



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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DIN2021364SW000000CIDA

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/47/2020-Appeal -Ahmedabad.
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-JC-59/20-21**
दिनांक Date : **19.03.2021** जारी करने की तारीख Date of Issue : **25.03.2021**
श्री. मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mukesh Rathor, Joint.Commissioner (Appeals)
- ग Arising out of Order-in-Original No GST-RFD-06 No. ZR2404200431026 **dated** दिनांक:
24.04.2020 passed by Assistant/Deputy Commissioner, Central GST, Division-VII(SG Highway-East), Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s Benchmark Agencies Pvt. Ltd..

Respondent- Assistant Commissioner, Central GST, Division-VII(SG Highway-East),
Ahmedabad-North.

(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.



ORDER IN APPEAL

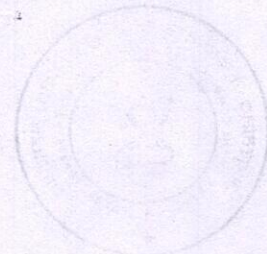
M/s. Benchmark Agencies Private Limited ,B-1 Shantum, Near Havmor Restaurant,Navrangpura,Ahmedabad-380009 GSTN:24AACC B3832C1ZB (hereinafter referred to as 'appellant') filed the present appeal against the Order-in-Original(GST-RFD-06 No.ZR2404200431026 dated 24.04.2020 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division-VII(SG Highway-East) Ahmedabad-North (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the appellant filed refund under Section 54 of the CGST Act,2017 in respect of tax paid in excess in the period Financial Year 2017-18 which was rejected by under the impugned order with the remark- "RFD- 06 is being issued for rejection under section 54"

3. Being aggrieved with the impugned order, the appellant preferred this appeal contesting *inter alia* that as per press release dated 03.07.2019 the tax payer is eligible for refund of excess amount paid during 2017-18 and required to file RFD 01A; that the adjudicating authority issued refund rejection order without stating/elaborating any reason in RFD 06 for rejection; that opportunity of being heard in term of Section 54(11) of the CGST Act,2017 not given to the claimant and hence order is issued without following the principle of natural justice; that as per circular No.26/26/2017-GST dated 29.12.2017 in cases where adjustment is not feasible to do in GSTR 3B, refund may be claimed; that excess payment is established by annual return GSTR-9 and reconciliation statement GSTR9C. Etc.,

4. Personal hearing in virtual mode was held on 12.01.2021 wherein Shri Bishan Shah and Priyanka Amin both CA reiterated the grounds of appeal memorandum. They also mailed additional submission under maid ted 2.01.2021 wherein reiterated the grounds of appeal and provided various case laws in support of their claim.

5. I have carefully gone through the facts of the case on I find that records, grounds of appeal in the Appeal Memorandum, written submissions made by them as well as oral submissions made at the time of virtual personal hearing and also the submissions mentioned in mail dated 12.01.2021 of the appellant. I find that the issue to be decided in the



matter is as to whether in the facts and circumstances of the case, the appellant's claims for refund is legally permissible or otherwise?

6. It is not forthcoming from the impugned order as to on what basis the decision of rejection of refund has been taken as no any reasoning of the decision appeared therein. It is well established judicial procedure that orders passed by quasi-judicial authorities should be reasoned and speaking one. I find that the impugned order failed in mentioning/elaborating the reason/s of rejection of refund claim as it is totally silent on the issue of as to on what basis the decision of rejection of the refund has been taken by the adjudicating authority. The present appeal has also been preferred by the appellant mainly contesting that the adjudicating authority issued refund rejection order without stating/elaborating any reason in RFD-06 for rejection and that opportunity of being heard in term of Section 54(11) of the CGST Act, 2017 not given to the claimant and hence order is issued without following the principle of natural justice.

7. Since the impugned order is silent as it does not divulge any reasons as to what reason constitutes the basis of the decision, it suffers from the infirmity of being a non-speaking order and liable to be set aside on this count only. Therefore, the ground of the appellant in so far it challenges the non speaking nature of the order, succeeds. For my such observation, I rely on the decision of Hon'ble High Court of Gujarat in case of M/s. Sitaram roadways v/s State of Gujarat reported in 2020(33)GSTL 174(Guj.), relevant para 21 of said order is reproduced below:

21. Viewed in the light of the principles enunciated in the decisions referred to hereinabove, the impugned order is in breach of the principles of natural justice on two counts : firstly, that though the matter was kept for hearing on 28-8-2019, the second respondent passed the impugned order on 24-8-2019 without affording any opportunity of hearing to the petitioner; and secondly, because the impugned order is a totally non-speaking order which does not reflect the reason as to why the proper officer has come to the conclusion that the goods and the conveyance are liable to be confiscated, which renders the order unsustainable. The impugned order, therefore, deserves to be set aside and the matter is required to be remitted to the proper officer to decide the matter afresh in accordance with law, keeping in mind the principles discussed hereinabove, after affording reasonable opportunity of hearing to the petitioner.



8. In view of the discussions above, the impugned order is not sustainable primarily on account of the fact that it does not elaborate/speaks the basis of the decision. The Hon'ble Supreme Court has further elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under: -

" If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

7. The adjudicating authority should, therefore, bear in mind that no material should be relied in the adjudication order to support a finding against the interests of the party unless the party has been given an opportunity to rebut that material. In the case on hand, rejection of the claim inflexibly based without assigning any reasons which is unfair to the appellant.

8. In view of the discussions above, I find infirmity in the impugned order to the extent it has not assigned any reason/s for the decision of non sanctioning of the refund, to which I reject and allow the appeal filed by the appellant, without going in to merit of other essential criterion of the refund claim which needs to be complied by the claimant in term of Section 54 of the CGST Act,2017

9. The appeal filed by the appellant stand disposed off in above terms.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !


(Mukesh Rathore)

Joint Commissioner, CGST(Appeals)

Date:



Attested


(Atulkumar B. Amin)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Benchmark Agencies Private Limited,
B-1 Shantum, Near Havmor Restaurant, Navrangpura,
Ahmedabad-380009.
GSTN:24AACC B3832C1ZB

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST, Appeals, Ahmedabad.
3. The Commissioner of Central Tax, Ahmedabad-North.
4. The Addl./Joint Commissioner, Central Tax (System), Ahmedabad- North.
5. The Asstt./Deputy Commissioner, Central Tax, Division-VII, SG Highway (East), Ahmedabad- North.
6. Guard File
7. P.A. File



