



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/2761/2021-APPEAL / 2688 - 93
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-ADC-053/2022-23 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. ZW2409210378222 dated 28.09.2021 issued by The Assistant Commissioner, CGST, Division - II (Naroda Road), Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shree Siddhi Fragrance (GSTIN-24ACTFS8907R1ZY) Address:- C/222, First Floor, B. G. Tower, O/s Delhi Darwaja, Madhupura, 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) 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. Shree Siddhi Fragrance, C/222, First Floor, B. G. Tower, O/s. Delhi Darwaja, Madhupura, Ahmedabad - 380 004 (hereinafter referred as '*Appellant*') has filed the present appeal against Order No. ZW2409210378222 dated 28.09.2021 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') rejecting refund claim of Rs.5,94,207/-, issued by the Assistant Commissioner, CGST & C. Ex., Division - II Naroda Road, Ahmedabad North (hereinafter referred as '*adjudicating authority*').

2(i). Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No.24ACTFS8907R1ZY has filed the present appeal on 29.12.2021. The '*Appellant*' had filed refund application for refund of Rs.5,94,207/- for the period April'19 to June'19 on account of "*Refund on account of ITC accumulated due to Inverted Tax Structure*". In response to said refund claim a show cause notice dated 17.08.2021 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 "*PRESCRIBED DOCS. AS PER CIR. NOT UPLOADED. REFUND FOR 6/19 TIME BAR.*"

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 24.08.2021 6.42 PM. Thereafter, the *adjudicating authority* has rejected the entire refund claim vide *impugned order* on the basis of aforesaid grounds as mentioned in SCN. A Remark is also mentioned in the *impugned order* as - "*RFD06 for rejection of entire refund be issued.*"

2(iii). Being aggrieved with the *impugned order* the appellant has filed the present appeal on 29.12.2021 wherein stated that -

- In response to SCN dated 17.08.2021 they have submitted their reply under RFD 09 dated 13.09.2021 along with Annexure B.
- The proper officer without referring documents submitted by appellant, rejected the entire refund claim. The Ld. Proper Officer has not mentioned any reason for rejecting entire claim. As can be seen from



- RFD 06, wherein simply mentioned in Remark that "RFD 06 is being issued for rejection of entire claim of refund".*
- *The refund application for the period April'19 to June'19 filed on 12.08.2021 shall be considered as filed within time in view of order of Hon'ble Supreme Court in the Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020 dated 23.09.2021.*
 - *The order passed by the proper officer in RFD 06 is not in consonance with the principal of justice, equity and good conscious which requires to be set aside. The Ld. Proper Officer is not justified in rejecting the entire claim of refund without mentioning any reason.*
 - *The rejection order is requires to be quashed and set aside on the ground that same is a no speaking order.*

3. Personal Hearing in the matter was through virtual mode held on 05.07.2022 wherein Sh. Tapan N. Patel, Advocate appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the submissions made till date and informed that they want to give additional submission/information, which was approved and 7 working days period was granted.

Accordingly, the appellant has submitted the additional written submission dated 11.07.2022 wherein stated that *the order passed in RFD 06 is requires to be set aside by holding that the same is passed without recording any reason for rejecting the entire claim of Rs.5,94,207/- . The order being non speaking order hence deserves to be quashed and set aside. The appellant has referred the judgment of Hon'ble Madras High Court in the case of M/s. GNC Infra LLP W.P. No. 18165 & 18168 dated 28.09.2021 in which the Hon'ble High Court has held that*

"Impugned order being order dated 26.07.2021 bearing reference No. ZB3307211327668 with regard to I writ petition and being order dated 28.07.2021 bearing reference No. ZB3307211335406 with regard to II writ petition are set aside solely on the ground that reasons for rejection of refund have not been recorded in writing in accordance with Rule 92 of said Rules"

As regards to rejection of refund for period 06/2019 as Time Bar the appellant has referred the judgment of the Hon'ble Bombay High Court in the case of Saiher Supply Chain Consulting Pvt. Ltd. Writ Petition (L.) No. 1275 of 2021 dated 10.01.2022.



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 as well as additional written submission. I find that the 'Appellant' had preferred the refund application on account of "Refund on account of ITC accumulated due to Inverted Tax Structure" for the amount of Rs.5,94,207/-. In response to said refund application Show Cause Notice was issued to them proposing rejection of refund claims for reasons mentioned as "Other". As per Remark mentioned in SCN, the appellant has not uploaded the prescribed documents as per Circular and Refund for 6/19 is Time Bar. In this regard I find that the appellant has submitted the Annexure B vide reply to SCN under RFD-09 dated 13.09.2021. However, the entire refund claim is rejected vide impugned order. I find that no specific reason is mentioned in the impugned order for rejection of refund application. Accordingly, appellant has preferred the present appeal.

4(ii). I find that in the present appeal the appellant is mainly contending that no reason is mentioned in the impugned order for rejection of entire refund claim. The appellant is contending that they have submitted the Annexure B in response to SCN, however, without considering/referring the said documents the refund claim is rejected without mentioning any reason for rejection of refund claim. Hence the principle of natural justice has not been followed by the adjudicating authority in the present matter.

4(iii). Further, as the appellant has referred and relied upon the judgment of Hon'ble Bombay High Court, I find that Hon'ble High Court in the case of M/s. Saiher Supply Chain Consulting P. Ltd. V/s. UOI (WP (L) No. 1275/2021) in its judgment dated 12.01.2022, has extended the benefit of Hon'ble Supreme Court Order dated 23.09.2021 for determining time limit under Section 54(1) of the CGST Act, 2017 for refund claims also. Consequently, in respect of refund claims for which due date for filing refund claim falls during period from 15.03.2020 to 02.10.2021, two years time limit under Section 54 of the CGST Act, 2017 is to be reckoned, excluding the said period and within 90 days from 02.10.2021.

In this regard, I find that the CBIC has recently issued Notification No. 13/2022-Central Tax dated 05.07.2022. The relevant para is reproduced as under :



(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020.

In view of above, I find that in the present matter the claim was filed for the period April'19 to June'19 on 12.08.2021, accordingly, following the judgment passed by the Hon'ble High Court based on order of Hon'ble Supreme Court in MA 665/2021 in SMW(C) No. 3/2020 as well as in the light of Notification No. 13/2022-Central Tax dated 05.07.2022, I hold that the entire claim for April'19 to June'19 filed on 12.08.2021 is not hit by time limitation prescribed under Section 54 of the CGST Act, 2017.

4(iv). Further, as regards to appellant's submission that the impugned order is issued without considering/referring the documents submitted by them and no specific reason is mentioned for rejection of entire refund claim, 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 24.08.2021. However, no such evidence available on records that Personal Hearing was conducted. 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 said order. Further, I am of the view that proper speaking order should have been passed by giving proper opportunity of personal hearing



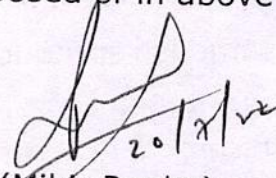
in the matter to the 'Appellant' and detailing factors leading to rejection of refund claim should have been discussed. Else such order would not be sustainable in the eyes of law.

5. 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 relevant documents/submission before the *adjudicating authority*.

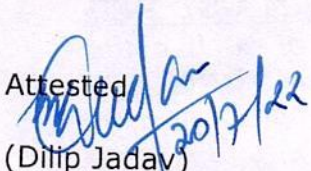
6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and accordingly, I allow the appeal of the "Appellant" without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

7. 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)

Attested

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

Date: 20.07.2022



By R.P.A.D.

To,
M/s. Shree Siddhi Fragrance,
C/222, First Floor, B. G. Tower,
O/s. Delhi Darwaja, Madhupura,
Ahmedabad - 380 004

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