
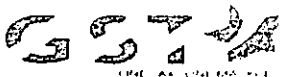


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. GST/15-18/OA/2020

आदेश की तारीख/Date of Order : - 23.02.2021
जारी करने की तारीख/Date of Issue :- 24.02.2021

DIN No.: 20210264WT000000E9B3

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi
संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 48/JC/MT/GST/2020-21

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से तीन महीने के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या GST APL-1 में दाखिल कर सकता है। इस अपील पर रु 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST APL-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त(अपील) के समक्ष नियमानुसार पूर्व जमा की धनराशि का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeals) on giving proof of payment of pre-deposit as per rules .

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST APL-1 में दो प्रतियों में दाखिल की जानी चाहिए। यह अपील सीजीएसटी अधिनियम, 2017 की धारा 107(1) के साथ सीजीएसटी नियम, 2017 के नियम 108 एवं 109(A) के प्रावधानों के अनुसार होनी चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

उक्त अपील की प्रति।

निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

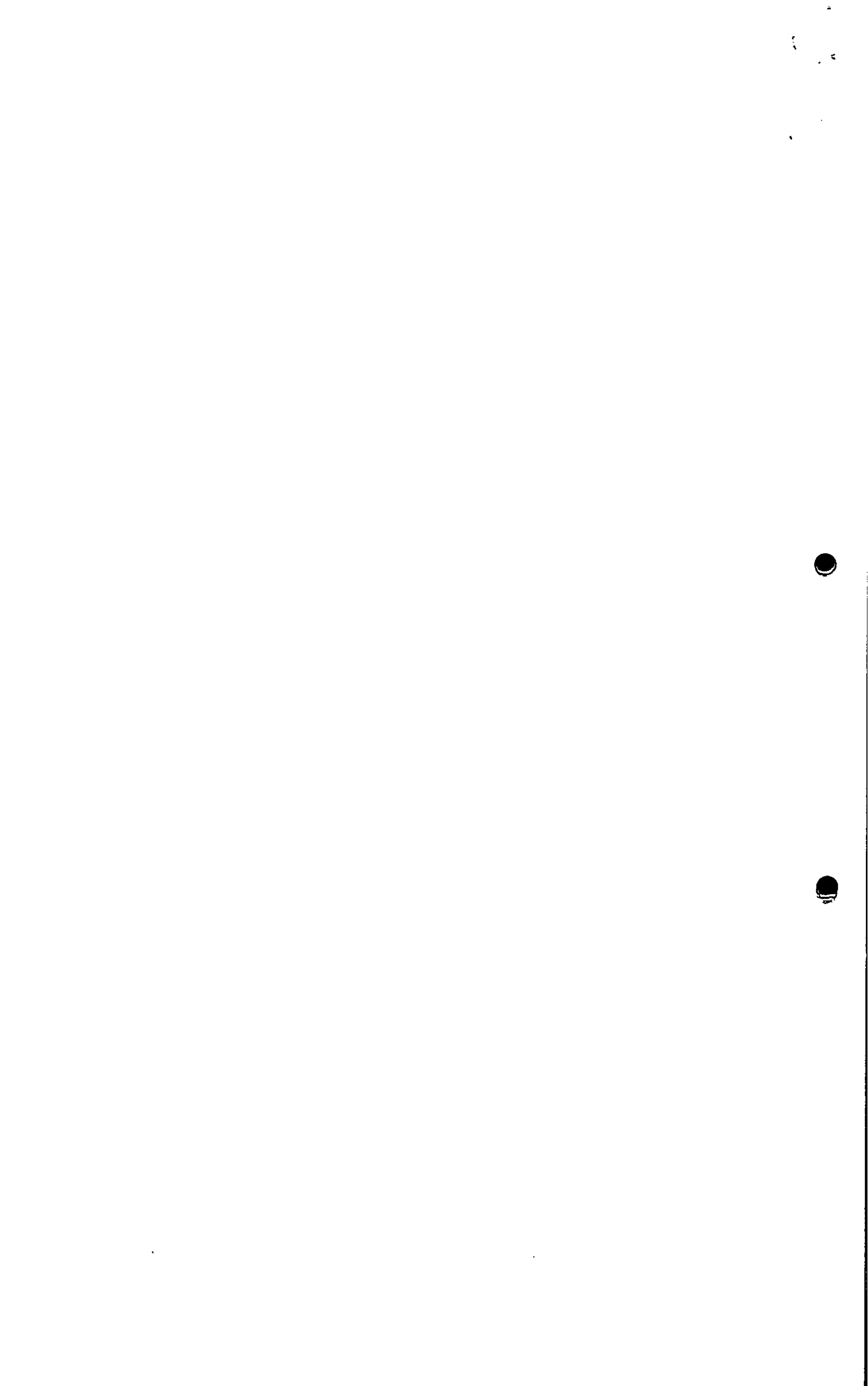
The appeal should be filed in form GST APL-1 in duplicate. This Appeal should be in accordance with the provisions of subsection(1) of Section 107 of CGST Act, 2017 read with Rule 108 and 109(A) of CGST Rules, 2017. It should be accompanied with the following:


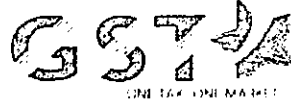
Copy of accompanied Appeal.

Copies of the decision, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय कारण बताओ सूचना/Show Cause Notice No. GST/15-18/OA/2020 dated 22.10.2020 issued to M/s Suraj Limited, Suraj House, Opp Usmanpura Garden, Ashram Road, Ahmedabad-380014.





<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद -उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557 फ़ैक्स/ FAX : 079-27544463 E-mail:- aaahmedabad2@gmail.com</p>		

To,
24AAGCS6939M1ZR
M/s Suraj Limited
Suraj House, Opp Usmanpura Garden,
Ashram Road, Ahmedabad-380014

Tax Period - July 2017 & Aug. 2017(erroneous refund)

F.Y. - 2017-18

Act - CGST Act, 2017

Section / sub-section under which order is being issued - Sec 73(9)

Brief facts of the case :

1. M/s Suraj Limited, Suraj House, Opp. Usmanpura Garden, Ashram Road, Ahmedabad-380014 (hereinafter referred as to "the said claimant") is registered with Central Goods & Services Tax Department having GSTIN No. 24AAGCS6939M1ZR.
2. The said claimant had filed following refund claims Applications (GST RFD-01A) under Section 54 of CGST Act, 2017 on account of input tax credit (ITC) accumulated due to Zero rated supply of goods and services:

Table 1 : Refund claim applications filed by the assessee

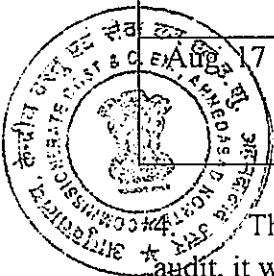
Refund period	Application Reference(ARN) No.	Amount of Refund claim (Rs.)			
		IGST	CGST	SGST	Total
July 17	AB240717975506N	5776746	1414425	1414425	8605596
Aug. 17	AA240817082383X	4714591	949439	949439	6613469

3. Vide following final refund orders (Form GST-RFD-06), the above refund claims were sanctioned to the claimant :

Table 2 : Refund claims sanctioned to the claimant

Refund period	Refund Order (Form-RFD-06) No. & Date	Amount of Refund Sanctioned (Rs.)			
		IGST	CGST	SGST	Total
July 17	Div-VII/GST-Refund/54/final/Suraj/2018 dtd 11.04.2018	5776746	1414425	1414425	8605596
Aug. 17	Div-VII/GST-Refund/35/final/Suraj/2018 dtd 04.04.2018	4714591	949439	949439	6613469

The said refund claims were sent for post-audit purpose to audit section. During the post audit, it was observed that ""the claimant has availed input tax credit of IGST of Rs. 40,56,682/-, CGST of Rs. 30,87,371/- and SGST of Rs. 30,87,371 as per the statement of purchase register (domestic purchase) for the period 01.07.2017 to 31.07.2017 submitted by the claimant. Further,



it was observed that the claimant has availed input tax credit of IGST of Rs. 93,23,804/- as per their statement of purchase register (import purchase) for period 01.07.2017 to 31.07.2017 submitted by the claimant. Further, it was observed that the claimant has taken input tax credit of Rs. 37932/- as CGST & Rs.37932/- as SGST for reverse charge paid. Thus, it was observed that the claimant has availed total input tax credit of IGST of Rs. 1,33,80,486/-, (40,56,682/- + 93,23,804/-), CGST of Rs. 31,15,303/- and SGST of Rs. 31,15,303/- . The total input tax credit availed by the claimant during July'17 was Rs. 1,96,31,705/- (Rs. 13380486 + 3125303 + 3115303). Further, it was observed that as per GSTR-3B the claimant has shown eligible ITC of Rs. 1,34,29,032/- as IGST, 32,88,072/- as CGST and Rs. 32,88,072/- as SGST. The total input tax credit shown as eligible ITC is Rs. 20005176/- which includes input tax credit of Rs. 37932/- as CGST and Rs. 37932/- as SGST of reverse charge. Thus it appears that the claimant has taken excess input tax credit of Rs. 3,73,471/- (2,00,05,176 — 1,96,31,705 = 3,73,471) Ongoing through the GST RFD -01A it was observed that net input tax credit is shown as Rs. 13429032/- as IGST, Rs. 3288072/- as CGST and Rs. 3288072/- as SGST which is the same amount as shown in GSTR-3B as eligible ITC. Further, on going through the GST RFD-01A it was observed that in the column tax credit availed during the period i.e. July'17, the claimant has shown Rs. 13429032/- as IGST credit, Rs. 2,26,99,697/- as CGST credit and Rs. 83,40,761/- as SGST credit. Thus it appears that input tax credit of Rs. 19584394/- (22699697/- - 3115303/- = 19584394) has been shown in excess & likewise the input tax credit of SGST of Rs. 5225458/- (8340761/- - 3115303 = 5225458) has also been shown in excess Further, it was observed that the claimant has utilized the total ITC of Rs. 19631705/- for payment of tax for the period July, '17". Similar aspects also noticed in the claims for the month of August-2017 as the claimant have not sufficient balance at the end of tax period to debit against their IGST claimed amount. Hence, the claims sanctioned do not appear proper".

5. In view of the above, the said claimant is not eligible for refund of Input Tax Credit on zero-rated supply of goods and services as the claimant was not having any unutilized balance of ITC in IGST, CGST and SGST and the balance lying in the CGST pertained to the transitional credit benefit availed by them. The refund amount ineligible to the claimant calculated by audit as under :

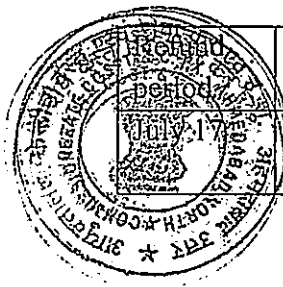
Table 3 : Amount ineligible to the claimant

Refund period	Refund Order (Form-RFD-06) No. & Date	Refund Amount ineligible (Rs.)			
		IGST	CGST	SGST	Total
July 17	Div-VII/GST-Refund/54/final/Suraj/2018 dtd 11.04.2018	5776746	1414425	1414425	8605596
Aug. 17	Div-VII/GST-Refund/35/final/Suraj/2018 dtd 04.04.2018	4714591	949439	949439	6613469
Total		10491337	2363864	2363864	15219065

6. Whereas, it is observed that the aforesaid Final Refund orders (RFD-06) have not been accepted by the department. The reviewing authority vide following Review Orders, have reviewed the refund sanctioned on the grounds mentioned below and filed Appeal before Commissioner(Appeals), Central Tax, Ahmedabad against the said refund order :

Table 4 : Details of Review orders

Refund Order (Form-RFD-06) No. & Date	Review order No. & Date	Appeal filed on
Div-VII/GST-Refund/54/final/Suraj/2018	30/2018-19 dated 31.10.2018	01.11.2018



	dtd 11.04.2018		
Aug. 17	Div-VII/GST- Refund/35/final/Suraj/2018 dtd 04.04.2018	31/2018-19 dated 31.10.2018	01.11.2018

7. Departmental appeal was filed on following grounds-

(i) As per sub-section (3) of the Section 54 of the CGST Act, 2017 :

"a registered person may claim refund of any unutilized input tax credit at the end of any tax period."

(ii) In the months for which refund claim was filed, there was no balance of input tax credit lying unutilized.

(iii) *The Adjudicating authority has erroneously sanctioned refund of Rs. 86,05,596/- for July 2017 and Rs. 66,13,469/- for August 2017 which needs to be recovered along with interest..*

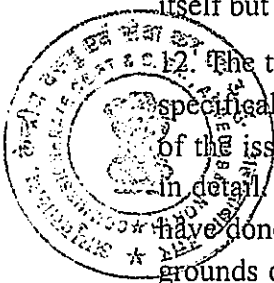
8. The Commissioner (Appeals), Central Tax, Ahmedabad vide Order-in-Appeals No. AHM-EXCUS-002-APP-197-198-18-19 dated 23.03.2019(issued on 15.05.2019), allowed the Departmental appeals filed above and set aside the impugned orders and allowed the prayer of the department for recovery of the erroneous refund along with interest.

9. In view of above, (1) the grant of refund of Rs. 86,05,596/- (Rs. 57,76,746/- for IGST, Rs. 14,14,425/- for CGST and Rs. 14,14,425/- for SGST) for the month of July 2017 vide RFD-06 Order No. Div-VII/GST-Refund/54/final/Suraj/2018 dtd 11.04.2018, & (2) the grant of refund of Rs. 66,13,469/- (Rs 47,14,591 for IGST, Rs 9,49,439 for CGST and Rs 9,49,439 for SGST) for the month of August 2017 vide RFD-06 Order No. Div-VII/GST-Refund/35/final/Suraj/2018 dtd 04.04.2018 to M/s Suraj Limited, in respect of refund of unutilized ITC in relation to exports of Goods/Services, declared to be erroneous and was required to be recovered from them under Section 73(1) of the CGST Act, 2017 along with applicable interest.

10 . Accordingly, a SCN for recovery of tax and other dues as per orders of Commissioner (A) was issued on 22.10.2020 by the Additional Commissioner on proposal of jurisdictional Assistant Commissioner. It is pertinent to mention that assessee had stated during the issuance of SCN that they intended to prefer an appeal against the OIA No.s AHM-EXCUS-002-APP-197-198-18-19 dated 23.03.2019 but could not file the same due to non constitution of the bench of GST Tribunal. Further assessee has stated that they have already requested to the Chief Commissioner, Ahmedabad Zone to provide them the details of the Appropriate Authority where the appeal can be filed against the aforesaid OIAs.

11. Written Reply of the SCN was filed by the noticee on dated 05.02.2021 wherein assessee has detailed the complete procedure and regulations of refund of ITC with circumstances of their case. In their reply they have tried to establish that they had the balance of unutilized credit due to zero rated supply and it is the GST Portal which calculates the refund amount. They have also stated in para 11 (iii) of their reply that they had filed Tran-1 on 06.09.2017 in respect of their GST registration obtained on migration and accordingly a balance of input tax credit of CGST totally amounting to Rs.24464314/-(CGST-Rs.19411625+ SGST- Rs.5052689/-) was available in their electronic credit ledger as on 06.09.2017. This credit was with them as on 01.07.2017 itself but had been transmitted on GST portal at a later date i.e. on filing of Tran-1.

12. The transitional ITC carry forwarded from old regime cannot be claimed as cash refund and specifically denied by virtue of Section 142(4) of CGST Act, 2017. The facts and circumstances of the issue in light of CGST act and rules have already been dealt by Commissioner (Appeals) in detail. The noticee had a chance to represent their case before the appellate authority and they have done so which is clear on going through the orders in appeal. The noticee had given similar grounds of defence as given here before the Appellate authority which is evident from the OIA. The notice was issued to carry out the orders of recovery given by the Commissioner (Appeals).



It appears that there is no substantial change in facts of the case since the orders of Appellate authority.

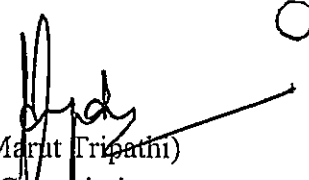
13. Personal hearing in the matter was fixed on 11.02.2021 and Shri Anil Gidwani, Advocate appeared on behalf of the noticee. He reiterated the submissions of written reply and requested to drop the proceedings.

14. The order of Commissioner Appeals is in favour of Revenue .The assessee was sanctioned excessive amount of refund overlooking the provisions of Section 54(3) of CGST Act, 2017. Though the noticee had expressed their intention to challenge the OIA during the issuance of the SCN but this order is being passed due to time limit given in Section 73 of the CGST Act keeping in view of the present legal position. As per Section 73(10), the order is to be passed within three years from due date of furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund. The date of erroneous refund orders in present case is 04.04.2018 and 11.04.2018.

Order

Thus I confirm the recovery of erroneously refunded amount of Rs 1,52,19,065/- as per Section 73 of CGST Act, 2017 along with applicable interest. I am also bound to impose mandatory penalty as envisaged in Section 73(Sub section 9) which comes to Rs. 15,21,907/-.




(Marut Tripathi)
Joint Commissioner
CGST, Ahmedabad North.

F.No. GST/15-18/OA/2020

Date: 24.02.2021

Copy to:

- (1) The Commissioner, CGST & CE ,Ahmedabad-North
- (2) The Assistant Commissioner, CGST &CE, Division-VII, Ahmedabad-North
- (3) The Superintendent, AR-I, Division-VII, CGST&CE, Ahmedabad-North
- (4) Guard File