



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.
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(क)	फ़ाइल संख्या / File No.	GAPPL/ADC/GSTP/102/2024 / 3999 - 4005
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-CGST-002-APP-JC-3/2024-25 and 16.04.2024
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	17.04.2024
(ङ)	Arising out of Order-In-Original No. ZK2410230076825 dated 06.10.2023 passed by The Assistant Commissioner, CGST, Division-V, Ahmedabad-North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s RAF Holdings Private Limited (GSTIN: 24AAACS6227N1Z6) 802, G.I.D.C. Estate, G.I.D.C. Dholka, Ahmedabad-382225



	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.
	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying –
(i)	(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-APPEALBRIEF FACTS OF THE CASE:

M/s. RAF HOLDINGS PRIVATE LIMITED (GSTIN-24AAACS6227N1Z6) having principal place of business 802, G.I.D.C. ESTATE, G.I.D.C..DHOLKA, Ahmedabad 382225 (hereinafter referred to as the "Appellant") has filed appeal against Refund Sanction/ Rejection Order No.ZK2410230076825 dated 06.10.2023 (herein after referred as the "impugned order") passed by the Assistant Commissioner, CGST & C.Ex., Division V, Ahmedabad-North Commissionerate, Ahmedabad (hereinafter referred to as *the 'adjudicating authority'*)

2. Brief facts of the case are that the Appellant is engaged in the business of manufacture and supply of medicaments. The Appellant had filed a refund application ARNo.AA240723110611S dated 29.07.2023 amounting to Rs.1,19,818/- for "Excess Payment of tax" during the month of August-2021. On examination, the proper officer due to the reason of inadmissibility of the refund ('Others') found that *"the refund claim cannot be granted as this claim cannot be considered in the category of excess payment of tax."* Hence a Show-cause-notice dated 19.09.2023 was issued to the appellant as to why their refund claim to the extent of Rs.1,19,818/- should not be rejected for the above reasons.

The adjudicating authority vide the impugned order passed the following:

10. *The claimant vide reply dated 04.10.2023 requested to sanction the refund amount. As per Section 16 (4) of CGST ACT, 2017 assessee was entitled to claim credit in respect of debit note no. 001 dated 02/05/2021 issued by H.SHAH & CO. by due date of furnishing of return under section 39 for the month of September following the end of financial year. Assessee failed to claim ITC in respect to said credit note dated 05/07/2021 as per CGST ACT. As per Section 89 of CGST ACT, 2017 and Circular 125/44/2019-GST dated 08/11/2019 refund cannot be granted.*

11. *Since the refund claim filed by the claimant seems contrary to CGST ACT, hence I reject the claim of refund amount of Rs.1,19,818/."*

4. Being aggrieved with the impugned order, the Appellant filed the present appeal on 05.12.2023 on the grounds that:

A. Having discharged excess tax during August-21; the appellant is entitled for Refund :

1. Vide Circular 72/46/2018-GST Dt.26th October, 2018; Procedure in respect of time expired drugs or medicines has been clarified.

- With Buyer M/s H. Shah & Co. having GSTIN 24ABVPS5253PIZO giving us GST Debit Note having reference No. "00001" Dt. 2nd May, 2021 on account of returning of different expired medicines sold by the taxable person of the period January 2019 to June-21. The buyer has discharged the GST on the same. The taxable person can avail ITC on the same. However, the taxable person has not availed input tax credit for the same and issued Financial Credit Note vide SID21/0027 Dt.5th July, 2021.
- Being Financial Credit Note While filing GSTR-1 and GSTR-3B of July-21; the taxable person is not requiring to report the above transaction, However, erroneously the above financial credit note has been reported as GST Credit Note while filing GSTR-1 of the July-21. It is pertinent to note that GSTR-3B of the July-21 has been filed correctly meaning thereby the above financial credit note has not been considered while filing July-21 GSTR-3B.
- While filing GSTR-1 of the August-21; the error is rectified by amending the Credit note with Zero amount.
- Since, GSTR-3B of the July-21 has been filed properly (i.e. Without incorporating this financial credit note); while Filing August-21 GSTR-3B nothing is required to be done as far as the subject transaction is concerned. Still by mistake once again the tax has been added and excess liability has been discharged. Copy of screenshot of above B2B credit note reported as GST Credit note in GSTR- 1 of July-21.
- Thus, CGST and SGST each amounting to Rs. 59,908/- has been discharged twice mistakenly while reporting the figures in GSTR-3B. Since the said CGST and SGST which is discharged 2nd time due to human err; paid from own pocket and hence, question of unjust enrichment does not arise.

Hence, CGST and SGST total amounting to Rs. 1,19,818/- discharged in excess in August-2021

Return	Month	CGST (Rs.)	SGST(Rs.)
GSTR-1	July-21	793050	793050
GSTR-3B	July-21	852959	852959
Less Reported in GSTR-1 July-21.		59909	59909
GSTR-1	Aug.-21	831962	831962
GSTR-3B	Aug.-21	891871	891871
Excess Reported in GSTR-3B Aug-21.		59909	59909

- Since the subject transaction has been given double time effect while filing GSTR-3B and thereby resulting into the excess payment of CGST and SGST each amounting to Rs.59,909/- the refund application has been filed under the excess payment of the tax.
- While reconciling the books of accounts with the GST data at the time of filing GSTR-9 for F.Y. 2021-22; the said excess payment of CGST and SGST comes to the notice.



Particulars	Tax payable	Tax paid thru Cash				Excess Tax paid
			CGST	SGST	IGST	
Central Tax	4894046	2114727	2481789		357480	59950
State/UT Tax	4894046	2114727		2481789	357480	59950

- Accordingly, the appellant is eligible for the refund under excess payment of tax. Having paid excess tax while filing GSTR-3B for the month of August-21, the appellant is eligible for refund of CGST and SGST each amounting to Rs.59,908/-
- Attention is invited to Para 10 of the refund order, relevant extract is as under:

"As per section 16(4) of the CGST Act, 2017 assessee was entitled to claim credit in respect of debit note no. 001 Dt. 2nd May, 2021 issued by M/s H.Shah & Co. by due date of furnishing of return under section 39 for the month following the end of the Financial year. Assessee failed to claim ITC in respect to said credit note dated 5th July, 2021 as per CGST Act. "

- Notice in form RFD-08 has been issued asking to reject the refund as under:

"The refund claim cannot be granted as this claim cannot be considered in the category of excess payment of tax."

- Thus evidently, the adjudicating authority have travelled beyond the scope of show cause notice.
- The show-cause notice is the foundation of any demand as settled in the case of CCE, Bangalore Vs. Brindavan Beverages (P) Ltd. [2007(213) ELT 487 (SC)] and therefore to divert from the allegations made in the show-cause notice and confirm demands on new grounds is wholly incorrect. Thus, the impugned order is bad on this score alone.
- The provisions of Rule 92(3) use the phrase "Where the proper officer is satisfied" which means that Notice can only be issued when the proper officer have sufficient reasons backed by legal provisions or documentary evidences that proves non- eligibility of the refund of the appellant.
- In impugned RFD-08, nowhere the officer has signed.
- The RFD-08 is more than a notice. It gives an opportunity to the Department of leading evidence in support of its allegations and equally it gives an opportunity to the person/firm/company charged with, to make representation and adduce evidence against the allegations or charges made out against them.
- Thus, the Notice issued in form RFD-08 which is base of the proceedings must be specific and after inquiry and investigation. Hence the said SCN issued in mechanical manner required to be set aside.
- Attention is invited to Para 10 of the refund order, relevant extract is as under:

"As per section 16(4) of the CGST Act, 2017 assessee was entitled to claim credit in respect of debit note no. 001 Dt. 2nd May, 2021 issued by M/s H.Shah & Co. by due date of furnishing of return under section 39 for the month following the end of the Financial year. Assessee failed to claim ITC in respect to said credit note dated 5th July, 2021 as per CGST Act. "

- *It is worth to note that the appellant has not claimed refund of GST paid by the dealer vide issuing Debit Note and the appellant has never claimed ITC on such debit note as in its books of accounts appellant has treated such transaction as Financial Credit note.*
- *The order fails to describe or examine under which section/rule refund is rejected. Hence the order is issued without authority of law and arbitrarily.*
- *The Ld Commissioner has without any basis arbitrarily held that the refund is liable to be rejected under the category of excess payment of tax.*
- *Refund order issued in form RFD-06 has no legal effect and is invalid as it not authenticated by the proper officer which directly questions the validity of the said Order.*

The appellant has further prayed that the impugned order be rejected and quashed.

5. Personal Hearing:

Personal Hearing in the matter was held virtually on 27.02.2024, wherein Shri Bishan R. Shah, Chartered Accountant appeared on behalf of the 'Appellant' as Authorized Representative before the appellate authority. He submitted that GST has been paid on financial Credit Note, by mistake which is required to be refunded under Section 54 of the CGST Act, 2017. He further submitted that since they have paid the tax, not leviable, therefore the order passed by the Ld. Adjudicating authority is not Legal and proper and appeal may be allowed. He will submit additional submissions to further clarify the issue.

Additional Submissions:

The appellant vide email dated 28.02.2024 have submitted additional submissions, wherein they have reiterated the written submissions made in Appeal memorandum.

6 Discussion and Findings:

6.1. I have carefully gone through the facts of the case and the submissions made by the Appellant and find that the, appellant is mainly contesting with, that the adjudicating authority has travelled beyond SCN and that they are eligible for the refund under excess payment of tax as they have paid excess tax while filing GSTR-3B for the month of August-21, therefore the appellant is eligible for refund of CGST and SGST each amounting to Rs.59,909/-.

6.2 So the issue to be decided in the present appeal is:

Whether the order passed by the adjudicating authority is proper or otherwise?

6.3 At the foremost, I observed that in the instant case the "impugned order" is of dated 06.10.2023 and the present appeal is filed online on 05.12.2023. As per Section 107(1) of the CGST Act, 2017, the appeal is required to be filed within three months time limit. I observe that in the instant case the appeal has been filed within normal period prescribed under Section 107(1) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.

6.4 I observe that the SCN was issued stating that "the refund claim cannot be granted as this claim cannot be considered in the category of excess payment of tax." Whereas the impugned order is issued stating that as per Section 16 (4) of CGST ACT, 2017 assessee was entitled to claim credit in respect of debit note no. 001 dated 02/05/2021 issued by H.SHAH & CO. by due date of furnishing of return under section 39 for the month of September following the end of financial year. Assessee failed to claim ITC in respect to said credit note dated 05/07/2021 as per CGST ACT. As per Section 89 of CGST ACT, 2017 and Circular 125/44/2019-GST dated 08/11/2019 refund cannot be granted.

6.5 In the present case I observe that the issue of refund has arisen on account of the Debit Note No.0001/02-05-2021 issued by M/s H.Shah & Company in the name of the Appellant (formerly known as M/s Sunway India Pvt. Ltd.) and the Credit Note No.SID21/0027 dated 05/07/2021 issued by the appellant to M/s H Shah and Company involving taxable value of Rs.10,52,906/- CGST Rs.59,909/- and SGST Rs.59,909/- for the time expired goods having expiry period between January -2019 to June-0121, were returned by M/s H Shah and Company to the Appellant which were supplied by the appellant before FY 2019-20.

6.6 As per Circular No.72/46/2018-GST dated 26.10.2018 issued by CBIC, if the time expired goods are returned back by the recipient after the time limit specified in sub section (2) of Section 34 of the CGST Act, 2017 has lapsed, a credit note may still be issued by the supplier for such return of goods but the tax liability cannot be adjusted by him in his hands. However, it has been further clarified that, in case time expired goods are returned beyond the time period specified in the sub-section (2) of section 34 of the CGST Act and a credit note is issued consequently, there is no requirement to declare such credit note on the common portal by the supplier (i.e. by the person who has issued the credit note) as tax liability cannot be adjusted in this case.

6.7 I observe that in the present case, the time expired goods are returned back by the recipient after the time limit specified in sub section (2) of Section 34 of the CGST Act, 2017 has lapsed, therefore there was no requirement to declare such credit note on the common portal by the appellant as tax liability cannot be adjusted in this case. However, I observe that the appellant had declared the credit note on the common portal and though in GSTR-1 filed for the month of July-2021 had adjusted the liability in GSTR-1 by showing less CGST and SGST each amounting to Rs.59,909/-, but had paid the same while filing GSTR-3B for the month of July-2021.

6.8 Further, I also observe that the appellant had uploaded the details of revised Credit Note on the common portal by revising the value as Rs.0.50/- (as the zero amount is not taken by the system). However in GSTR-3B for the month of August-2021, again paid CGST and SGST each amounting to Rs.59,909/- in excess of the liability declared in GSTR-1 of the same period. The appellant has contended that they by mistake paid the excess CGST of Rs.59,909/- and SGST of Rs. 59,909/- for which they have claimed refund.

6.9 I observe the following provisions of Refund :

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:

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1) Any person, except the persons covered under notification issued under section 55 claiming refund of ¹³[any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or] any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or ¹⁰[subject to the provisions of rule 10B,] an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

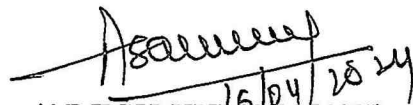
6.10 I observe that the appellant paid CGST Rs.59,909/- and SGST of Rs.59,909/- in the month of July-2021 itself, for declaring the Credit Note in the Common portal by mistake, and again made payment of the said amount during the month of August-2021 by declaring the amount of credit note as Rs.0.50/- to nullify the effect of Credit Note, in the Common portal, therefore

the amount of CGST Rs. 59,909/- and SGST of Rs. 59,909/- paid excess in the month of August-2021 is eligible for refund as per the provisions as above.

7. In view of above discussions, the impugned order passed by the adjudicating authority is set aside for being not legal and proper and appeal is allowed.

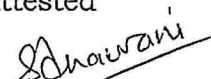
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

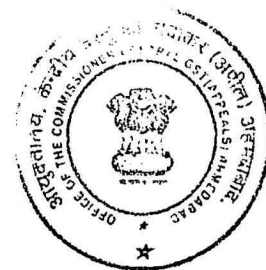
8. The appeal filed by the appellant stands disposed of in above terms


(ADESH KUMAR JAIN)
JOINT COMMISSIONER (APPEALS)
CGST & C.EX., AHMEDABAD.

Date: .04.2024.

Attested


(S. D. Nawani)
Superintendent,
CGST & C.Ex.,
(Appeals), Ahmedabad



By R.P.A.D.

To:

M/s. RAF HOLDINGS PRIVATE LIMITED,
802, G.I.D.C. ESTATE, G.I.D.C. DHOLKA,
Ahmedabad 382225 (GSTIN-24AAACS6227N1Z6).

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
3. The Pr./Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Additional Commissioner (System), Ahmedabad-North Commissionerate.
5. The Dy./Assistant Commissioner, CGST & C.Ex., Division-V, Ahmedabad North Commissionerate.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/ P.A. File.