



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी, अहमदाबाद-380015

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आजादी का
अमृत महोत्सव

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DIN NO. : 20221064SW0000555AAB

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2322/2021 / 4184-89
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-003/APP-ADC-55/2022-23 and 21.10.2022
(ग)	पारित किया गया / Passed By	श्री मिहिर रायका, अपर आयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	21.10.2022
(ङ)	Arising out of Order-In-Original No. ZV2409210130777 dated 09.09.2021 issued by The Assistant Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Royal Surgicare Pvt. Ltd., Plot No. 832, Nr. Ganesh Rubber, Prima Atomization Lane, Santej, Kalol, Gandhinagar-382721

(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 .



ORDER-IN-APPEAL**Brief Facts of the Case:**

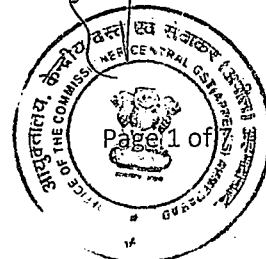
M/s. Royal Surgicare Pvt. Ltd., Plot No. 832, Nr. Ganesh Rubber, Prima Atomization Lane, Santej, Kalol, Gandhinagar – 382721 (GSTIN: 24AADCR3670H1ZG) (hereinafter referred as 'appellant') has filed the present appeal against Order No. ZV2409210130777 dated 09.09.2021, passed in the Form –GST-RFD-06 (hereinafter referred as 'impugned order') issued by the Assistant Commissioner, CGST, Division, Kalol, Gandhinagar Commissionerate (hereinafter referred as 'the adjudicating authority') by rejecting refund claim of Rs.5,21,588/-.

2. Briefly stated the facts of the case are that the 'appellant' has filed online present appeal on 19.10.2021 (in physical mode on 28.10.2021). The 'Appellant' had filed refund application vide ARN NO. AA240821115250V for refund of Rs. 12,46,851/- for the financial year 2020-21 in the month of August' 2021 on account of refund of ITC on Export of Goods & Services without Payment of Tax. In response to said refund claim a Show Cause Notice NO. ZW2409210096677 dated 07.09.2021 was issued to the 'appellant' citing the reason "Other" and a Remark was also mentioned as "The claim is in order. However Rs. 521588/- needs to be adjusted and reduced from eligible 50% amount on account of an erroneously refund claim against ARN 88240721057411M wherein Rs. 521588/- was paid in excess by oversight."

2.1 Further, the 'appellant' was asked to furnish reply to the SCN within 15 days from the date of service of SCN dated 07.09.2021 and a personal hearing was also offered to the 'Appellant' on 09.09.2021. Upon receiving of the reply, the adjudicating authority has rejected the subject refund claim vide impugned order dated 9.9.2021 stating that "I hereby sanction an amount of INR 101837 to M/s. Royal Surgicare Private Limited having GSTIN 24AADCR3670H1ZG under sub-section (5) of section 54) of the Act/ under Section 56 of the Act" and a remark was also mentioned as "RFD-06 issued. "

2.2 Being aggrieved with the impugned order dated 9.9.2021 the appellant has filed the present appeal on 19.10.2021 wherein they stated that-

- The appellant have applied the refund for Export of goods without payment of tax for the financial year 2020-21 in the month of Aug - 2021. The Application has been partially rejected by citing the grounds that excess refund has been granted in application of inadvertent duty structure of FY 2019-20. However, as per the calculation there is no excess payment of refund is being made. The calculation made by the authority is not valid. They attached the response in SCN given to them but the same has not been considered and claim has been partially rejected.
- As per recent judgment of Supreme Court dated 23-September 2021 there is period of limitation has been given and according to that they can still eligible for the refund of the said period.



3. Personal Hearing in the matter was through virtual mode held on 20.07.2022 wherein Shri Kalrav Patel CA appeared on behalf of the 'Appellant' as authorized representative. During the P.H. he has reiterated the submissions made till date and informed that they want to give additional submission /information within seven (7) working days, which was granted by the appellate authority.

Accordingly, the appellant has submitted their additional written submission dated 22.07.2022 wherein they referred the Notification 13/2022-Central Tax dated 5th July 2022 issued by CBIC clarifying the period of 01-March -2020 to 28th Feb-2022 to be excluded for the purpose of time limit for application of the refund. Considering the above Notification the appellant has stated that order of rejection of refund claim on the ground of time barred is not legal.

Discussions and findings:

4. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on records. At the outset, I find that the impugned order was communicated to the appellant on dated 09.09.2021 and present appeal was filed online on dated 19-10-2021 (physical copy on 28-10-2021) i.e after a period of one month hence the appeal was filed within the time limit prescribed under Section 107 of the Act. Further, the refund application for the period April-2020 to March-2021 was also filed by the appellant on 21.08.2021. However as per Hon'ble Supreme Court's Order dated 10-1-2022 in suo-moto writ petition (C) NO.3 of 2020 in MA No.665/2021, excluding the period from 1-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 1-3-2022 in filing appeals, I hold that the present appeal as well as filing of refund application for the period April-2020 to March-2021 is not hit by time limitation factor.

5. I have carefully gone through the facts of the case available on records and submissions made by the 'Appellant' in the Appeal Memorandum as well as additional written submissions. I find that the 'Appellant' had preferred the refund claim on account of "Refund of ITC on Export of goods & services without Payment of Tax." for the amount of Rs. 12,46,851/-. In response to the said refund application a Show Cause Notice No. ZW2409210096677 dated 7.9.2021 was issued to the appellant proposing rejection of refund claim for reasons mentioned as " Other " "Amount inadmissible Rs. 5,21,588/-" with Remarks " *This claim is in order. However, Rs.521488/- needs to be adjusted and reduced from the eligible 50% amount on account of an erroneously refund claim against ARN 88240721057411M wherein Rs.521588/- as paid in excess by oversight.*" and sanctioned an amount of INR 101837 to M/s. Royal Surgicare Private Limited having GSTIN 24AADCR3670H1ZG under sub-section (5) of Section 54 of the Act / under Section 56 of the Act.



5.1 I find that in this case the appellant had filed refund claim for the amount of Rs.12,46,851/- for the period April-2020 to March-2021. Out of refund Rs. 12,46,851/- the *adjudicating* authority has allowed/ sanctioned the eligible 50% amount Rs. 6,23,425.5/- of refund claimed. From the FORM-GST-RFD-06 dated 09.09.2021, it is observed that refund claim to the tune of Rs. 5,21,588/- has been disallowed due to the reason that Rs.5,21,588/- needs to be adjusted. Further, in remarks portion of GST-RFD-06 dated 9.9.2021 it has been stated that *"This claim is in order. However, Rs.521488/- needs to be adjusted and reduced from the eligible 50% amount on account of an erroneously refund claim against ARN 88240721057411M wherein Rs. 5,21,588/- as paid in excess by oversight."* I further find that Refund Order No. ZV2409210130777 dated 09.09.2021 has not been contested by the Reviewing Authority. SCN was issued against Order No. ZV2409210130777 dated 9.9.2021 (ARN NO. AA240821115250V dated 21.08.2021) vide reference SCN No. ZW2409210096677 dated 7.9.2021 under Other's category for deduction of refund claim of Rs. 5,21,588/- erroneously sanctioned against the claim made vide ARN No. AA240721057411M dated 17.07.2021 (ARN NO. wrongly mentioned as 88240721057411M) and Order No. ZV2409210130777 dated 9.9.2021 has been issued to the appellant.

Further, as per Para 35 of Circular No. 125/44/2019-GST dated 18th November, 2019 issued under CBEC-20/16/04/18-GST, that adjustment of refund amount against any outstanding demand under the existing law can be done.

Para 35 of Circular No. 125/44/2019-GST dated 18th November, 2019, stipulates as under :

"35. The provisions relating to refund provide for partial as well as complete adjustment of refund against any outstanding demand under GST or under any existing law. It is hereby clarified that both partial or complete adjustment of sanctioned amount of refund against any outstanding demand under GST or under any existing law would be made in FORM GST RFD-06. Furthermore, sub-clause (b) of sub-section (6), sub-clause (a) of sub-section (7), sub-clause (a) of sub-section (8) and sub-clause (a) of sub-section (9) of Section 142 of the CGST Act provides for recovery of any tax, interest, fine, penalty or any other amount recoverable under the existing law as an arrear of tax under GST unless such amount is recovered under the existing law. It is hereby clarified that adjustment of refund amount against any outstanding demand under the existing law can be done."

5.2 While going through Para 35 of Cir No. 125/44/2019-GSTS dated 18th November, 2019, the refund can be adjusted against **any outstanding demand under GST or under any existing law**. I find that at no point of time, the adjudicating authority has given any break up of erroneous refund of Rs. 5,21,588/- or not specified how they derived inadmissible refund of Rs.5,21,588/- or failed to establish the amount Rs. 5,21,588/- as outstanding demand against the appellant



under GST or under any existing law. I also do not find any evidence regarding demand confirming the amount of Rs. 5,21,588/- have been issued by the CGST department as per provision under Section 74 of the CGST Act, 2017 (hereinafter referred to as "*the Act*").

In the present case, I find that the adjudicating authority has not mentioned any outstanding demand due to the appellant in their Show Cause Notice No. ZW2409210096677 in FORM GST-RFD-08 and thus erred in the impugned order by adjusting the amount of Rs. 5,21,588/- considering it as erroneous excess refund sanctioned earlier from the eligible amount of refund without any justifiable reasons.

5.3 Further, I find that refund was rejected without mentioning any reasons to Show Cause Notice wherein rejection was proposed on the only reason of adjustment of erroneous excess refund. I have tracked the refund application status in GST portal to find that the appellant has filed any reply to the show cause notice or not. However, I find that in the show cause notice issued on dated 7-9-2021 the appellant was asked to file reply within fifteen days which falls on or before 21-9-2021 and personal hearing was given to them on 9.9.2021. I find that the appellant filed their reply on the very next day i.e on 8.9.2021 in FORM GST RFD-09, however they were not being heard in person or virtual mode. The impugned order rejecting refund was passed on the same day i.e on 9-9-2021. Therefore, it is apparent that no opportunity of personal hearing was provided to the appellant and the impugned order was passed without heard the appellant. By doing so it emerges that the refund claim was rejected with predetermined mindset, without considering the reply filed by the appellant to the show cause notice and without recording reasons for rejection of refund. Since the claim was rejected due to any reasons mentioned in the impugned order, I also have the reason to believe that no personal hearing was held before rejecting the refund claim. Thus, except issuance of show cause notice for the subject refund claim in form of RFD-08, no other procedures were followed by the adjudicating authority before rejecting the refund claim which I find is against the statutory provisions and against the principles of natural justice.

6. I further find that in the show cause notice the claim was proposed for rejection due to refund of Rs.521488/- was paid in excess by oversight, whereas I find that no Show Cause Notice issued by the adjudicating for confirming the



demand of Rs.5,21,588/- under the provisions of Section 73 / 74 of the CGST Act,2017 for erroneous excess refund. In this regard I also refer to relevant provisions contained under Section 54 of CGST Act, 2017 in such situations as under:

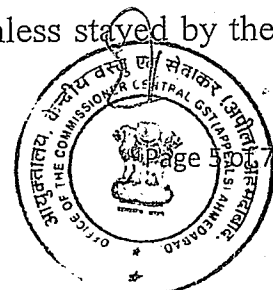
(10) Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

6.1 As per provisions of sub rule (3) of Rule 92 of CGST Rules, it is a statutory requirement to issue show cause notice; consider the reply filed by the claimant; provide opportunity of personal hearing and record the reasons in writing for rejection of refund claim. In the subject case it is apparent that except issuance of show cause notice and merely given time for personal hearing no other procedures seems to have been followed by the adjudicating authority before rejecting the refund claim. Therefore, rejection of refund without considering reply filed by the appellant and without recording reasons for rejection, I find this is against the provisions of Rule 92 of CGST Rules, 2017 and principles of natural justice.

7. As per above statutory provisions the proper officer is empowered to deduct / adjust from the refund due to the registered person against tax, interest, penalty which the claimant is liable to pay but which remain unpaid under CGST Act or under existing Law and such recovery is not stayed by any Court / Tribunal of higher appellate authorities. Thus, the above statutory provisions envisage to deduct the claim amount from pending arrears and does not provide for rejection of refund due to pending arrears. Accordingly on the face of the facts of the case, I find that in this case issue of rejection of refund does not arise at all and only reduction of refund amount from the arrears is to be ordered unless stayed by the



higher appellate authorities. Therefore, in cases where there is pending arrears against the claimant which were not stayed by higher appellate forums, it is imperative on the part of proper officer to put to notice the claimant the details of arrears viz amount of arrears, order number and date and amount proposed for deduction from claim amount enabling them to give compliance. In the subject case no such details were mentioned in the show cause notice and the show cause notice is silent as to whether the arrear due from the appellant fall within the above statutory provisions or otherwise. In the absence of such details in the show cause notice, rejection of refund due to adjustment or paid in excess by oversight to such vague and ambiguous show cause notice, I find the refund rejection order is not justifiable, legal and tenable for rejection.

8. In view of above, I hold that impugned order passed by the adjudicating authority rejecting refund on the grounds mentioned therein is not legal and proper and deserve to be set aside. Hence I allow this appeal. I further order that any claim of refund made in consequence to this Order may be dealt with by the proper officer in accordance with CGST Act and Rules made thereunder and observing principles of natural justice and considering the observations made in preceding para. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

9. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, allow the appeal of the "*Appellant*" without going into merit of all other aspects, which are required to be compiled by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

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

10 The appeals filed by the '*Appellant*' stand disposed off in above terms.

Attested

Tejas Mistry
21/10/2022

तेजस मिस्ट्री/TEJAS MISTRY
अधीक्षक/SUPERINTENDENT
केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद.
CENTRAL GST(APPEALS), AHMEDABAD.

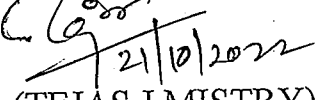
Mihir Rayka
21/10/22
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 10.2022



Attested



(TEJAS J MISTRY)

Superintendent, Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,

M/s. Royal surgicare Pvt. Ltd.
Plot No. 832, Nr: Ganesh Rubber,
Prima Atomization Lane, Santej, Kalol,
Gandhinagar-382721

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- Ahmedabad – Gandhinagar
4. The Assistant Commissioner, CGST & C.Ex, Division-Kalol ,. Gandhinagar- Commissionerate-
- 5 The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate-.

✓ 6. Guard File..

7. P.A File

