



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
0792630506- टेलीफैक्स 07926305136



DIN NO. : 20221264SW000000A924

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2324/2022

/622 - 622

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-ADC-71/2022-23
दिनांक Date : 16-12-2022 जारी करने की तारीख Date of Issue : 19-12-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No Z02403220309072 dated 24.03.2022
issued by the 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 Skott Pharma [GSTIN: 24ADIFS0701R1ZV]
Plot No. 319, Acharasan-Ankhoi Road,
At Acharasan, TA Kadi, Mehsana - 382728

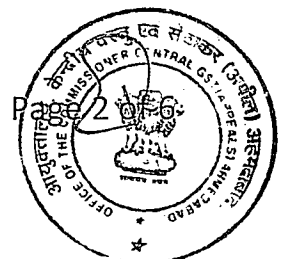
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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 - (vii) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (viii) 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-APPEALBRIEF FACTS OF THE CASE :

M/s Skott Pharma, Plot No. 319, Acharasan-Ankhol Road, At. Acharasan, Ta. Kadi, Mehsana, Gujarat-382728 (hereinafter referred to as the 'Appellant') has filed the present appeal against the Order No. ZO2403220309072 dated 24.03.2022 (hereinafter referred to as the 'impugned order') rejecting refund claim amounting to Rs. 8,50,160/- passed by the Assistant Commissioner, CGST & C. Ex., Division-Kadi, Kalol, Gandhinagar Commissionerate (hereinafter referred to as the 'adjudicating authority').

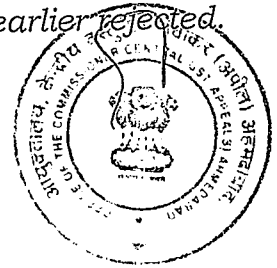
2 (i). Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration No. 24ADIFS0701R1ZV and has filed the present appeal on 18.06.2022. The 'Appellant' had filed the refund application on 28.02.2022 for refund claim amounting to Rs. 8,50,160/- on account of ITC accumulated due to inverted tax structure in FORM-GST-RFD-01 for the period September 2021 to December 2021. Thereafter, the appellant have been issued a Show Cause Notice No. ZZ2403220263916 dated 21.03.2022 by the Assistant Commissioner, CGST, Kadi-Division, Gandhinagar Commissionerate, on the grounds that "On examination, it appears that refund application is liable to be rejected on account of following reasons : "Description : Others, Amount Inadmissible Rs. 8,50,160/-" with remarks "Remarks : On scrutiny of refund claim Inverted Tax Structure of Circular No. 125/44/2019-GST dated 18.11.2019 and copy of GSTR-2A on the relevant period is not uploaded. Please upload GSTR-2A." and also directed to the appellant to appear before the adjudicating authority on 25.03.2022. The appellant submitted their reply on 22.03.2022 in form of GST-RFD-09 and attached requested GSTR-2A for the month of Sep '21 till Dec.'21, Further, the adjudicating authority has rejected the refund claim vide impugned order in Form GST-RFD-06 stating that "I hereby reject an amount of INR 0 to M/s. SKOTT PHARMA having GSTIN-24ADIFS0701R1ZV under sub-section () of section) of the Act / under Section - of the Act" i.e without specifying proper reasons of rejection of the claims. A Remark is also mentioned in the impugned order as - "Remarks : The claimant has not been submitted proper reply as per law. Hence, refund claim is rejected."



2 (ii). Being aggrieved with the impugned order the appellant has filed the present appeal on 18.06.2022 mainly on the following reasons-

The Order of Assistant Commissioner, Division-Kadi, Gandhinagar Commissioner, is bad in law as well as on the facts on the following grounds:-

- *Impugned order is passed by the Adjudicating Authority is in violation of natural justice, as it has been alleged that the appellant has claimed refund of input tax credit for invoices reflecting in their GSTR-2A but not uploaded the GSTR-2A for the period. In reply to the SCN issued in Form RFD-08 dated 21.03.2022, the appellant duly filed reply on 22.03.2022 alongwith GSTR-2A for the period but unable to upload the same due to technical glitch on common portal. Such reply and documents have not been verified by the adjudicating authority before passing the impugned order dated 24.3.2022, the refund claim of Rs. 8,50,160/- has been rejected that invoices are not reflecting in GSTR-2A. Thus, the principle of natural justice have been breached and violated.*
- *Appellant is entitled to avail ITC as all the conditions of Section 16 of CGST Act, 2017 are satisfied. The only reason for denying the refund of Rs.8,50,160/- is non-submission of GSTR-2A for invoices on which refund of accumulated credit has been claimed by the appellant. It is not in dispute that appellant is duly eligible for the credit of ITC on inward supplies availed by them. Mere non-submission of GSTR-2A is just a procedural lapse and permissible refund claim cannot be denied for procedural lapse.*
- *Set aside the impugned order No. ZO2403220309072 dated 24.03.2022 in FORM GST-RFD-06 passed by the Assistant Commissioner, Kadi Division.*
- *Sanction the refund of Rs.8,50,160/- which was earlier rejected.*



PERSONAL HEARING :

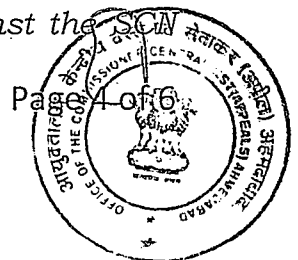
3. Personal Hearing in the matter was held on 24.11.2022, wherein Shri Sourabh Singhal, appeared in person on behalf of the 'Appellant' as Authorized Representative. During Personal Hearing he has reiterated that they have nothing to add more to their written submission till date.

DISCUSSION AND FINDINGS :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal, I find that the 'Appellant' had preferred the refund application before the refund sanctioning authority. The refund sanctioning authority [Adjudicating Authority] has rejected the refund applications vide impugned orders mentioning the reason as- "*I hereby reject an amount of INR 0 to M/s. SKOTT PHARMA having GSTIN-24ADIFS0701R1ZV under sub-section () of section) of the Act / under Section - of the Act*" with a Remarks "*The claimant has not been submitted proper reply as per law. Hence, refund claim is rejected.*" Accordingly, the appellant has preferred the present appeal. Further, I find that the adjudicating authority has not disputed about the admissibility of refund claim by the appellant.

4(ii). I find that in the present appeal the appellant in the ground of appeals has mainly stated that the Adjudicating Authority has violated and breached the principle of natural justice by passing the order by rejecting refund application. The appellant contended that Adjudicating Authority has passed the order of rejecting refund application without considering the reply & documents and giving an opportunity of personal hearing. Thus, principle of natural justice have been violated and breached.

4 (iii). As regards to the appellant's submission that the impugned order is passed on the basis of without considering the reply & documents and also passed without giving an opportunity of personal hearing to the appellant, I find that in the Show Cause Notice No. ZO2403220309072 dated 24.03.2022, the Adjudicating authority has given an opportunity for personal hearing to the appellant on 25.03.2022 while the impugned order has already been passed on 24.03.2022 by the Adjudicating Authority, however, the appellant has filed their reply on 22.03.2022 against the

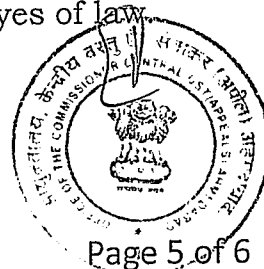


issued to them. Further, the appellant has also submitted copy of GSTR-2A reflecting the invoices for the period. I referred the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under:

*“(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.”*

In view of above legal provisions, “no application for refund shall be rejected without giving the applicant an opportunity of being heard”. In the present matter, on going through copy of impugned order, I find that no specific reasons for rejection of refund claims have been recorded by the adjudicating authority. I also find that there is no evidence available on records that Personal Hearing in the matter was conducted. The adjudicating authority has mentioned in the Form GST-RFD-06 that “The claimant has not been submitted proper reply as per law. Hence, refund claim is rejected”. This is evident that the adjudicating authority has concluded the refund matters without considering the reply and documents giving an opportunity of being heard to the appellant. Therefore, I find that the adjudicating authority has violated the principle of natural justice in passing the impugned order vide which rejected the refund claim without communicating the valid or legitimate reasons before passing the impugned order. Further, I am of the view that proper speaking order should have been passed by giving proper opportunity of personal hearing in the matter to the ‘Appellant’ and detailing factors leading to rejection of refund claims should have been discussed. Else such order would not be sustainable in the eyes of law.



5. Considering the above facts, the *adjudicating authority* is hereby directed to process the refund applications of the *appellant* by following the principle of natural justice. The '*Appellant*' is also directed to submit all the relevant documents/submission before the *adjudicating authority*.

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

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

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

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: .12.2022

Attested

(Tejas J Mistry)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,
M/s Skott Pharma, Plot No. 319, Acharasan-Ankhol Road,
At Acharasan, Ta: Kadi, Mehsana, Gujarat-382 728.

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., Gandhinagar Ahmedabad.
4. The Additional Commissioner, Central Tax (System), Gandhinagar Commissionerate.
5. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-Kadi, 3rd Floor, Janta Super Market, Kalol, Gandhinagar Commissionerate.
6. Guard File.
7. P.A. File