



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
Phone: 079-26305065 Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in



By Regd. Post

DIN NO. 20221164SW000000FBF7

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/572/2022 / 525-90
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-103/2022-23 and 29.11.2022
(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	30.11.2022
(ङ)	Arising out of Order-In-Original No. ZY2410210034778 dated 04.10.2021 passed by The Assistant Commissioner, CGST, Division - VII (S G Highway East), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Centurion Polyplast Pvt. Ltd. (GSTIN-24AAJCC2206Q1ZK) Sagar House, 4TFH 6/5/AB, Sindh Model Soc, Nr Vadaj Bus Stand, Opp. Khadi Gramudhyog, Ahmedabad, Gujarat-380013

(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 :

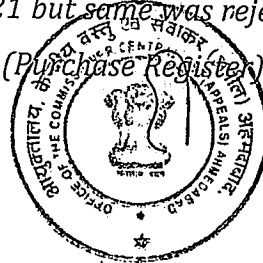
M/s Centurion Polyplast Pvt. Ltd. (GSTIN-24AAJCC2206Q1ZK), Sagar House, 4TFH 6/5/AB, Sindh Model Soc, Nr Vadaj Bus Stand, Opp. Khadi Gramudhyog, Ahmedabad, Gujarat-380013 (hereinafter referred as *the 'Appellant'*) has filed the present appeal against the Order No. ZY2410210034778, dated 04.10.2021 passed in the Form-GST-RFD-06 (hereinafter referred as *'impugned order'*) rejecting refund claim of Rs.6,41,893/-, issued by the Deputy Commissioner, CGST & C.Ex., Division-VII (S.G.Highway East), Ahmedabad-North Commissionerate (hereinafter referred as *'the adjudicating authority'*).

2(i). Briefly stated the facts of the case are that the *'Appellant'* is holding GSTINo. 24AAJCC2206Q1ZK has filed the present appeal on 03.12.2021. The *'Appellant'* in the appeal memo informed that they had filed refund application on account of exporting goods under LUT and were eligible to claim refund of accumulated input tax credit for which they filed refund application in the month of June, 2021. In response to said refund claim a show cause notice dated 17.09.2021 was issued to the *'Appellant'*. In the said SCN it was mentioned that refund application is liable to be rejected for the reason *"Miss Match of ITC"* and a Remark was also mentioned as *"The ITC claimed as per Annexure B appeared to be entirely improper. Reply should be sent as to why the amount mentioned above should not be rejected"*.

2(ii). Further, the *'Appellant'* was asked to furnish reply to the SCN within 15 days from the date of service of SCN and a personal hearing was also offered to the *'Appellant'* on 20.09.2021. Thereafter, the *adjudicating authority* has rejected the entire refund claim vide *impugned order*. A remark is mentioned in the *impugned order* as *"THE DETAILS OF ANNEXURE-B DOES NOT MATCH WITH GSTR-2A. THE AMOUNT ADMISSIBLE CANNOT BE CALCULATED BASED ON THE DOCUMENTS PROVIDED. THEREFORE, THE REFUND IS BEING REJECTED"*.

2(iii). Being aggrieved with the *impugned order* the appellant has filed the present appeal on 03.12.2021 wherein stated that -

- They are exporting goods without payment of tax under the LUT , so they have applied for refund for the month of June 2021 but same was rejected on the ground of mismatch in the GSTR 2A & ANNEXURE B (Purchase Register).



- They are submitting the reconciliation of GSTR 2A & Purchase Register.

The appellant in the appeal memorandum has prayed to pass order considering the provisions of the law to meet the end of justice.

3. Personal Hearing in the matter was held on 21.10.2022 wherein Sh. Jignesh Oza, Chartered Accountant, appeared in person on behalf of the 'Appellant' as authorized representative. During the P.H. he reiterated the submissions made by them till date.

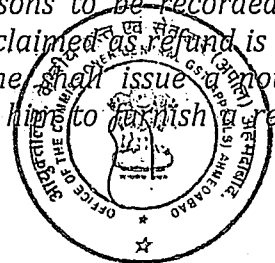
Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the 'Appellant' had preferred the refund application on account of Zero Rated Supply as per Section 54(3) of the CGST Act, 2017. In response to said refund applications Show Cause Notice was issued to them proposing rejection of refund claims for reasons mentioned as "Miss Match of ITC". In the SCN, remark was also mentioned that - *"The ITC claimed as per Annexure B appeared to be entirely improper. Reply should be sent as to why the amount mentioned above should not be rejected"*. The said refund claim was rejected by the adjudicating authority vide impugned order. I find that in the impugned order in the remark-section it is mentioned that - *"THE DETAILS OF ANNEXURE-B DOES NOT MATCH WITH GSTR-2A. THE AMOUNT ADMISSIBLE CANNOT BE CALCULATED BASED ON THE DOCUMENTS PROVIDED. THEREFORE, THE REFUND IS BEING REJECTED"*.

4(ii). I observed that in the instant case the "impugned order" is of 04.10.2021 and appeal is filed on 03.12.2021. As per Section 107(1) of the CGST Act, 2017, the present appeal is considered to be filed in time.

4(iii). In view of foregoing facts, I find that the refund claim is rejected for the reason that there is mismatch between Ann. 'B' & GSTR - 2A. The appellant in the present appeal submitted that they have submitted the reconciliation of GSTR 2A and purchase register for the reference. 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.

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 SCN, I find that opportunity of Personal Hearing was provided to the 'Appellant' on 20.09.2021. However, no such evidence available on records that Personal Hearing was conducted. Therefore, I find that the *impugned order* is issued without being heard the 'Appellant'.

4(iv). Further, I find that the appellant in the present appeal contended that they are eligible for refund on account of Zero rated Supply as per Section 54 (3) of the CGST Act, 2017 and they have filed the refund application in time. The relevant provision of Section 54 is reproduced as under :

Section 54. Refund of tax.- *

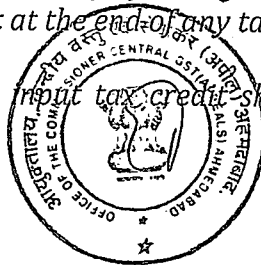
(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in ¹[such form and] manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of ¹[two years] from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-



F.No. : GAPPL/ADC/GSTP/572/2022-APPEAL

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

I find that the adjudicating authority has rejected the refund claim on the sole ground of mismatch of GSTR-2A and Annexure-B. Therefore, it transpires that there is no other dispute with regard to the refund claim involved in the matter.

5. In view of above, 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 being heard the *appellant* as well as without communicating the valid or legitimate reasons before passing said 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 claim should have been discussed. Else such order would not be sustainable in the eyes of law. Therefore, the *adjudicating authority* is hereby directed to process the refund application of the *appellant* by following the principle of natural justice. The '*Appellant*' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

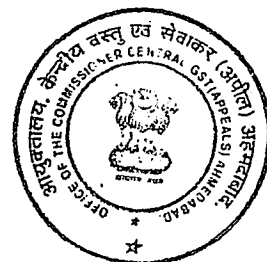
6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "*Appellant*" without going into the merit of all other aspects, which are required to be complied by the claimant in terms 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।

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

(Mehir Rayka)
Additional Commissioner (Appeals)

Date: 24.11.2022



Attested

(Ajay Kumar Agarwal)
Superintendent (Appeals)
Central Tax, Ahmedabad.



By R.P.A.D.

To,
M/s Centurion Polyplast Pvt. Ltd.
(GSTIN-24AAJCC2206Q1ZK)
Sagar House, 4TFH 6/5/AB, Sindh Model Soc,
Nr Vadaj Bus Stand, Opp. Khadi Gramudhyog,
Ahmedabad, Gujarat-380013

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., Ahmedabad-North.
4. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
5. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-VII (S.G.Highway East), Ahmedabad-North.
- ✓ 6. Guard File.
7. P.A. File

