



आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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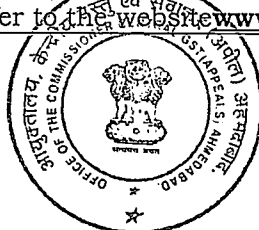


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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1041/2022 / ८४६२ - ६२
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-159/2022-23 and 24.02.2023
(ग)	पारित किया गया / Passed By	श्रीमिहिररायका, अपरआयुक्त (अपील) Shri Mihir Rayka, Additional Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	27.02.2023
(ङ)	Arising out of Order-In-Original No. ZP2412210356847 dated 30.12.2021 passed by The Assistant Commissioner, CGST, Division - II, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Vallabh Corporation (GSTIN-24AAMFV6767D1ZT) 3rd Floor, T-19, Sukan Mall, Nr Rajasthan Hospital, Shahibaug, Ahmedabad, Gujarat-380004

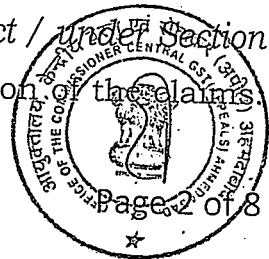
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to <u>twenty five per cent</u> 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 Vallabh Corporation, 3rd Floor, T-19, Sukan Mall, Nr. Rajasthan Hospital, Shahibaug, Ahmedabad, Gujarat-380004 (hereinafter referred to as the 'Appellant') has filed the present appeal against the Order No. ZP2412210356847 dated 30.12.2021 (hereinafter referred to as the 'impugned order') rejecting refund claim amounting to Rs. 6,24,740/- passed by the Assistant Commissioner, CGST & C. Ex., Division- II [Naroda Road], Ahmedabad North Commissionerate (hereinafter referred to as the 'adjudicating authority').

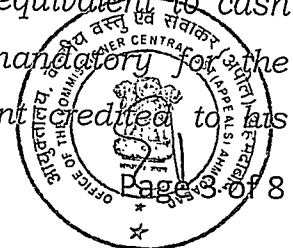
2 (i). Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration No. 24AAMFV6767D1ZT and has filed the present appeal on 21.03.2022. The 'Appellant' had filed the refund application on 18.11.2021 for refund claim amounting to Rs. 624740/- on account of untillized cash in electronic cash ledger in FORM-GST-RFD-01. Thereafter, the appellant have been issued a Show Cause Notice No. ZV2412210295736 dated 24.12.2022 by the Assistant Commissioner, CGST & C.Ex, Division-II [Naroda Road], Ahmedabad North Commissionerate, on the grounds that "On examination, it appears that refund application is liable to be rejected on account of following reasons : "Description : Others, Rs. 6,24,740/-" with remarks "Remarks : "Remarks : TDS/TCS credit received, particulars are not attached with the claim. That may be asked. No other supporting documents found to substantiate the claim, SCN for the same is issued." and also directed to the appellant to furnish a reply to this notice within fifteen days from the service of this notice and directed to appear before the adjudicating authority on 27.12.2022. The appellant submitted their reply on 26.12.2022 in FORM GST-RFD-09 stating that "we have applied for cash ledger refund application. We are doing a construction work of government. Government make TDS on payment, we have filed GST return for TDS for October 2021 and make application of refund thereof and attached requested TDS Return for Oct 21, TDS and TCS credit received, Cash Ledger - Electronic Cash Ledger. Further, the adjudicating authority has rejected the refund claim vide impugned order in Form GST-RFD-06 stating that "I hereby reject an amount of INR 0 to M/s. Vallabh Corporation having GSTIN-24AAMFV6767D1ZT under sub-section () of section) of the Act / under Section - of the Act," i.e without specifying proper reasons of rejection of the claims.



A Remark is also mentioned in the impugned order as – “Remarks : RFD-06 for full refund be issued.”

2 (ii). Being aggrieved with the impugned order the appellant has filed the present appeal on 21.03.2022 mainly on the following reasons–

- As per the GST law, Tax deducted at source (TDS) to be made by government entity at the time of making payment or credit. So, at the time of payment by government entity to assessee, TDS has been deducted at 2% on such payment. Assessee filed a return of TDS and claim the said TDS. As per the procedure, TDS amount will be credited in electronic cash ledger. Assessee will utilize such cash amount against the liability and remaining amount in electronic cash ledger, assessee file a refund application and refund will be credited in the bank account. Assessee have already taken such type of refund in past and got the refund in bank account.
- The appellant filed refund application for excess amount in electronic cash ledger on 18.11.2021 against which the appellant was issued a show cause notice on 24.12.2021 without mentioning any discrepancy or without demanding any further documents or without specifying any issue. The appellant has submitted reply on 26.12.2021 mentioning the above facts with attaching TDS return filed and Electronic Cash Ledger for the said period for justification. Without considering the above facts, the adjudicating authority has passed the impugned order on 30.12.2021 without specifying the issue or reason.
- Circular NO. 166/22/2021-GST dated 17th November, 2021 issued clarification on certain refund related issues. Vide it has been mentioned that “ No certification or declaration under Rule 89(2) (1) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases”. It is further mentioned that “The amount deducted / collected as TDS /TCS by TDS/TCS deductors under the provisions of Section 51 /52 of CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilize the TDS / TCS amount credited to his



electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of Section 49 of CGST Act."

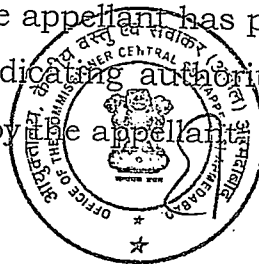
- Based on above circular and general practice, refund has to be issued if it is related to excess cash balance refund. Further, reason for rejection or discrepancy or issue not mentioned in the Show Cause Notice as well as in order for rejection of refund.

PERSONAL HEARING :

3. Personal Hearing in the matter was held on 24.11.2022, wherein Shri Akash A Thakkar, appeared in person on behalf of the 'Appellant' as Authorized Representative. During Personal Hearing he has reiterated that they have nothing to add more to 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, 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 orders mentioning the reason as- "I hereby reject an amount of INR 0 to M/s. Vallabh Corporation having GSTIN-24AAMFV6767D1ZT under sub-section () of section) of the Act / under Section - of the Act," with a remarks "Remarks : RFD-06 for full refund be issued." Accordingly, the appellant has preferred the present appeal. Further, I find that the adjudicating authority has not disputed about the admissibility of refund claim by the appellant.



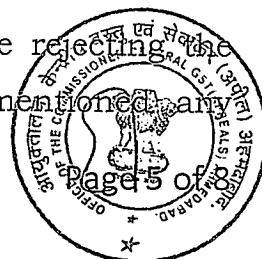
4(ii). I find that in the present appeal the appellant contended that Adjudicating Authority has passed the order of rejecting refund application without giving reason for rejection or discrepancy or issue or considering the reply and without being heard the appellant. Thus, principle of natural justice have been violated and breached.

4 (iii). As regards to the appellant's submission that the impugned order is 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 Show Cause Notice No. No. ZV2412210295736 dated 24.12.2022, the Adjudicating authority has given an opportunity for personal hearing to the appellant on 27.12.2021, however, the appellant has filed their reply on 26.12.2021 against the SCN issued to them. Further, the appellant has also submitted copy of TDS Return for Oct 21, TDS and TCS credit received, Cash Ledger – Electronic Cash Ledger for the relevant period. 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, I find that no specific reasons for rejection of refund claims have been recorded by the adjudicating authority. I also find that there is no evidence available on records that the appellant being heard in the matter before rejecting the refund application. The adjudicating authority has not mentioned any



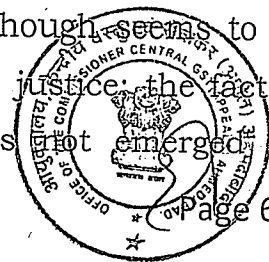
specific reasons in FORM GST-RFD-06 while rejecting the subject refund claim. This is evident that the adjudicating authority has concluded the refund matters without considering the reply & documents and without being heard to the appellant. Therefore, I find that the adjudicating authority has violated 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 being heard in the matter to the 'Appellant' and detailing factors leading to rejection of refund claims should have been discussed. Else such order would not be sustainable in the eyes of law.

5. Further, I find that the adjudicating authority has rejected the refund claim and passed the impugned order without giving any material findings or any valid reasons, without considering the appellants contentions in reply [RFD-09] dated 26.12.2021 to the Show Cause Notice [RFD-08]. For this, I rely upon 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."

6. I find that the sanctioning authority has given opportunity for the appellant to reply to the Show Cause Notice and also granted personal hearing on 27-12-2021. 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 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.

7. In view of the above, I am of the view that speaking order should have been passed by giving material findings in the matter and the adjudicating authority should give reasons for arriving at conclusion by showing proper explanation. Without giving reasons adjudication order amounts to denial of justice to the appellant. Thus, I find that the impugned refund order being a non-speaking order, has been passed in gross violation of equity and natural justice.

8. 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*.

9. In view of above discussions, the *impugned orders* 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.

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.

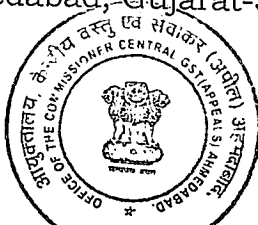
(Minir Rayka)
Additional Commissioner (Appeals)

Date: .2.2023

Attested

(Tejas J Mistry)
Superintendent (Appeals)
Central Tax, Ahmedabad.
By R.P.A.D.

M/s Vallabh Corporation, 3rd Floor, T-19, Sukan Mall, Nr. Rajasthan Hospital, Shahibaug, Ahmedabad, Gujarat-380004.



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 Comm'te.
4. The Additional Commissioner, Central Tax (System), Ahmedabad North Commissionerate.
5. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-II [Naroda Road], Ahmedabad North Commissionerate.
6. Guard File.
7. P.A. File.

