



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

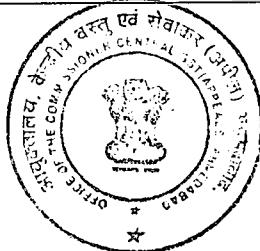


By Regd. Post

DIN NO. : 20230364SW00003833B5

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/473/2023 / 148 70 53
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-177/2022-23 and 31.03.2023
(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	31.03.2023
(ङ)	Arising out of Order-In-Original No. ZI2412220024637 dated 02.12.2022 issued by The Deputy Commissioner, Division-III, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s ML Springs India Pvt. Ltd., Plot-358, Opp. OM Logistics, Nr. Bol Cross Road, Sanand GIDC-2, Sanand, Ahmedabad-382110

(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 ML Springs India Pvt. Ltd., Plot-358, Opp. OM Logistics, Nr. Bol Cross Road, Sanand GIDC-2, Sanand, Ahmedabad-382110 (hereinafter referred as 'Appellant') has filed the present appeal against Order No. ZI2412220024637 dated 02.12.2022 passed in the Form-GST-RFD-06 (hereinafter referred as 'impugned order') rejecting refund claim of Rs. 9,84,960/-, issued by The Deputy Commissioner, Division-III, Ahmedabad North Commissionerate (hereinafter referred as the 'adjudicating authority/refund sanctioning authority').

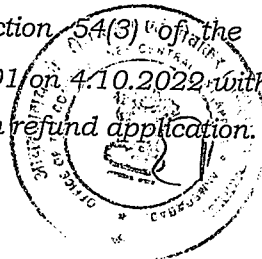
2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No. 24AANCM7946D1Z8 has filed the present appeal on 16.01.2023. The 'Appellant' in the appeal memo stated that they had filed refund application on account of exporting goods without payment of tax. In response to said refund claim a show cause notice dated 16.11.2022 was issued to the 'Appellant'. In the said SCN it was mentioned that refund application is liable to be rejected on the below mentioned grounds:

- Difference in amount of exported goods from Sep-2021 to Jun-2022 i.e. Rs. 91,77,435/- and amount mentioned by applicant in RFD-01 i.e. Rs. 66,16,002/-.
- Details of shipping bills has not been provided.
- Difference in Annexure-B and GSTR 2A amounting to Rs. 329/-.

2(ii). Further, the 'Appellant' was asked to furnish reply to the Show Cause Notice (SCN) within 15 days from the date of service of SCN and opportunity for a personal hearing was also offered to the 'Appellant' on 30.01.2022. Thereafter, the *adjudicating authority* has rejected the entire refund claim vide *impugned order* on the basis of grounds mentioned in the SCN.

2(iii). Being aggrieved with the impugned order the appellant has filed the present appeal on 16.01.2023 wherein they contended that -

- They are exporting goods without payment of tax, so they have applied for refund for the month of Sep-2021 to June- 2022 but same was rejected by the department.
- They have been issued deficiency memo (GST RFD-03) and thereafter adjudicating authority has rejected refund directly.
- they are eligible for refund under Section 54(3) of the CGST Act, 2017 accordingly applied for refund GST RFD-01 on 4.10.2022 within due time. Also submitted all the relevant documents with refund application.



The appellant in the appeal memorandum has requested to consider their refund application and grant refund as per Section 54(3) of the CGST Act, 2017.

Personal Hearing:

3. A personal hearing in the matter was held on dated 23.02.2023. Shri Rishiraj Sharma, Authorized Representative, appeared personally before the appellate authority. He stated that he has nothing more to add to their earlier written submission till date.

Discussion and Findings:

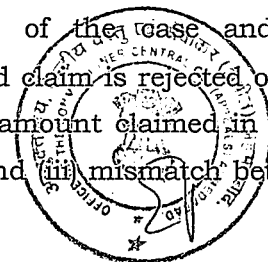
4(i). I observed that in the instant case the "*impugned order*" is of 02.12.2022 and appeal is required to be filed within three months time limit as per Section 107(1) of the CGST Act, 2017. The present appeal is filed on 16.01.2023, therefore as per Section 107(1) of the CGST Act, 2017, I find that the present appeal is considered to be filed in time.

4(ii). I have carefully gone through the facts of the case available on record, submissions made by the 'Appellant' in the Appeal Memorandum and written submissions. I find that the 'Appellant' had preferred the refund application vide ARN NO. AA241022010863V dated 4.10.2022 for Rs. 9,84,960/- under the category "Export of Goods / Services - w/o - Payment of Tax (Accumulated ITC)" for the period from September-2021 to June-2022 as per Section 54 of the CGST Act, 2017. Subsequent to the said refund application, a Show Cause Notice No. ZH2411220173581 dated 16.11.2022 was issued to the appellant proposing rejection of refund claim on the grounds mentioned below:

- Difference in amount of exported goods from Sep-2021 to Jun-2022 i.e. Rs. 91,77,435/- and amount mentioned by applicant in RFD-01 i.e. Rs. 66,16,002/-.
- Details of shipping bill have not been provided.
- Difference in Annexure-B and GSTR 2A amounting to Rs. 329/-.

Thereafter, the said refund claim was rejected by the *adjudicating authority* vide *impugned order* on the basis of reasons mentioned in SCN after offering an opportunity for personal hearing on 30.11.2022, however, no one attended the personal hearing on 30.11.2022. It is further also observed that the sanctioning authority has rejected the refund claim without being heard to the appellant.

4(iii). I have carefully gone through the facts of the case and the submissions made by the appellant, I find that the refund claim is rejected on the grounds (i) mismatch in amount of goods exported and amount claimed in Form GST-RFD-01, (ii) non providing of shipping bills details and (iii) mismatch between



Annexure-'B' & GSTR – 2A, so the main issue in this case is whether the impugned order passed by the adjudicating authority is proper and legal or otherwise?

5. I find that the 'Appellant' had filed refund application in Form GST-RFD-01 on 4.10.2022 for Rs. 9,84,960/- under the category "Export of Goods / Services – w/o – Payment of Tax (Accumulated ITC)" for the period from September-2021 to June-2022 as per Section 54 of the CGST Act, 2017. Subsequently, Show Cause Notice No. ZH2411220173581 dated 16.11.2022 was issued to the appellant on the ground mentioned above. Thereafter, the said refund claim was rejected by the *adjudicating authority vide impugned order* on the basis of reasons mentioned in SCN after giving an opportunity for personal hearing on 30.11.2022, however, no one attended the personal hearing on 30.11.2022. It is further observed that the sanctioning authority has rejected the refund claim without being heard to the appellant.

Further, I find that the appellant has submitted copies of shipping bills along with reconciliation of GSTR 2A and Annexure-B. Further, the appellant also submitted that the difference in amount of exported goods from September-2021 to June-2022 and amount mentioned Rs. 66,16,002/- in GST-RFD-01 is a typographical error and Rs. 91,77,435/- is the correct value of exported goods and accordingly the appellant has submitted copies of GSTR-1 for the relevant period wherein goods exported by them. The appellant stated that they have given deficiency memo and issued SCN and subsequently rejected their refund claim directly by the adjudicating authority / refund sanctioning authority.

6. Further, I find that the appellant in the present appeal contended that they are eligible for refund under the category "Export of Goods / Services – w/o – Payment of Tax (Accumulated ITC)" on account of accumulated ITC on Export of goods & Services without payment of Tax, as per Section 54 (3) of the CGST Act, 2017 and they have filed the refund application within prescribed time limit for the relevant period. The relevant provision of Section 54 of CGST Act, 2017, is reproduced as under:

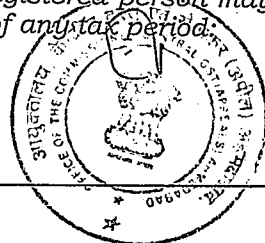
Section 54. Refund of tax. - *

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

***Provided** that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in ¹[such form and] manner as may be prescribed.*

(2)

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period.



Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

PROVIDED FURTHER that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

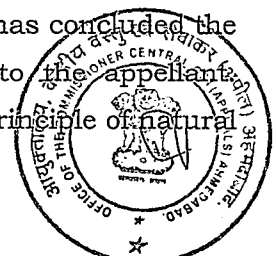
PROVIDED ALSO that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies. "

7. I find that the adjudicating authority has rejected the refund claim on the grounds mentioned in the SCN, the reply of which has been submitted by the appellant. I find that there is no dispute with regard to the eligibility or entitlement of refund claimed by the appellant. Further, I find that the appellant has been given opportunity for personal hearing on 30.11.2022 after issuance of Show Cause Notice but no one appeared in the personal hearing. It is further observed that the sanctioning authority has rejected the refund claim without being heard to the appellant as per Rule 92(3) of the CGST Act, 2017 before rejecting the refund claim and passed the impugned order. In this regard, 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 the impugned order, I find that there is no evidence available on records that in the impugned order an opportunity have been given to the appellant to be heard in person before passing the impugned order / rejecting the refund claim. This is evident that the adjudicating authority has concluded the 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 under which rejected the refund claim without giving the appellant a reasonable opportunity of being heard. Further, I am of the view that speaking order should have been passed by giving reasonable opportunity of being heard in the matter to the 'Appellant' before rejecting the refund claim in terms of Rule 92(3) of the CGST Rules, 2017.

8. 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.

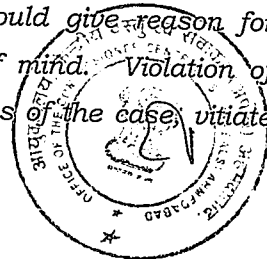
13. Noticing the fact that the grievance is with regard to the non-availment of opportunity of hearing and being a breach on procedural side, let the same be ordered to be cured without quashing and setting aside the show cause notice itself.

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."




8.1 I find that the adjudicating authority has given opportunity for the appellant to reply to the Show Cause Notice and granted opportunity for personal hearing in the matter but not being heard before rejecting the refund claim. 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.

9. Therefore, 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 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 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 Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

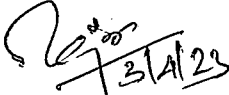
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka) 31/03/23

Additional Commissioner (Appeals)
Date: 31.03.2023

Attested


31/3/23

(Tejas J Mistry)
Superintendent,
CGST, Appeals, Ahmedabad

By R.P.A.D.

To,
M/s ML Springs India Pvt. Ltd.,
Plot-358, Opp. OM Logistics,
Nr. Bol Cross Road, Sanand GIDC-2,
Sanand, Ahmedabad-382110

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.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-III, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
- ✓ 6. Guard File.
7. P.A. File

