



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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क फाइल संख्या : File No : GAPPL/ADC/GSTP/120/2023 -APPEAL / 9536 - 82

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-166/2022-23**

दिनांक Date : **16-03-2023** जारी करने की तारीख Date of Issue : **17-03-2023**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZE2410220136157 DT. 14.10.2022** issued by The Assistant Commissioner, CGST & CX, Division-III, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**M/s. Hindustan Gum & Chemicals Limited, Block No. 780 & 780 A/P,  
Ahmedabad- Viramgam Highway, Jakhwada, Ahmedabad-382150**

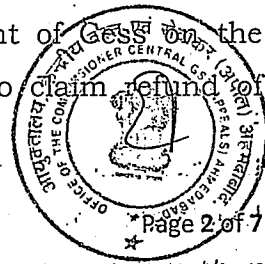
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed 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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



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

M/s. Hindustan Gum & Chemicals Limited [GSTIN : 24AAACH7214E1Z3], Block No. 780 & 780 A/P, Ahmedabad – Viramgam Highway, Jakhwada, Ahmedabad : 382 150 (herein after referred to as the “*appellant*”) have filed the appeal against the refund sanction/rejection order ZE2410220136157 dated 14.10.2022 (herein after referred to as the “*impugned order(s)*”) passed by the Assistant Commissioner, CGST & C.Ex., Div-III, Ahmedabad North Commissionerate (herein after referred to as the “*adjudicating authority*”) for amount of Rs. 6,57,256/- (hereinafter referred to as the “*respondent*”) on account of accumulated ITC due to inverted tax structure i.e accumulated Coal compensation Cess credit.

2. Brief facts of the case in the appeal is that the appellant registered under GSTIN – 24AAACH7214E1Z3 and is engaged in the business of manufacturing and export of Guar Gum & Tamarind Kernel Powder. The appellant has procured coal for its usage as fuel in manufacturing process & taken credit of CGST, SGST & Cess paid on its procurement. Since Cess is not leviable on the outward supply made by the appellant and hence, Cess amount is got accumulated. The appellant used to make zero rated supply under LUT as well as on payment of IGST. The appellant is eligible to claim refund of Cess to the extent of zero-rated supply made on LUT basis as per Section 54(3) of the CGST Act 2017 read with Rule 89(4) of the CGST Rules, 2017. Thus appellant filed refund application in Form RFD-01 vide ARN No. AA2408220994902 dated 27<sup>th</sup> August 2022 for the period April-2022 to June-2022. The *adjudicating authority* has rejected the refund claim on the ground that Cess credit is not available as Cess availed by the appellant in Table 4A of GSTR-3B of relevant month(s) is less than Cess reversed by it in Table 4B of its GSTR-3B of relevant month(s). Further, the appellant reversed the Cess by observing the 3<sup>rd</sup> proviso to Section 54(3) and clarification given at Para 42 of Circular No. 125/44/2019 dated 18<sup>th</sup> Nov 2019. As per 3<sup>rd</sup> proviso to the Sec 54(3) of CGST Act, no refund of input tax credit is allowed if supplier claims refund of IGST paid on such supplies of goods or services. Vide para 42 of the circular, it is clarified that a registered person making zero rated supply under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal. Such registered person may also make zero-rated supply on payment of Integrated Tax but they cannot utilize the credit of the compensation Cess paid on coal for payment of Integrated tax in view of the proviso to Section 11(2) of the Cess Act, which allows the utilization of input tax credit of cess, only for the payment of Cess on the outward supplies. Therefore, the appellant is neither entitled to claim refund of



Cess on Zero rated supplies made on payment of IGST nor it can utilize Cess for the payment of IGST. Such cess will remain idle as same can never be utilized or refunded. Thus reversal of Cess by appellant in no way related to Cess availed by it during April 2022 to June 2022. Apart from the above, the appellant has not upload undertaking as per Notification No. 16/2020-Central Tax, dated 23.03.2020 regarding non-receipt of foreign remittance. Further, the "Net ITC" calculated by the appellant is not true or correct as per the relevant provision of Refund under Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

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

- i. The impugned order may be set aside the rejection of refund claim of accumulated Cess in respect of Export of Goods on LUT covered under impugned order, which is against the appellant and refund claim of the appellant is to be allowed with consequential relief.
- ii. To grant a personal hearing.

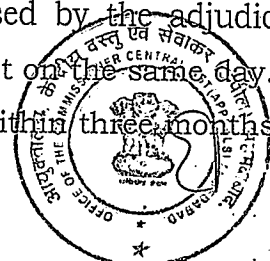
**PERSONAL HEARING :**

4. Personal hearing in the matter in the present appeal held on 03.03.2023 in person. Shri Pradeep Kataria, Chartered Accountant /Authorised Representative, appeared on behalf of the appellant. During P.H. he said that the appellant has not been given proper opportunity of being heard before passing the Order in Original (OIO) 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. I find that the main issue to be decided in the instant case(s) is whether the refund order(s) for the month of April 2022 to June 2022 passed by the Adjudicating Authority are in conformity with Section 54(3) of CGST Act, 2017 read with Rule 89(4), Rule 92 (3) of CGST Rules 2017 and is legal and proper or not.

6. I find that the subject refund claim has been passed by the adjudicating authority on 14.10.2022 and communicated to the appellant on the same day. The appellant filed present appeal on 27<sup>th</sup> December, 2022 i.e within three months time



limit, and accordingly the present appeal is 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 the appellant in the ground of appeal has mainly stated that the Adjudicating Authority has not passed the impugned order in conformity with Sec. 54(3) of CGST Act, 2017 read with Rule 89(4) and Rule 92(3) of the CGST Rules, 2017. The appellant contended in the personal hearing held on 3.3.2023 that *Adjudicating Authority* has passed the order of rejecting refund application(s) without giving a proper opportunity of being heard to the appellant. Thus, principle of natural justice have been violated and breached.

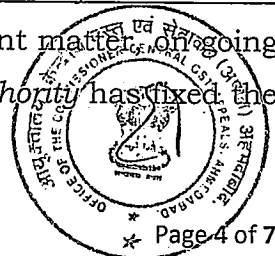
**6 (ii)** As regards to the appellant's submission that the impugned order is passed on the basis of without giving an opportunity of being heard to the appellant, I find that in the Show Cause Notice issued in the FORM-RFD-08 vide ZE2409220345289 dated 28.09.2022 for refund claim of Rs. 6,57,256/- for the period April 2022 to June 2022, the *Adjudicating authority* has given fifteen days time to the appellant to furnish their reply to the notice from the date of service of this notice. In pursuance to this SCN, the appellant has filed their reply of the SCN in the FORM GST RFD-09 on 3.10.2022 well within fifteen days time given to them.

Now, I refer to the Rule 92(3) of the CGST Rules, 2017, the same is re-produced 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 the *adjudicating authority* has fixed the



personal hearing on 6.10.2022 to the appellant, which was not attended by the claimant on that day but without giving an opportunity of being heard the appellant, they passed the impugned order. I find, there is/are no evidence available on records that in the impugned order any opportunity have been given to the appellant to be heard in person before passing/ rejecting the impugned order. This is evident that the *adjudicating authority* has concluded the subject refund matter 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 vide which rejected the refund claim without giving the applicant a reasonable opportunity of being heard before passing the impugned order. Further, I am of the view that speaking order should have been passed by giving proper opportunity or reasonable opportunity of being heard in the matter to the 'Appellant' before rejecting the refund claim. Else such order 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

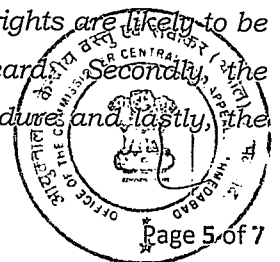
*"12.1 Non-availment of the opportunity of hearing, more particularly when it affects adversely the petitioner and exceeds the scope of show cause notice, the order deserves indulgence.*

*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."


8. I find that the adjudicating authority has given opportunity for the appellant to reply to the Show Cause Notice and granted only once for personal hearing but not given any further opportunity for being heard 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.

9. 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*.

10. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal, proper and not followed the principles of natural justice and accordingly, I allow the present appeal 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.

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

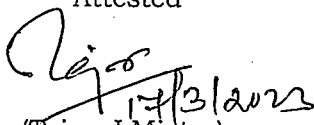
The appeals filed by the *appellant* stands disposed of in above terms.

  
(Mihir Rayka)

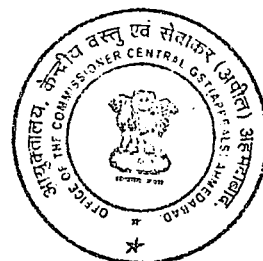
Additional Commissioner (Appeals)

Date: 16.3.2023

Attested

  
(Tejas J Mistry)

Superintendent,  
Central Tax (Appeals), Ahmedabad



By R.P.A.D.

To

M/s. Hindustan Gum & Chemicals Limited [GSTIN : 24AAACH7214E1Z3],  
Block No. 780 & 780 A/P, Ahmedabad – Viramgam Highway, Jakhwada,  
Ahmedabad : 382 150

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- III,  
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.

