



आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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DIN NO. : 20220564SW000000A2FD

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1293/2021

1882-892

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-16/2022-23

दिनांक Date : 12-05-2022 जारी करने की तारीख Date of Issue : 12-05-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No ZT2404210037138 dated 05.04.2021 issued by Assistant Commissioner, Central Goods and Service Tax, Division Kadi, Gandhinagar Commissionerate

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

M/s Supernova Engineers Ltd
F-2, 1st Floor, Shapath Hexa,
Opp. Gujarat High Court,
SG Highway, Ahmedabad - 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 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 is 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 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

M/s. Supernova Engineers Ltd. F-2, 1st Floor, Sapath Hexa, Opp Guj. High Court, Sarkhej Gandhinagar High Way, Ahmedabad-380054, (hereinafter referred to as the appellant) has filed the following appeal against Order issued by the Assistant Commissioner, CGST, Kadi, Gandhinagar (hereinafter referred to as the adjudicating authority) rejecting refund claims filed by the appellant.

Sr No.	Appeals No.	Date of filing of appeal	Impugned order number and date	Amount of refund	Period dispute
1	GAPPL/ADC/GSTP/1293/2021	02-07.2021	ZT2404210037138/ 05-04-2021	21,55,130/-	November 2017

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AACCS6758G1Z7 and are engaged in domestic supply as well as zero-rated supply of the finished products. The present dispute is in respect of refund of IGST paid by the Appellants at the time of sale of goods to firm, situated at Special Economic Zone. The appellant duly paid the amount of Rs. 21,55,130/- in the form of IGST for supply of goods to the SEZ unit. However, at the time of reporting the invoices in GSTR-1 returns, due to an inadvertent error, the appellant shown the invoices as "Export out of India" instead of "Supply to SEZ". Due to this error, the refund of the appellant for the period November 2017 has been stuck with the ICEGATE. As per Section 16 of IGST Act, 2017, the supply made to SEZ unit shall be treated as Zero rated supply; therefore, as per Section 16(3) of the IGST Act, the appellant is eligible to claim the refund of IGST paid on the goods supplied to SEZ unit in accordance with the provisions of Section 54 of the CGST Act, 2017. The appellant filed online refund application under the category of "export of services with payment of tax", on account of export /zero rated supply for an amount of Rs.21,55,130/- on 10.03.2021. Further, the appellant vide letter dated 10.03.2021, intimated to the Jurisdictional Assistant/Deputy Commissioner that due to an inadvertent error, the Appellant shown the supply of goods to SEZ as Export of goods out of India. Due to this reason their refund claim has been stuck with in ICEGATE. Therefore, the appellant has filed the refund application on 10.03.2021. The appellant was issued show cause notice on the online portal under FORM GST RFD 08, proposing rejection of refund claim. Further, the appellant has submitted that they could not able to open the SCN issued by the adjudicating authority. The appellant sent email dated 26.03.2021 stating that "they confirming the receipt of SCN on GST portal however, they are unable to open any attachment and requested to send attachments is any so that they can understand the reason of SCN because of this they could not filed any reply to the SCN dated 18.03.2021. The adjudicating authority vide impugned order No.ZT2404210037138/05-04-2021



held that refund of 21,55,130/- is inadmissible to the appellant on the ground *that scn was issued for inadmissible amount, the claimant did not appeared for hearing nor submitted reply.*

3. Being aggrieved the appellant filed the present appeals on the following grounds:

3.1 Appellant submitted that they have filed the online refund application on 10.03.2021 and intimated the same to the Adjudicating authority. Pursuant to the said refund application the adjudicating authority issued a show cause notice on the GSTN portal, however, the appellant could not open the same. Further, the appellant wrote an email to provide the copy of the SCN so that they can understand the reason of the SCN, however, till date neither the SCN was provided nor any personal hearing was issued to Appellant..

3.2 The appellant further submitted that the adjudicating authority passed the impugned dated 05.04.2021 without giving any material finding or any reasons for rejection and simply passed with remark that the Appellant have neither appeared for hearing nor filed any reply. The appellants further submitted that it is a trite law that any order passed by the authorities has to be reasoned order and after following the principles of natural justice. However, the impugned order was passed without providing any copy of SCN or notice for personal hearing and simply rejected the refund claim without giving any material finding.

3.3 The appellant has placed reliance on the following judgments as given below:-

(i) Hon'ble Apex Court's Judgement in case of S.N. Mukherjee v, Union of India AIR 1990 SC 1984

(ii) Hon'ble Supreme Court's Judgement in case of Sant Lal Gupta and Ors. V. Modern Cooperative Group Housing Society Ltd. And Ors. (2010) 13 SCC 336.

(iii) Hon'ble Apex Court's Judgement in case of Cyril Lasardo (Dead) V/s. Juliana Maria Lasarado 2004 (7) SCC 431 at Para 11, 12

3.4 The appellant submitted that they have duly complied with the law and the procedure as per CGST Acts and rules made there under and duly provided all the relevant documents as required. The appellant submits that they have issued invoices to the units situated in SEZ area and the amount of IGST was duly paid by the Appellants at the time of filing GSTR-3B returns for the month of November. Further, the recipient has not paid the amount of IGST to the appellants the same was clarified amount of invoice.

3.6 The appellant has submitted that substantial benefit cannot be denied due to technical error. The appellant have duly charged the amount of IGST in taxable invoices however at the time of calculation of total amount after tax the , appellants mistakenly, not added the amount of IGST in the total amount. The appellant have correctly filed the GSTR-3B returns and duly paid the amount of IGST to the government exchequer.

3.7 The appellant has submitted that the refund claim of Rs. 21, 55,130/- filed under the category of "Refund on account of supplies to SEZ unit with tax" to the extent of zero rated supplies, as per Section 16 of the IGST Act, 2017, is correct and proper and thus, the impugned order rejecting the said claim is liable to set aside.

4. The personal hearing in the matter was through virtual mode held on 29.03.2022 wherein Shri Ambarish Pandey, Advocate appeared on behalf of the Appellant as authorized representative. During



Personal Hearing, he has reiterated the submissions made by them till date to defend the case and informed that they have nothing to add more to it.

Discussions and Findings:

5. (i) I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum.

I find that the 'Appellant' had preferred the refund application on account of supplies made to SEZ units for refunds Rs. 21,55,130/- paid as IGST. In response to the said refund application, Show Cause Notice dated 18.03.2021 was issued to them proposing rejection of refund claim. I find that the adjudicating authority rejected the refund claim for reasons that the claimant did not appear for hearing nor submitted reply. Therefore, the said refund claim was rejected vide Order No. ZT2404210037138 dated 05.04.2021.

5(ii) I find that appellant vide email dated 26.03.2021 has informed to the adjudicating authority that they were unable to open any attachment in the same and requested to provide them attachment if any, so that they can understand the reason for the Show Cause Notice but the same has not been provided till date.

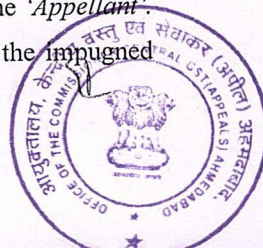
5 (iii) I find that the adjudication authority did not respond to the email dated 26.03.2021. I find that the adjudicating authority should have taken into account the appellants email dated 26.03.2021 before rejecting the refund claim.

5 (iv) I find that the 'Appellant' in the present appeal submitted that due to unable to open attachments of SCN they could not find the reason of SCN; therefore, no reply could be given in time. In such situation without being heard them the adjudicating authority has rejected their refund claims. I find that the adjudicating authority has violated the principle of natural justice. In this regard, I have referred the Rule 92(3) of the CGST Rules, 2017 same is reproduced as under:

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

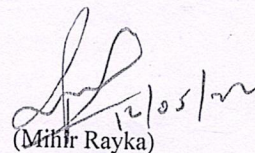
5 (v). In view of the above legal provisions, "no application for refund shall be rejected without giving an opportunity of being heard". In the present matter, on going through the records of the case it transpire that despite the requests made by the 'Appellant' the copy of the SCN and Personal Hearing has not been provided to the them so as to enable to submit the reply of SCN. Therefore, I find that the *impugned* order is issued without being heard the 'Appellant'. Further in view of above facts and circumstance of the case, I firmly hold that the *impugned*



orders passed by the adjudicating authority rejecting refund claim on the ground that the 'Appellant' did not appear in Personal Hearing and submitted the reply is bad in Law and hence legally unsustainable and untenable. Therefore, the *adjudicating authority* is hereby directed to process the refund application of the appellant in the light of Section 54 of CGST Act 2017 read with Rule 89 of CGST Rules, 2017 by following the principle of natural justice. The 'Appellant' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of 'Appellant' without going into facts of admissibility of refund claim.

07. अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
07. The appeals filed by the appellant stands disposed of in above terms.

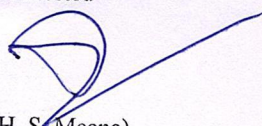

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: .05.2022



Attested


(H. S. Meena)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,

M/s. Supernova Engineers Ltd.
F-2, 1st Floor, Sapath Hexa, Opp Guj. High Court,
Sarkhej Gandhinagar High Way, Ahmedabad-380054

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Commissionerate- Gandhinagar
4. The Assistant Commissioner, CGST & C.Ex, Division-Kadi, Gandhinagar Commissionerate-
5. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate-.
- ~~6. Guard File.~~
7. P.A. File

