



सत्यमेव जयते

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



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DIN NO. : 20230264SW000000EB0C

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/7-10/2023 / 8704-10
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-155-158/2022-23 and 21.02.2023
(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	22.02.2023
(ङ)	Arising out of Order-In-Original no.'s mentioned below issued by The Assistant Commissioner, CGST, Division - VII, Ahmedabad North Commissionerate:	
	F.No.	OIO no.
	GAPPL/ADC/GSTP/7/2023	ZK2409220280845
	GAPPL/ADC/GSTP/8/2023	ZF2409220273067
	GAPPL/ADC/GSTP/9/2023	ZD2409220280612
	GAPPL/ADC/GSTP/10/2023	ZE2409220280501
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Astha Creation 5th Floor, A-501, Narnarayan Complex, Swastik Society Cross Road, Ahmedabad-380009

(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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
(i)	(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 .

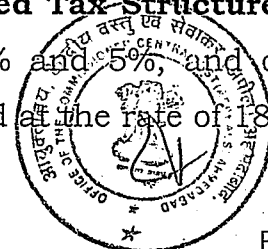
ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE:**

M/s. Astha Creations [GSTIN : 24AATFA7005L1Z9], 5th Floor, A-501, Narnarayan Complex, Swastik Society Cross Road, Ahmedabad (herein after referred to as the "appellant") have filed the following appeals against the refund sanction/rejection orders (herein after referred to as the "impugned order(s)") as mentioned below passed by the Assistant Commissioner, CGST, Div-VII, Ahmedabad North Commissionerate (herein after referred to as the "adjudicating authority") for amount shown against respective ARN No (hereinafter referred to as the "respondent") on account of accumulated ITC due to inverted tax structure. The details are as under:

TABLE -A:

Sr. No	Appeal File Number	Date of filing of appeal	Refund sanctioned Order (Impugned Order-RFD-06) No. & Date / Refund Application ARN No. & Date	Refund claimed for the month	Refund claimed (In Rs.)	Amount of Refund sanctioned (In Rs.)	Amount of refund rejected (in Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	GAPPL/ADC/GSTP/7/2023	14.12.2022	ZK2409220280845 / 22.9.2022 (ARN NO. AA2408220018885 / 01.08.2022)	Jan 2021	62807	0	62807
2	GAPPL/ADC/GSTP/8/2023	14.12.2022	ZF2409220273067 / 21.9.2022 (ARN NO. AA240822020169G/ 05.08.2022)	Feb 2021	725825	489020	236805
3	GAPPL/ADC/GSTP/10/2023	14.12.2022	ZE2409220280501 / 22.9.2022 (ARN NO. AA2408220203250/ 05.08.2022)	Mar 2021	570337	302862	267475
4	GAPPL/ADC/GSTP/9/2023	14.12.2022	ZD2409220280612/ 22.9.2022 (ARN NO. AA240822020513P/ 05.08.2022)	Jun 2021	206203	17852	188351

2. Brief facts of the case in all these 04 (four) appeals is that the appellant registered under GSTIN – 24AATFA7005L1Z9 and is engaged in the business of manufacturing of textile products i.e Bedsheets, Bed Cover, etc and also engaged in Jobwork activity for various textile products and has filed refund claim(s) on account of accumulated ITC due to inverted tax structure for the month of Jan 2021, Feb 2021, Mar 2021 and Jun 2021 respectively for amount shown in Table-A mentioned above under Section 54(3) of the CGST Act, 2017 under the category of "Refund on account of ITC accumulated due to Inverted Tax Structure". The appellant have procured inputs at the rate of 18%, 12% and 5%, and outward supply made at 0.1%, 5%, since inputs have been procured at the rate of 18%, 12%



and 5% (rate of tax on inputs being higher than the rate of tax on output supplies). Subsequently, the Assistant Commissioner, CGST, Division – VII, Ahmedabad North Commissionerate, has sanctioned refund amount partially as shown against Col no.7 and rejected partial amounts as shown against Col No.8 in the Table-A above for the respective months by considering the outward supply made at the rate of 18% as inverted duty turnover and calculated maximum refund claims in terms of Rule 89(5), Rule 92(3) of the CGST Rules, 2017 read with Section 54(3) of the Customs Act, 2017 (in light of Notification No. 14/2022- Central Tax dated 05.07.2022) with reason remarked as *"the contention of the appellant is not tenable in law. Thus making it clear that no part of the outward supply can be excluded while calculating eligible refund"*.

3. Being aggrieved with the impugned order(s), the appellant preferred appeal(s) on the following grounds:

- i. The impugned order(s) passed by the adjudicating authority are in violation of natural justice, since submission in RFD-09 have not been appreciated and not considered by the adjudicating authority and not provided opportunity of being heard, before passing the impugned order(s), thus liable to be set aside.
- ii. The impugned order(s) are vague and liable to be set aside, since the appellant has correctly calculated and claimed the refund, on the basis of rules and provisions mentioned under Rule 89(5) of CGST Rules, 2017 for refund of ITC accumulated on account of inverted duty structure.
- iii. The impugned order(s), have passed without even referring reply filed by the appellant, and without considering the personal hearing, that they should have been given proper opportunity to present their case. The conduct of personal hearing is one of the basic pillar of principle of natural justice. Rejection of refund order would be in violation of the proviso to sub-rule (3) of Rule 92 of CGST Rules and also in violation of the principles of natural justice, would be *non-est in law*. And any adjudication process done without following the process of natural justice renders the whole process as *void ab initio*.

PERSONAL HEARING :

4. Personal hearing in the matter on all these appeals held on 9.2.2023 in virtual mode. However, the appellant has sought for early hearing in these four appeals vide their letter dated 27.01.2023 in the interest of justice. Ms. Madhu Jain, Authorised Representative, appeared on behalf of the appellant in all these



appeals. During P.H. she has told that the appellant has not been given any hearing before passing the Order in Original (OIOs) by the adjudicating authority and they have nothing more to add to their written submission till date.

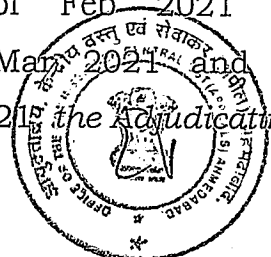
DISCUSSION AND FINDINGS:

5. I have gone through the facts of the case, written submissions made by the 'appellant' alongwith appeal memorandum and documents available on record. Since the issue involved in all the present appeal(s) are identical in nature, all these appeals are disposed of, through a common order. I find that the main issue to be decided in the instant case(s) is whether the refund order(s) for the month of Jan 2021, Feb 2021, Mar 2021 and Jun 2021 passed by the Adjudicating Authority are in conformity with Section 54(3) of CGST Act, 2017 read with Rule 89(5), Rule 92 (3) of CGST Rules 2017 (in light of Notification No. 14/2022-Central Tax dated 5.7.2022) and are legal and proper or not.

6. I find that all the four refund claims have been passed by the adjudicating authority on 21/22.09.2022 and communicated to the appellant on same day. The appellant filed present appeal(s) on 14th December, 2022 i.e within three months time limit, and accordingly the present appeal(s) are filed within the time limit as prescribed under Section 107(1) of the CGST Act, 2017, hence same are considered filed within time limit.

6 (i) I find that in the present appeal(s) the appellant in the ground of appeal(s) has mainly stated that the Adjudicating Authority has violated and breached the principle of natural justice by passing the order(s) by rejecting refund application(s). The appellant contended that Adjudicating Authority has passed the order(s) of rejecting refund application(s) without considering the reply & documents and giving an opportunity of personal hearing. Thus, principle of natural justice have been violated and breached.

6 (ii) As regards to the appellant's submission that the impugned order(s) is/are passed on the basis of without considering the reply & documents and also passed without giving an opportunity of personal hearing to the appellant, I find that in the all the four Show Cause Notice(s) issued in the FORM-RFD-08 viz. (i) ZI2409220063789 dated 5.9.2022 for refund claim of Jan 2021 (ii) ZI2409220068034 dated 6.9.2022 for refund claim of Feb 2021 (iii) ZF2409220071078 dated 6.9.2022 for refund claim of Mar 2021 and (iv) ZG2409220069212 dated 6.9.2022 for refund claim of June 2021.



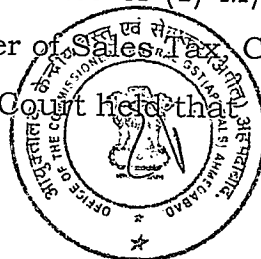
authority has given fifteen days time to the appellant to furnish their reply to the notice(s) from the date of service of this notice(s). In pursuance to these SCNs, the appellant has filed their reply in all four SCNs in the FORM GST RFD-09 on 15.09.2022. Now, I referred the Rule 92(3) of the CGST 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 copy of impugned order(s), I find that there is/are no evidence available on records that in any of the impugned order(s) a personal hearing was/were conducted or any opportunity have been given to the appellant to be heard in person before passing/ rejecting the impugned order(s). This is evident that the adjudicating authority has concluded the refund matters without giving an opportunity of being heard to the appellant. Therefore, I find that the adjudicating authority has violated the principle of natural justice in passing the impugned order(s) vide which rejected the refund claim(s) without giving the applicant a reasonable opportunity of hearing before passing the impugned order(s). Further, I am of the view that speaking order should have been passed by giving proper opportunity or reasonable opportunity of personal hearing in the matter to the ‘Appellant’ before rejecting the refund claim(s). Else such order(s) would not be sustainable in the eyes of law.

7. For this, I place the reliance in the case of (1) M/s. TTEC India Customer Solutions Pvt Ltd Vs Deputy Commissioner of Sales Tax, Circle-2 [2022 (61) G.ST.L. 11 (Guj.), wherein the H’ble Gujarat High Court held that



"12.1 Non-availment of the opportunity of hearing, more particularly when it affects adversely the petitioner and exceeds the scope of show cause notice, the order deserves indulgence.

13. Noticing the fact that the grievance is with regard to the non-availment of opportunity of hearing and being a breach on procedural side, let the same be ordered to be cured without quashing and setting aside the show cause notice itself.

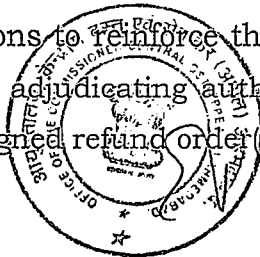
13.1 From the foregoing discussion, we deem it appropriate to quash and set aside the order and direct the respondent authority to avail an opportunity to the petitioner in relation to the show cause notice dated 16/18-3-2021 to schedule a day for hearing and if the physical hearing is not permitted, the authority concerned shall virtually hear the petitioner and decide the matter in accordance with law bearing in mind the basic requirement."

(2) In the case of Assistant Commissioner, Commercial Tax Department Vs. Shukla & Brothers reported at 2010 (254) E.L.T. 6 (SC) = 2011 (22) STR 105 (SC), the H'ble Supreme Court held that :

"9. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.....

13. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion shown proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself."

7.1 I find that the adjudicating authority has given opportunity for the appellant to reply to the Show Cause Notice but not granted any opportunity for personal hearing in the matter. The adjudicating authority though seems to have apparently fulfilled the tenets of principles of natural justice; the fact that cannot be denied is that the impugned order(s) has not emerged as a culmination of a complete and robust judicial process. It is an established Law that an adverse Order seeking to reject the refund claim shall not be passed without considering the contra stand of the aggrieved. The appellant also has canvassed substantial submissions to reinforce their case against rejection of refund that has not been considered by the adjudicating authority. I therefore consider it to be legal and proper to set aside the impugned refund order(s).



8. Considering the above facts, the *adjudicating authority* is hereby directed to process the refund application(s) 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*.

9. In view of above discussions, the *impugned order(s)* passed by the *adjudicating authority* is/are set aside for being not legal, proper and not followed the principles of natural justice and accordingly, I allow the present appeal(s) of the "Appellant" without going into 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.

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

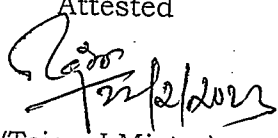
10. The appeals filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)

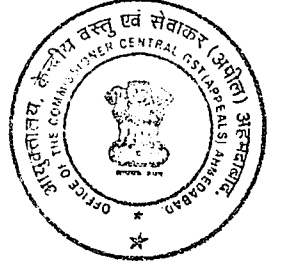
Additional Commissioner (Appeals)

Date: .2.2023

Attested



(Tejas J Mistry)
Superintendent,
Central Tax (Appeals), Ahmedabad



By R.P.A.D.

To

M/s. Astha Creations [GSTIN : 24AATFA7005L1Z9], 5th Floor, A-501, Narnarayan Complex, Swastik Society Cross Road, Ahmedabad : 380 009.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Ahmedabad North Commissionerate.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division- VII, Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North Comm'te.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File.
8. P.A. File.

