



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- 20221264SW000051035A

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1913/2022 -APPEAL / 6690-95

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-129/2022-23**
दिनांक Date : **30-12-2022** जारी करने की तारीख Date of Issue : **30-12-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZP2405220108885 DT. 09.05.2022** issued by
Deputy Commissioner, CGST & CX, Division-VII, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Adi Enterprises, Ground Floor, Heritage Tower, B/H Visnagar Bank,
Ashram Road, Usmanpura, Ahmedabad-380014**

(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. Adi Enterprises, Ground Floor, Heritage Tower, B/H Visnagar Bank, Ashram Road, Usmanpura, Ahmedabad-380014, (hereinafter referred as 'Appellant') has filed the present appeal against the Order No. ZP2405220108885, dated 09.05.2022 (hereinafter referred as 'impugned order' by the Deputy Commissioner, CGST & C.Ex., Division-VII [S.G.Highway-East], Ahmedabad-North. (hereinafter referred as the 'adjudicating authority') rejecting the refund claim of Rs.24,96,898/-.

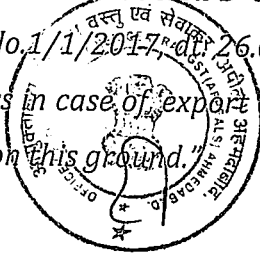
2(i). Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration/GSTIN No.24AANFA3259Q1ZX and has filed the present appeal on 30.06.2022.

The appellant had filed the refund application on dated 04.04.2022 for the refund claim of Rs.24,96,898/- [Rs.10,31,390/- Integrated Tax + Rs.14,65,508/- Cess], for the period from January, 2021 to March, 2021; on account of supplies to SEZ unit/SEZ developer (with payment of tax).

The adjudicating authority had issued Notice to Show Cause No. ZR2404220260740, dated 21.04.2022 mentioning that - "As per Cir. No. 45/19/2018, dt.30.05.2018 - No refund of compensation is permitted if zero rated supply is made with payment of IGST. The respondent needs to reply why the refund should not be rejected proportionately."

In response, the appellant had submitted the reply dated 28.04.2022. The appellant replied that - "As clarified in Circular No.1/1/2017 date d26.07.2017, the provisions of section 16 of the IGST Act, 2017, relating to Zero Rated Supply will apply mutatis mutandis for the purpose of Compensation Cess."

Thereafter, the adjudicating authority has rejected the whole of the refund claim vide impugned order in Form GST-RFD-06 by mentioning in the remarks section that - "Para 8(b) of Circular No.1/1/2017, dt. 26.07.2017 quoted in the reply of SCN, restricts refund of compensation cess in case of export of goods / services with payment of IGST". The refund is being rejected on this ground.



2(ii). Being aggrieved with the impugned order the appellant has filed the present appeal on 30.06.2022 mainly on the following grounds: -

- The appellant has referred the Circular No.1/1/2017-Compensation Cess, dated 26.07. 2017 , wherein Para 8 reads as under :-

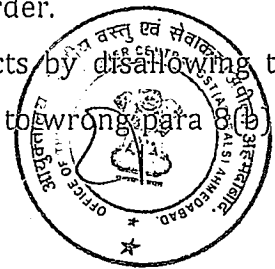
" 8. In view of the above, it is hereby clarified that provisions of section 16 of the IGST Act, 2017, relating to zero rated supply will apply mutatis mutandis for the purpose of Compensation Cess (wherever applicable), that is to say that:-

a) Exporter will be eligible for refund of Compensation Cess paid on goods exported by him [on similar lines as refund of IGST under section 16(3) (b) of the IGST, 2017];
or

b) No Compensation Cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of Compensation Cess relating to goods exported [on similar lines as refund of input taxes under section 16(3) (a) of the IGST, 2017]. "

The appellant contended that their case will fall under para 8(a) and not 8(b) as decided by the adjudicating authority.

- The adjudicating authority has erred in law and facts by disallowing the refund of IGST & Compensation Cess.
- Despite giving the detailed contention before the Ld. Deputy Commissioner, no reasonable explanation / justification given by the adjudicating authority stating the reason for rejecting the refund leading the order being prejudicial in the interest of revenue.
- The impugned Refund Rejection Order is not keeping in the Principle of equity, justice and law.
- The impugned Refund Rejection Order has been passed in clear breach of Principle of Natural Justice.
- The impugned Refund Rejection Order is a non-speaking order.
- The Ld. Deputy Commissioner has erred in law and facts by disallowing the refund aggregating to Rs.24,96,898/- by giving reference to wrong para 8(b) of



the Circular No.1/1/2017-Compensation Cess, dated 26.07.2017 instead of considering the reference of para 8(a) of the said circular.

- The impugned Refund Rejection Order is passed without applying correct provisions of IGST Act, 2017.

In view of the above submission, *the appellant* has prayed to quash the impugned refund rejection order appeal and allow the refund.

Personal Hearing :

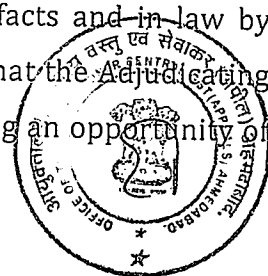
3. Personal Hearing in the matter was held on 28.12.2022, wherein Shri Ankit Parikh & Nisarg Shah, Chartered Accountants, appeared on behalf of the *appellant*, in person, as authorized representatives. During the Personal Hearing they have reiterated the grounds mentioned in the appeal memorandum and nothing more to add in their written submission 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 appeal memorandum & during the 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 claim vide impugned order in Form GST-RFD-06 mainly on the ground that the Para 8(b) of Circular No.1/1/2017, dt. 26.07.2017 quoted in the reply of SCN, restricts refund of compensation cess in case of 'export of goods / services with payment of IGST'. Accordingly, *the appellant* has preferred the present appeal.

4(ii). At the foremost, I observed that in the instant case the "impugned order" is of dated 09.05.2022 and appeal is filed on 30.06.2022. As per Section 107(1) of the CGST Act, 2017, the appeal is considered to be filed in time.

4(iii). I find that in the present appeal, the appellant in the ground of appeal has mainly stated that the Adjudicating Authority has erred both on facts and in law by passing the order rejecting the refund claim. They also contended that the Adjudicating Authority has passed the order of rejecting the refund without giving an opportunity of



hearing to *the appellant* and also the impugned order is a non-speaking order. Thus, principles of natural justice have been violated.

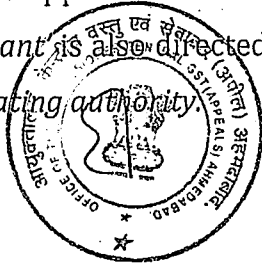
4(iv). As regards to the appellant's submission that the impugned order is passed on without following the principles of natural justice and without giving an opportunity of hearing to them, I referred the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under:-

*(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 there is no evidences available on records that Personal Hearing in the matter was conducted which has also been pointed out by the appellant in their appeal memorandum. Therefore, I find that the adjudicating authority has violated the principles of natural justice in passing the impugned order. Further, I am of the view that 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 supported by the relevant law. Else such order would not be sustainable in the eyes of law.

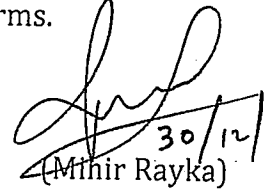
5. Considering the above facts, the *adjudicating authority* is hereby directed to process the refund application of the *appellant* by following the principle of natural justice. The '*Appellant*' is also directed to submit all the relevant documents/submission before the *adjudicating authority*.



6. In view of the 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 other aspects, which are required to be complied by the claimant in terms of the CGST Act, 2017 / IGST Act, 2017 or the CGST Rules, 2017 or any other law for the time being in force.

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

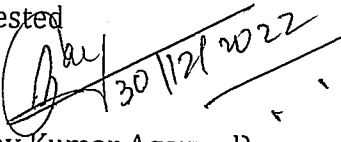
The appeals filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 30.12.2022

Attested


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



By R.P.A.D.

To,
M/s. Adi Enterprises,
Ground Floor, Heritage Tower,
B/H Visnagar Bank, Ashram Road,
Usmanpura, Ahmedabad-380014.

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 & C.Ex, Division-VII , S.G.Highway-East, Ahmedabad North.
- ✓ 6. Guard File.
7. P.A. File

