



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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टेलीफैक्स 07926305136



DIN- 20221264SW0000444EBA

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2162/2022 -APPEAL / 16529 - 3rd

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-127/2022-23**
दिनांक Date : **27-12-2022** जारी करने की तारीख Date of Issue : **27-12-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZV2403220011838 DT. 01.03.2022** issued by Assistant Commissioner, CGST & CX, Division-VII, Ahmedabad North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Mosaic India Pvt. Ltd., 38, Second Floor, 4D Square Mall,
Visat-Gandhinagar Highway, Motera, Ahmedabad-380005**

(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 ::

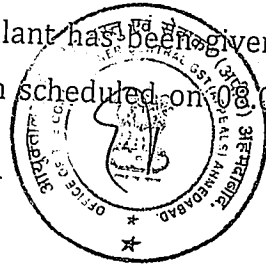
BRIEF FACTS OF THE CASE:

M/s Mosaic India Pvt. Ltd., 38, Second Floor, 4D Square Mall, Visat-Gandhinagar Highway, Motera, Ahmedabad, Gujarat, 380005 (hereinafter referred as 'Appellant') has filed the present appeal against the Order No. ZV2403220011838, dated 01.03.2022 (hereinafter referred as 'impugned order') rejecting refund claim amounting to Rs.13,07,236/-, passed by the Deputy Commissioner, CGST, Division-VII [S.G.Highway-East], Ahmedabad-North (hereinafter referred as 'adjudicating authority').

2(i). Briefly stated the facts of the case are that the 'Appellant' is holding GST No. 24AACCC4033C3ZD has filed the present appeal on 31.05.2022. The 'Appellant' is engaged in the business of supply of fertilizers. They also import the goods i.e. bulk fertilizers on Cost, Insurance & Freight [CIF] basis. They paid the duties of Customs which includes IGST and since CIF value includes freight charges paid for transportation of goods, IGST is discharged on such freight at the time of importation.

They had paid the IGST on ocean freight on CIF value of import on RCM basis in terms of Notification No.10/2017-Integrated Tax (Rate), dated 28.06.2017. However, being aggrieved with such double taxation the appellant filed a writ petition before the Hon'ble High Court of Gujarat vide SCA No.22085 of 2019. Hon'ble High Court of Gujarat vide its Order dated 29.01.2020, disposed of the Writ Application on the grounds that Hon'ble Court on 23.01.2020 had already passed order in case of *M/s Mohit Mineral Pvt. Ltd. Vs Union of India [in SCA No.726 of 2018]* and has struck down the impugned Notification.

2(ii). The 'Appellant' had filed a refund application in Form GST RFD-01 dated 24.01.2022 claiming refund of the IGST on ocean freight under reverse charge basis claimed to have been paid by them. In response to said refund application, Show Cause Notice No. ZV2402220058482, dated 07.02.2022 was issued to the appellant proposing rejection of refund claim on the ground "Others". Rejection was proposed on the grounds that "As per Circular No.125/44/2019-GST, dated 18.11.2019 clarification is being sought regarding DRC -03 dated 23.07.2021". Appellant has been given fifteen days time to file reply and personal hearing has also been scheduled on 08.02.2022.



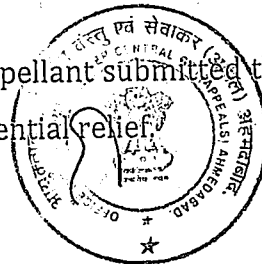
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Thereafter, the refund claim was rejected by the *adjudicating authority* vide *impugned order*. A Remark is also mentioned in the *impugned order* as – “*The claimant conveyed the trouble of receipt of SCN on his end due to technical glitch, the ample time was given for the filing of reply. However, no reply of SCN received so far. The claim is being rejected ex-parte.*”

2(iii). Being aggrieved with the “*impugned order*” the ‘Appellant’ has filed the present appeal on 31.05.2022, wherein they stated mainly on the grounds they are eligible for the refund as per Hon’ble High Court of Gujarat’ order dated 23rd January’2020 in the case of *M/s. Mohit Minerals Pvt. Ltd. Vs Union of India & ors. (In Special Civil Application No.726 of 2018)*.

The appellant has further stated that the order of the Deputy Commissioner [Adjudicating Authority] is against the principles of natural justice. They stated that the appellant had made all possible attempts to furnish the reply to SCN online on GST portal but was prevented from undertaking the same due to a technical glitch therein. Consequently, the appellant requested the Adjudicating Authority to consider the reply shared through email and grant refund on merits of the case. However, the Adjudicating Authority did not consider the reply in records and passed an *ex-parte* order for rejection of refund claim. The appellant in their support highlighted the observation made by the *Supreme Court of India in case of Collector of Central Excise, Patna & ors. Vs ITC Ltd. [1995] 2 SCC 38*, wherein it was held that show- cause and personal hearing is necessary before saddling an assessee with additional demand and this is a settled law. The appellant has also relied upon the decision of Apex court in case of *Tin Box Co. Ltd. Vs CIT, New Delhi [2001] 9 SCC 725*, *Dharampal Satyapal Ltd. Vs Deputy CCE, Guwahati 2015(320) ELT 3(SC)* in their support that no opportunity to be heard was granted to them before rejection of the refund. They further stated that they had no knowledge of such SCN since an intimation for issuance and upload of SCN online portal was not received. Thus, by not granting an opportunity, the Jurisdictional GST authority acted in violation of natural justice.

In view the above submissions the appellant submitted that the *impugned order* dated 01.03.2022 be set aside with consequential relief.



PERSONAL HEARING :

3. Personal Hearing in the matter was held on 23.12.2022. Shri Vinayak Kohli and Shri G. Sriram, on behalf of the 'Appellant' as authorized representative has attended the hearing on virtual mode. They reiterated the submissions made till date and nothing more to add.

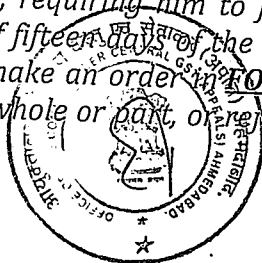
DISCUSSION AND FINDINGS :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal memorandum & during hearing. 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 order mentioning the reason as- "*The claimant conveyed the trouble of receipt of SCN on his end due to technical glitch, the ample time was given for the filing of reply. However, no reply of SCN received so far. The claim is being rejected ex-parte.*" Therefore, the appellant has preferred the present appeal.

4(ii). I find that in the present appeal the appellant in the ground of appeals has mainly stated that the Adjudicating Authority has erred both on facts and in law by passing the order rejecting application of refund as order rejecting the claim is based upon non-filing of reply. They also contended that Adjudicating Authority has passed the order of rejecting refund application without giving an opportunity of hearing to assessee. Thus, principles of natural justice have been violated.

4(iii). As regards to the appellant's submission that the impugned order is passed without considering their reply submitted through email as there was technical glitch on GST portal and also passed without giving an opportunity of hearing to the *appellant*, 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



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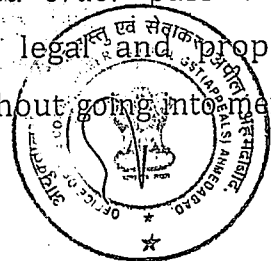
refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

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 specific reason for rejection of refund claim has been recorded. I also find that there is no evidence available on records that Personal Hearing in the matter was conducted which has also been pointed out by the appellant. The adjudicating authority has mentioned in the Form GST-RFD-06 that "The claimant conveyed the trouble of receipt of SCN on his end due to technical glitch, the ample time was given for the filing of reply. However, no reply of SCN received so far. The claim is being rejected ex-parte." This is evident that the adjudicating authority has concluded the refund matter ex-parte. 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 claim 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 application 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*. The *adjudicating authority* is further directed to consider the Hon'ble High Court of Gujarat's Order dated 29.01.2020 in SCA No.22085 of 2019 in appellant's own case wherein the Hon'ble High Court disposed of the Writ Application on the ground that Hon'ble Court on 23.01.2020 had already passed order in case of M/s Mohit Mineral Pvt. Ltd. Vs Union of India [in SCA No.726 of 2018].

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 merit of all

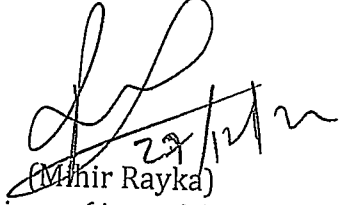


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other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

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

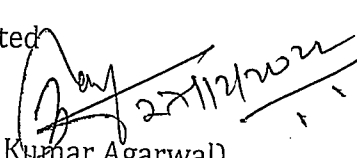
The appeals filed by the *appellant* stands disposed of in above terms.

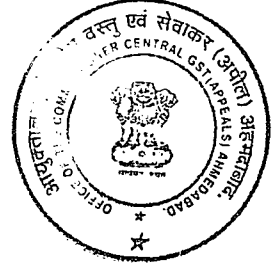


Additional Commissioner (Appeals)

Date: 27.12.2022

Attested


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



By R.P.A.D.

To,
M/s Mosaic India Pvt. Ltd.,
38, Second Floor, 4D Square Mall,
Visat Gandhinagar Highway,
Motera, Ahmedabad,
Gujarat, 380005.

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, Central Tax (System), Ahmedabad-North.
5. The Deputy/ Assistant Commissioner, CGST, Division-VII [S.G.Highway East], Ahmedabad-North.
6. Guard File.
7. P.A. File.

