digitally signed copy by Authorized officer has been submitted as a token of proof that the goods have been entered into SEZ Unit. Therefore refund is admissible and requested to allow the appeal.

5 DISCUSSION AND FINDINGS:-

5.1 I have carefully gone through the facts of the case and the submissions made by the appellant in their grounds of appeal as well as at the time of personal hearing and find that the appellant is mainly contesting for grant of Refund as online digitally signed copies by authorized officer in support of their refund claim have been submitted as a token of proof that the goods have been entered into SEZ Unit.

5.2 So the question to be answered in the present appeal is:

Whether the impugned order passed by the adjudicating authority rejecting the refund claim of the appellant is proper or otherwise?

5.3. At the foremost, I observed that in the instant case the "impugned order" is of dated 13-04-2023 and the present appeal is filed on 30.05.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. Therefore, I find that the present appeal is filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

DISCUSSIONS AND FINDINGS:

6. I have carefully gone through the case, written submissions made by the appellant during the personal hearing and available records. The only dispute with regard to rejection of the refund claim filed by the appellant is non-endorsement of export document by the specified Officer of the SEZ.

6.1 To examine the procedure for application for Refund, I refer Rule 89 of the CGST Rules, 2017 wherein the provisions of endorsement by the specified officer in such refund claims have been made:




Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1) Any person, except the persons covered under notification issued under section 55 claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or] any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or [subject to the provisions of rule 10B,] an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

[Provided that] in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the -

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

6.2 The CBIC has issued Circular No. 125/44/2019 – GST dated 18-11-2019 regarding “Fully electronic refund process through FORM GST RFD-01 and single disbursement” wherein List of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application has been mentioned. The relevant portion of the same is as under:



Type of Refund	Declaration/Statement/Undertaking/Certificates to be filled online	Supporting documents to be additionally uploaded
Refund of un-utilized ITC on account of Supplies made to SEZ units/developer without payment of tax	Declaration under third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
	-Statement 5 under rule 89(2)(d) and rule 89(2)(e)	Statement of invoices (Annexure-B)
	-Statement 5A under rule 89(4)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period
	Declaration under rule 89(2)(f)	Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/ services for authorized operations under second proviso to rule 89(1)
	Undertaking in relation to sections 16(2)(c) and section 42(2)	
	Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	

6.3 From the above, it is crystal clear that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the Zone on the export documents.

6.4 From the documents i.e. copies of SEZ-DTA Procurement Forms submitted by the appellant, with respect to supplies made vide invoices issued by them to SEZ, it is seen that on some of the Forms submitted, it is written as:

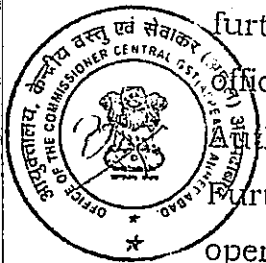
" This DTA Procurement is Digitally signed and submitted by (name-----) on behalf of SEZ Entity and This DTA Procurement is Digitally signed and approved by (name-----) SEZ Authorised Officer on (date-----)".

Whereas in some of the Forms only " *This DTA Procurement is Digitally signed and submitted by (name-----) on behalf of SEZ Entity*" is written, still in some others, there is no mention of any of the above.

6.5 On perusal of the documents submitted by the appellant, it is found that none of the documents is endorsed by the Specified Officer of the SEZ. It is further observed that only some gate entries digitally signed by authorized officer, and not by specified officer of the Zone, have been produced. Authorized officer and specified officer are two different authorities of the SEZ. Further the specified officer has to clarify that goods are for authorized operations in Zone. Therefore, it is evident on record that provisions of Rule 89 have not been complied with by the appellant, which are mandatory statutory provisions. Thus in absence of statutory compliance, the refund sanctioning authority has rejected the refund claim filed by the appellant.

6.6 Further this issue has been clarified by the CBIC vide Circular No. 125/44/2019-GST dated 18-11-2019 wherein all the supporting documents which needs to be uploaded have been clarified, however, the same also not been complied with by the appellant.

6.7. It is seen that appellant has casually uploaded the documents without knowing the significance of the endorsement by the specified officer of SEZ. When there are some provisions in the Rules, the same are to be strictly adhered to, to file any claim under the said provisions. Without following the same, there cannot be any legitimate right of getting in return of something. It is specifically mentioned in the proviso of Rule 89 that " *[Provided that] in*



respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the -

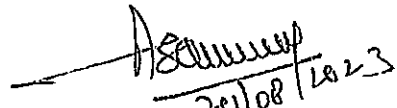
- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

6.8 From the above, it is seen that the proviso to Rule 89 ibid has not been complied with in the instant case. Therefore, I am of the view that, in absence of valid endorsement on the Export documents in r/o the goods supplied to SEZ, admitted in full in the Special Economic Zone for authorized operations, by the specified officer of the Zone, the refund amount of Rs.1,51,674/- as claimed by the appellant is rightly rejected by the refund sanctioning authority.

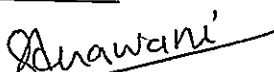
7. In view of the foregoing facts & discussion, I do not find any infirmity in the impugned order passed by the adjudicating authority and is legal, proper and as per the provisions of law. Accordingly, I reject the present appeal of the "Appellant".

8. 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)
CGST & C.EX., AHMEDABAD.

ATTESTED.


(SUNITA D. NAWANI)
SUPERINTENDENT
CGST & C.EX.(APPEALS),
AHMEDABAD.

By R.P.A.D.

M/s. Simmi Gurpal Singh Dua, Aishwarya Bunglows Part-1,
Science City Road, Sola, Ahmedabad Gujarat- 380060.
(GSTN : 24ABLPD2706L1ZT)

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad.
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. 5. Addl/Jt. Commissioner (Systems), CGST & C.Ex., Ahmedabad-North.
5. The Dy/Asstt. Commr., CGST & C.Ex, Division-VI, Ahmedabad-North.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/P.A. File.

