



सत्यमेव जयते

आयुक्त का कार्यालय
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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DIN NO. : 20220764SW0000323462

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/1009/2022-APPEAL / 261 to 2666
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-049/2022-23 and 20.07.2022
(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	20.07.2022
(ङ)	Arising out of Order-In-Original No. ZT2411210013891 dated 01.11.2021 issued by The Assistant Commissioner, CGST, Division - I (Naroda), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Aarti Selection (GSTIN-24ABCFA1073C1Z7) Address:- Shop Number 8 to 15, Dev Complex, Opp. J P Complex, Naroda Gam, Ahmedabad, Gujarat-382330

(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 .



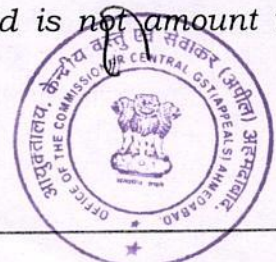
Brief Facts of the Case :

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24ABCFA1073C1Z7 has filed the present appeal on 23.03.2022. The 'Appellant' had filed refund application for refund of Rs.5,59,630/- for the period 01.09.20 to 31.08.21 on account of *"Refund of Excess Balance in Electronic Cash Ledger"*. In response to said refund claim a show cause notice dated 01.10.2021 was issued to the 'Appellant'. In the said SCN it was mentioned that refund application is liable to be rejected for the reason *"Other"* and a Remark was also mentioned as *"Tax-payer has not uploaded any documents/Annexure. Further, Tax-payer is silent about – how the excess balance arised in their cash ledger. Hence the claim is liable for rejection"*.

2(ii). Further, the '*Appellant*' was asked to furnish reply to the SCN within 15 days from the date of service of SCN and a personal hearing was also offered to the '*Appellant*' on 07.10.2021 07.54 PM. Thereafter, the *adjudicating authority* has rejected the entire refund claim vide *impugned order* on the basis of aforesaid grounds as mentioned in SCN as well as on the ground that the Tax-payer has not replied to the SCN.

2(iii). Being aggrieved with the impugned order the appellant has filed the present appeal on 23.03.2022 wherein stated that –

- Their nature of business is sale of product via E Commerce platform and as per GST Rule TCS is deducted by the counter party and same amount was reflected after filing of TCS Return for the respective period. Amount in excess of Cash Ledger is claimed by application.
- Refund claimed is supported with all valid documents and GST Return.
- Also appellant has not got proper opportunity of being heard.
- Neither Tax-payer nor their representative appeared is not amount to fraudulent intent.



- As per SCN reply to be filed within 15 days i.e. by 16.10.21, which was lapsed by them. Further, they had requested on 21.10.2021 for adjournment of personal hearing and/or extension of due date for replying to SCN.

The appellant has further submitted through e-mail that they are regularly claiming the refund from cash ledger and receiving the same. But for the period from Sept.'20 to Aug.'21 due to some issue not attached certain documents and therefore refund claim rejected.

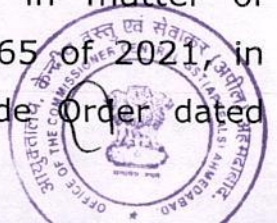
3. Personal Hearing in the matter was through virtual mode held on 05.07.2022 wherein Sh. Roshan G. Shah, CA appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the submissions made by them till date.

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 Appeals Memorandum. I find that the 'Appellant' had preferred the refund application on account of "Refund of Excess Balance in Electronic Cash Ledger" for the amount of Rs.5,59,630/-. In response to said refund applications Show Cause Notice was issued to them proposing rejection of refund claims for reasons mentioned as "Other". Thereafter, the said refund claim was rejected by the *adjudicating authority vide impugned order*. Further, I find that in response to SCN the *appellant* has filed the "Request for Adjournment of Personal Hearing and /or extension of due date for replying to SCN" on 21.10.2021. However, the refund claim was rejected vide *impugned order* dated 01.11.2021 without being heard the appellant. Accordingly, appellant has preferred the present appeal.

4(ii). I observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.

However, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020. Hon'ble Supreme Court vide Order dated



10.01.2022 ordered that for computing period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till 28.02.2022 shall stand excluded and consequently balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022 and that in cases where the limitation would have expired during the period from 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

In the present matter, the “*impugned order*” is of 01.11.2021 and appeal is filed on 23.03.2022. Accordingly, in view of above order of Hon’ble Supreme Court the present appeal is considered to be filed in time.

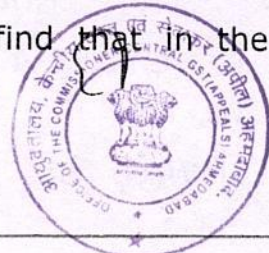
4(iii). Further, through e-mail in the present appeal the appellant has submitted that they apply for refund from cash ledger every month and receiving the same, but due to non attachment of documents for Sept’20 to Aug’21 the refund claim is rejected. Further, I find that in the present appeal the appellant is contending that impugned order is issued without being heard them, they have not get the proper opportunity of being heard. Hence the principle of natural justice has not been followed by the adjudicating authority in the present matter.

In this regard, I have 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 SCN, I find that opportunity of Personal Hearing was provided to the ‘Appellant’ on 07.10.2021. However, the appellant has requested for Adjournment of Personal Hearing and /or extension of due date for replying to SCN. Further, I find that in the



impugned order a Remark is mentioned as "*The TP has not replied to the SCN hence, the entire claim is rejected.*" Therefore, I find that the *impugned order* is issued without being heard the '*Appellant*'.

4(iv). In view of above, I find that the *adjudicating authority* has rejected the refund claim for the reasons that '*Appellant*' has not replied to the SCN, not appear for PH, not uploaded the required documents. Further, I find that without considering the *appellant's* request of *adjournment of PH/ extension of time for reply to SCN* the *adjudicating authority* has rejected the refund claim. 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 being heard the *appellant* as well as without communicating the valid or legitimate reasons before passing said order. Further, I am of the view that proper 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. Else such order would not be sustainable in the eyes of law. 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*.

5. 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.

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

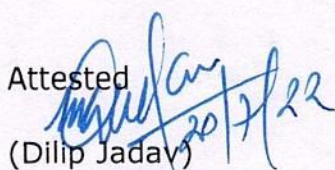
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 20.07.2022

Attested


(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,

M/s. Aarti Selection,

Shop No. 8 to 15, Dev Complex, Opp. J P Complex,
Naroda Gam, Ahmedabad - 382 330

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-I Naroda, Ahmedabad North.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. ✓ Guard File.
7. P.A. File

