



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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DIN- 20221264SW0000161981

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2882/2022 -APPEAL

6018-23

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-113/2022-23**
दिनांक Date : **16-12-2022** जारी करने की तारीख Date of Issue : **16-12-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZN2406220226253 DT. 13.06.2022** issued by
Assistant Commissioner, CGST & CX, Division-I, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Rajeshbhai Bhojwani of M/s. Raj Agency, 8A/1, First Floor,
Sindhusagar Co. Op. Society, M ward, B/h Maya Cinema Road,
Kubernagar, Ahmedabad-382340

(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 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 Raj Agency [Legal Name- Rajeshbhai Bhojwani], 8A/1, First Floor, Sindhusagar Co. Op. Society, M ward, B/h Maya Cinema Road, Kubernagar, Ahmedabad-382340, (hereinafter referred as the 'Appellant') has filed the present appeal against the Order No. ZN2406220226253, dated 13.06.2022 (hereinafter referred as 'impugned order') rejecting refund claim of Rs. 1,66,000/- passed by the Assistant Commissioner, CGST & C.Ex., Division-I [Naroda], Ahmedabad-North 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 GSTIN 24AFKPB8691M1ZY and has filed the present appeal on 10.10.2022. The 'Appellant' had filed the refund application on dated 12.05.2022 claiming refund of Rs.1,66,000/- on account of ITC accumulated due to Inverted Tax Structure for the period from April, 2020 to March, 2021. In response to said refund claim a show cause notice dated 26.05.2022 was issued to the 'Appellant'. In the said SCN it was mentioned that the refund application is liable to be rejected for the reason "Other" and amount Rs.1,66,000/- is admissible. A remark was also mentioned as - *"TP has not uploaded the documents under Sec. 54(3)(ii) of the CGST Act read with para 3.2 of Circular No.135/05/2020, Annexure-B with correct HSN/SAC of inputs in the Proforma & declarations as prescribed vide Circular No.135/05/2020-GST dated 31.03.2020."*

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 02.06.2022 at 06.27 PM. The Appellant vide Form-GST-RFD-09, dated 08.06.2022 claimed to have attached all the documents / declarations as required and has sought time for Physical Hearing in case of any further requirements.

2(iii). Thereafter, the adjudicating authority has rejected the refund claim of Rs.1,66,000/- vide the impugned order. A Remark is also mentioned in the impugned order as- *"Since TP not furnished details of input-outputs & manufacturing process/premises in reply to SCN, claim does not fall under category of inverted tax structure as per Section 54(3) of the CGST Act, 2017. Hence, TP not entitled for refund of accumulated ITC."*



3. Being aggrieved with the impugned orders the appellant has filed the present appeal on 10.10.2022 mainly on the following reasons-

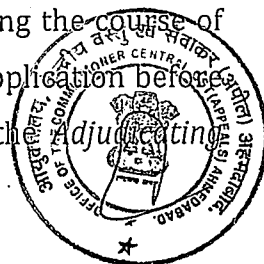
- The authority rejected the refund claim without giving any speaking order as required by Instruction No. 03/2022-GST, dated 14.06.2022.
- The authority has failed in following the procedure for appraising the refund application by not issuing the deficiency memo in Form RFD-03 as provided in Refund Master Circular No.125/44/2019-GST, dated 18.11.2019.
- The authority has issued the order rejecting the refund in Form RFD-06 outside the purview of SCN without giving speaking order to the appellant as required under Instruction No. 03/2022-GST, dated 14.06.2022.
- The authority has made remarks in refund order outside the points raised in the SCN dated 23.05.2022 which grossly against the rule of natural justice and as per the order dated 31.03.2022 of Hon'ble High court of Gujarat in case of *M/s Uni Well Exim Vs State of Gujarat* [C/SCA/885/2021], it has been made clear that the order cannot go ultra virus to the points raised in the SCN. However, in the present case the authority has never raised a query about manufacturing process and applicability of inverted duty structure and issued order of refund rejection on that ground.

In view of the above submission, *the appellant* has prayed to allow the appeal and consider their request for grant of the refund.

4. Personal Hearing in the matter was held on 08.12.2022, wherein Shri Sumit G. Kherajani, Tax Practitioner appeared in person on behalf of the 'Appellant' as authorized representative. During Personal Hearing he has reiterated the grounds mentioned in the appeal memorandum and informed that they want to give additional submission, which was approved and 3 working days was granted. However, till date no additional submission has been filed by the appellant.

Discussion and findings:

5(i). I have carefully gone through the facts of the case available on records and submissions made by the *appellant* in the appeal memo as well as during the course of personal hearing. I find that the 'Appellant' had preferred the refund application before the refund sanctioning authority. The refund sanctioning authority [the adjudicating



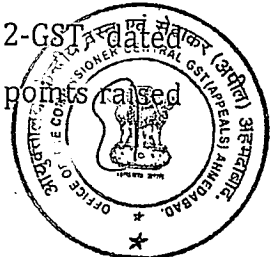
Authority] has rejected the refund application vide impugned order mentioning the reason as- "Since TP not furnished details of input-outputs & manufacturing process/premises in reply to SCN, claim does not fall under category of inverted tax structure as per Section 54(3) of the CGST Act, 2017. Hence, TP not entitled for refund of accumulated ITC." Accordingly, appellant has preferred the present appeal.

5(ii). I observed that in the instant case the impugned order was issued on 13-06-2022 and the appeal was filed on 10-10-2022. The appellant was required to file the appeal within 3 months from the date of communication of the said order as per Section 107 (1) of CGST Act, 2017. I find that the order was communicated to the appellant on dated 13-06-2022 and present appeal was filed on dated 10-10-2022 i.e. after a period of three months hence the appeal was filed beyond the time limit as prescribed under Section 107 of the Act, i.e. delayed by 28 days. Further, as per Section 107(4) of CGST Act, 2017, the appellate authority has powers to condone the delay of one month in filing of appeal, over and above the prescribed period of three months as mentioned above, if sufficient cause is shown.

The appellant in the appeal memorandum mentioned that they were consulting and taking legal advice from various consultants to get the exact reasons from the authorities for rejecting the application for refund. The appellant was not aware of the detailed procedure for filing appeal and made delay in appointing the proper person for taking such legal steps.

Considering the request of the appellant, in view of the Section 107(4) of the CGST Act, 2017, I condone the delay of 28 days occurred in filing the present appeal.

5(iii). I find that the appellant in the grounds of the present appeal has mainly stated that the *Adjudicating Authority* has rejected the refund claim without giving any speaking order as required under Instruction No. 03/2022-GST, dated 14.06.2022 ; the authority has failed in following the procedure for appraising the refund application by not issuing the deficiency memo in Form RFD-03 as provided in the Refund Master Circular No.125/44/2019-GST, dated 18.11.2019; the authority has issued the order of rejecting the refund in Form RFD-06 outside the purview of SCN without giving speaking order to the appellant as required under CBIC Instruction No. 03/2022-GST, dated 14.06.2022; the authority has made remarks in refund order outside the points raised



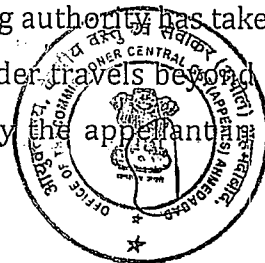
in the SCN dated 23.05.2022 which grossly against the rule of natural justice; as per the Order dated 31.03.2022 of Hon'ble High Court of Gujarat in case of *M/s Uni Well Exim Vs State of Gujarat* ruling that the order cannot travel beyond the scope of the notice. Thus, the principles of natural justice have been violated in the present case.

5(iv). As regards to the appellant's submission that the impugned order is passed without following the principles of natural justice and without giving any speaking order, 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 the impugned order, I find that no detailed reasons for rejection of refund claim have been recorded. I also find that there is no evidence available on records that Personal Hearing in the matter was conducted. Find that the adjudicating authority has mentioned in the impugned order dated 13.06.2022 in Form GST-RFD-06 that - "Since TP not furnished details of input-outputs & manufacturing process/premises in reply to SCN, claim does not fall under category of inverted tax structure as per Section 54(3) of the CGST Act, 2017. Hence, TP not entitled for refund of accumulated ITC," whereas in the notice dated 26.05.2022 issued in Form GST-RFD-08 in remark section it has been mentioned that - "TP has not uploaded the documents under Sec. 54(3)(ii) of the CGST Act read with para 3.2 of Circular No.135/05/2020 Annexure-B with correct HSN/SAC of inputs in the Proforma & declarations as prescribed vide Circular No.135/05/2020-GST dated 31.03.2020." From the above, it is amply clear that the adjudicating authority has taken a different stand for rejection of refund claim and the impugned order travels beyond the scope of the show cause notice which has also been disputed by the appellant in the



present appeal. Therefore, I find that the adjudicating authority has erred in passing the impugned order vide which the refund claim was rejected 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 claim should have been discussed and recorded in writing. Else such order would not be sustainable in the eyes of law.

6. Considering the above facts, the *adjudicating authority* is hereby directed to process the refund application of the *appellant* and issue a speaking order after following the principle of natural justice and taking into consideration all the other relevant points as discussed hereinabove. The 'Appellant' is also directed to submit all the relevant documents/submissions before the *adjudicating authority*.

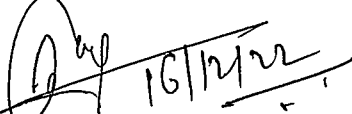
7. In view of the above discussions, the *impugned order* passed by the *adjudicating authority* is set aside and accordingly, I allow the appeal of the "Appellant" without going into merit of all other aspects, which are required to be complied by the claimant under relevant Sections / Rules of the CGST Act, 2017 / CGST Rules, 2017.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the *appellant* stands disposed of in above terms.


(Mahir Rayka)
Additional Commissioner (Appeals)

Date: 16.12.2022

Attested


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



By R.P.A.D.

To,
M/s Raj Agency,
[Legal Name- Rajeshbhai Bhojwani],
8A/1, First Floor,
Sindhusagar Co. Op. Society,
M Ward, B/h Maya Cinema Road,
Kubernagar, Ahmedabad-382340.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner [Appeals], CGST & C. Ex., Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-North.
4. The Additional Commissioner (System), CGST & C. Ex., Ahmedabad-North.
5. The Assistant Commissioner, CGST & C. Ex, Division-I [Naroda], Ahmedabad-North.
6. ☒ Guard File.
7. P.A. File.



