



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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टेलीफैक्स 07926305136



DIN- 20221064SW0000222CD4

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1376 & 1377/2022 -APPEAL /4236-41

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-002-APP-ADC-083 to 084/2022-23**
दिनांक Date : **21-10-2022** जारी करने की तारीख Date of Issue : **21-10-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZX2408210069421 DT. 05.08.2021 & ZS2408210069487 DT. 05.08.2021** issued by Deputy Commissioner, Division-VII, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Kishorkumar Bhimjibhai Bodana of M/s. Loyal Industries, 12A, Shyam Pooja Part-3, Behind HP Petrol Pump, Motera, Ahmedabad-380005

(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 of 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 Loyal Industries [Legal Name- Kishorkumar Bhimjibhai Bodana], 12A, Shyam Pooja Part-3, Behind H.P.Petrol Pump, Motera, Ahmedabad-380005, (hereinafter referred as 'Appellant') has filed the present appeals against the Orders tabulated below (hereinafter referred as 'impugned orders') rejecting refund claim of the amount as shown against the Orders, passed by the Deputy Commissioner, CGST & C. Ex., Division-VII [S.G.Highway-East], Ahmedabad-North. (hereinafter referred as 'adjudicating authority').

Sr. No.	Appeal No. / date	Order No. and date	Refund involved. [In Rs.]
1.	GAPPL/ADC/GSTP/1376/2022, dated 09.05.2022.	ZX2408210069421, dated 05.08.2021	65,700/-
2.	GAPPL/ADC/GSTP/1377/2022, dated 09.05.2022.	ZS2408210069487, dated 05.08.2021.	1,61,775/-

2(i). Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration - GSTIN No. 24ABAPB7701N1ZX and has filed the above appeals on 09.05.2022. The 'Appellant' had filed the refund applications for refund claims as mentioned in the above table. The adjudicating authority has rejected the refund claims vide impugned orders in Form GST-RFD-06 without specifying proper reasons of rejection of the claims. A Remark is also mentioned in the impugned orders as - "SCN was issued on the grounds of claim being time-barred and non-submission of certain documents, however, no reply of SCN received so far. The claim is being rejected ex-parte."

2(ii). Being aggrieved with the impugned orders the appellant has filed the present appeals on 09.05.2022 mainly on the following reasons-

The Order of Deputy Commissioner, Division-VII [S.G.Highway-East], Ahmedabad [AO] is bad in law as well as on the facts on the following grounds:-

- *The learned AO has erred both on facts and in law by passing the order rejecting applications of refund as order rejecting the claim is based upon delay in filing refund application / also a silent SCN. Thus, principle of natural justice have been violated while adjudication of refund claim which needs to be directed to pass a fresh order for refund.*
- *The learned AO has erred both on facts and in law by passing the order rejecting applications of refund without giving an opportunity of hearing to assessee. Thus, principle of natural justice have been violated while adjudication of refund claim which needs to be directed to pass a fresh order for refund.*



3. Personal Hearing in the matter was held on 14.10.2022, wherein Shri Asit R.Oza, Tax Consultant appeared in person on behalf of the 'Appellant' as authorized representative. During Personal Hearing he has reiterated the grounds mentioned in the appeal memorandums and nothing more to add in 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 Appeals. I find that the 'Appellant' had preferred the refund applications before the refund sanctioning authority. The refund sanctioning authority [Adjudicating Authority] has rejected the refund applications vide impugned orders mentioning the reason as- "SCN was issued on the grounds of claim being time-barred and non-submission of certain documents, however, no reply of SCN received so far. The claim is being rejected ex-parte." Accordingly, appellant has preferred the present appeals.

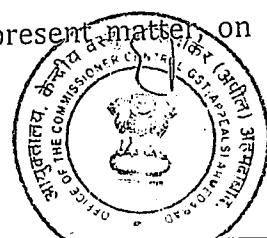
4(ii). I find that in the present appeals the appellant in the ground of appeals has mainly stated that the Adjudicating Authority has erred both on facts and in law by passing the order rejecting applications of refund as order rejecting the claim is based upon delay in filing refund application / also a silent Show Cause Notice. He also contended that Adjudicating Authority has passed the order of rejecting refund applications without giving an opportunity of hearing to assessee. Thus, principles of natural justice have been violated.

4(iii). As regards to the appellant's submission that the impugned orders are passed on the basis of silent SCN and also passed without giving an opportunity of hearing to assessee, 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



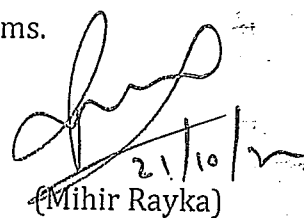
going through copies impugned orders, I find that no specific reasons for rejection of refund claims have been recorded. I also find that there is no evidence available on records that Personal Hearings in the matters were conducted which has also been pointed out by the appellant. The adjudicating authority has mentioned in the Form GST-RFD-06 that "*The claim is being rejected ex-parte*". This is evident that the adjudicating authority has concluded the refund matters ex-parte. Therefore, I find that the adjudicating authority has violated the principle of natural justice in passing the impugned order vide which rejected the refund claims without communicating the valid or legitimate reasons before passing the impugned orders. Further, I am of the view that proper speaking order should have been passed by giving proper opportunity of personal hearing in the matters 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. Considering the above facts, the *adjudicating authority* is hereby directed to process the refund applications 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*.

6. In view of above discussions, the *impugned orders* passed by the *adjudicating authority* are set aside for being not legal and proper and accordingly, I allow the appeals 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।

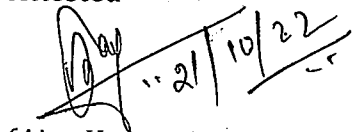
The appeals filed by the *appellant* stands disposed of in above terms.


21/10/22

(Mihir Rayka)
Additional Commissioner (Appeals)

Date: 21.10.2022

Attested


21/10/22
(Ajay Kumar Agarwal)
Superintendent (Appeals)
Central Tax,
Ahmedabad.



By R.P.A.D.

To,
M/s Loyal Industries,
12A, Shyam Pooja Part-3,
Behind H P Petrol Pump,
Motera, Ahmedabad-380005.

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



