

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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टेलिफैक्स 07926305136



DIN- 20230964SW0000111EE1

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2386/2023 -APPEAL

16697 - 6702

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-003-APP-JC-29/2023-24

दिनांक Date : 26-09-2023 जारी करने की तारीख Date of Issue : 27-09-2023

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. ZG2404230336363 DT. 25.04.2023 issued by The Assistant Commissioner, CGST & C.Ex., Divison- Kadi, Gandhinagar Commissionerate

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

M/s. Myra Alucop Private Limited,
Kherpur Road, New Survey No. 1222,
Near DPS School, Village Rajpur, Taluka Kadi,
Mehsana, Gujarat - 382705

(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.

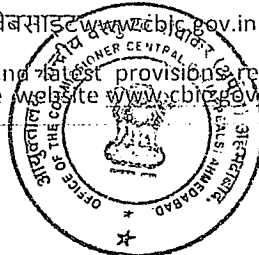
(ii)

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.

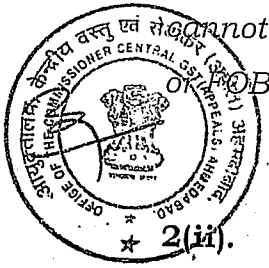


ORDER-IN-APPEAL

BRIEF FACTS OF THE CASE:

M/s. Myra Alucop Private Limited, Kherpur Road, New Survey No. 1222, Near DPS School Village, Rajpur, Taluka Kadi, Mahesana, Mahesana, Gujarat, 382705 (GSTIN 24AAQCA6341M1ZB) (hereinafter referred to as the 'Appellant') has filed the present appeal against the order No. ZG2404230336363 dated 25.04.2023 (hereinafter referred to as the 'impugned order') rejecting refund claim of IGST amounting to Rs. 3,60,197/- passed by the Assistant Commissioner, CGST & C. Ex., Division-Kadi, 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. 24AAQCA6341M1ZB, had filed refund claim of IGST totaling to Rs. 3,60,197/- vide ARN No. AA2402230840091 dated 21.02.2023 for the period March 2022 in form GST-RFD-01. On scrutiny of the said refund claims, the adjudicating authority observed that certain discrepancies, like the appellant had earlier also filed refund claims for the same amount under ARN No. AA2407221009120 dated 25.07.2022 in RFD-01, which was rejected by the earlier jurisdictional adjudicating authority vide RFD-06 No. ZD2409220288512 dated 22.09.2022 on the grounds that "it cannot be established, whether the claim submitted by the appellant was on CIF or FOB basis. Therefore the claim is hereby rejected."



2(ii). In view of the above facts, the adjudicating authority had issued show cause notice vide RFD-08 dated 10.03.2023 stating that "refund application was already filed on 25.07.2022 vide ARN AA2407221009120 for the period October 2021 which has already been rejected by the sanctioning authority after following due process of Principles of Natural Justice and issued order no. ZD2409220288512 dated 22.09.2022. For the same amount and issue you have again filed an application for refund for tax amounting Rs. 3,60,197/- which was accepted and paid voluntarily during audit conducted by the department and final audit report was issued. Once an order was issued, there is an appeal mechanism for those who have not satisfied with the order, therefore, if you are not satisfied with the Order NO. ZD2409220288512 dated 22.09.2022, the remedy is to file an appeal before appellate authority i.e. Additional Commissioner, CGST Appeals, Ahmedabad. Personal hearing was also held on 13.03.2023."

2(iii). The adjudicating authority rejected the refund claim on the grounds that *"the claimant has not approached appellate authority against order dated 22.09.2022 and again filed refund claim on same issue citing different period March-2022 which is incorrect and not admissible under Section 54 of CGST Act, 2017 the claimant also not submitted any reply to the SCN issued in the matter nor submitted any reply to the SCN within prescribed time limit, and hence rejected the refund claim."*

3. Aggrieved by the aforesaid order of the adjudicating authority, the appellant has preferred appeal under Rule 107 of the CGST Act, 2017 on the following grounds;

(i) *that the refund application dated 25.07.2022 was rejected by issuance of order in for RFD-06 stating that it cannot be established, whether the claim was on CIF or FOB basis, Therefore, the claim is hereby rejected. Form GST ADT-02 clearly states that during department preceding it has been observed that the good are imported on the CIF basis. Learned assessing officer has failed to appreciate the fact that the audit wing has already examined and concluded that the import was based on CIF basis instead of FOB basis and adjudicated accordingly;*

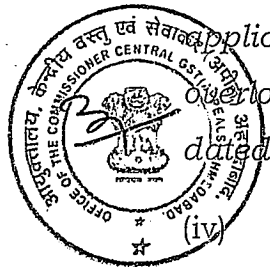
(ii) *that the impugned order was passed without giving the appellant an opportunity of being heard for the ground on the basis on which application for the appellant has been rejected;*

(iii) *that consequent to rejecting of refund application they have filed refund application to show the accessing authority that rejection is based solely due to overlooking of the material available on the record vide ARN AA2402230840091 dated 21.02.2023;*

(iv) *that the attitude of assessing authority stating that once any application rejected here can't be processed till same has been redirected by the appellate authority is completely irrational and causes hardship to genuine taxpayers sto knock the doors for the appellant authority for small issues where mistake is apparent from the record;*

(v) *that section 161 of the CGST Act, 2017 empowers the assessing authority to rectify the orders passed due to error available on the face of records. The assessing authority has completely overlooked the circumstances of the case and again passed the rejection order;*

(vi) *that the assessing authority has overlooked the provisions and passed the OIO,. Hence on this ground also OIO is challenged and needs to be set aside.*



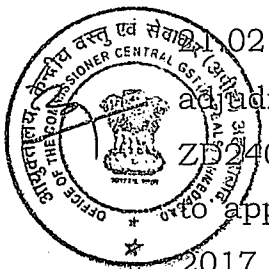
Personal Hearing:

4. Opportunity for personal hearing was granted to the appellant on 11.09.2023, whereby Mr. Aman Rathi, C.A. appeared before the appellate authority as authorized representative of the appellant. During the course of personal hearing, it was reiterated the written submissions. Since the issue is already decided by Hon'ble Supreme Court in Case of M/s. Mohit Mineral case, requested to allow refund.

DISCUSSIONS & FINDINGS

5. I have carefully gone through the facts of the case and submissions made by the appellant at the time of personal hearing. The said refund claim is rejected vide *impugned order* and accordingly, *appellant* has challenged the *impugned order* under present appeal proceedings. On scrutiny of the appeal filed by the appellant and the show cause notice and the impugned order issued by the adjudicating authority, I find that the appellant had filed refund claim of Rs. 3,60,197/- vide ARN No. AA2402230840091 dated 21.02.2023 for the period March 2022. Further I find that the appellant had earlier also for filed the refund application of the same amount for the period October 2021 vide ARN No. AA2407221009120 dated 25.07.2022 which was rejected on the ground that "*it cannot be established, whether the claim submitted by the clement was on CIF or FOB basis. Therefore the claim is hereby rejected.*"

6. In the instant case, I find that the appellant had filed refund claim of IGST totaling to Rs. 3,60,197/- vide ARN No. AA2402230840091 dated 21.02.2023 for the period March 2022 in form GST-RFD-01. Further, the adjudicating authority rejected the refund application vide Order NO. ZG2409220288512 dated 22.09.2022. However, the appellant were supposed to approach the first appellate authority under section 107 of the CGST Act, 2017 if they were concerned about their rejected refund claim. I find that the appellant instead of filing appeal before the appellate authority, again filed fresh refund claim on 21.02.2023 for the same amount of Rs. 3,60,197/- on the same grounds pertaining to the same period, which was rejected by the Refund Sanctioning Authority vide impugned OIO No.ZG2404230336363 dated 25.04.2023. I find that the appellant had erred and not approached appellate authority against order dated 22.09.2022 and again filed refund claim on same issue citing different period March-2022 which is incorrect and not admissible under Section 54 of CGST Act, 2017.



7. From the above facts it is clear that the appellant has not followed the legal recourse available under Section 107 of CGST 2017 against rejection of refund claim filed on 25.07.2022 and instead again filed the refund. Thus the rejection of the said claim is legal and proper in the eyes of law.

8. In view of the above facts and discussions, I do not find any infirmity in the impugned OIO and no merit in the appeal filed by the appellant and hereby reject the appeal.

अपील कर्था 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
26/09/2023

(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: 26.09.2023

Attested

(Signature)
(Sandheer Kumar)
Superintendent (Appeals)

By RPAD

To,

M/s. Myra Alucop Private Limited,
Kherpur Road, New Survey No. 1222,
Near DPS School Village, Rajpur,
Taluka Kadi, Mahesana, Mahesana,
Gujarat, 382705



Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Gandhinagar Commissionerate.
- 4) The Assistant Commissioner, CGST, Division Kadi, Gandhinagar.
- 5) The Additional Commissioner, Central Tax (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
- 6) Guard File
- 7) PA file.



