



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

☎ 07926305065-

टेलीफैक्स 07926305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GST)31/Ahd-South/2019-20/15913 To 15914  
22N-20201064SW000039B38A

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-JC-018/20-21  
दिनांक Date : 29-09-2020 जारी करने की तारीख Date of Issue : 14/10/2020

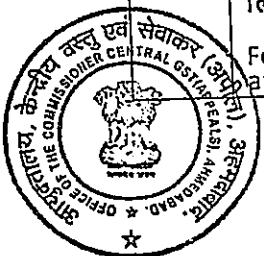
श्री मुकेश राठोर संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mukesh Rathor, Joint. Commissioner (Appeals)

ग Arising out of Order-in-Original No ZN2404200379637 दिनांक: 20.04.2020 issued by  
Deputy Commissioner, Central GST, Division-I, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s Shree Nakoda Synthetics Private Limited, 2-New Cloth Market, Ghantakarna  
Mahadev Market Road, Sarangpur, Ahmedabad-380002.

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .

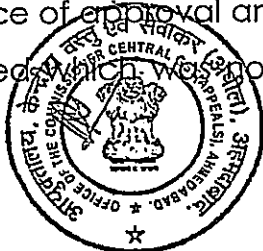


**ORDER-IN-APPEAL**

M/s. Shree Nakoda Synthetics Pvt Ltd., 2- New Cloth Market, Ghantakarna Mahadev Market Rad, Sarangpur, Ahmedabad-380002 (henceforth, *appellant*"), has filed the present appeal against the Order GST-RFD-06 (Order-In-Original) No.2N2404200379637 dated 20.04.2020 (henceforth, *"impugned order"*) issued by the Deputy Commissioner, Central GST, Division-I(Rakhiyal), Ahmedabad-South (henceforth, *"adjudicating authority"*).

2. The facts of the case, in brief, are that the appellant registered with Gujarat GST Department vide GSTIN-24AAGCS5568J1ZY filed refund application vide ARN date 06.03.2020 under Section 54(ii) of the CGST Act, 2017 and Gujarat Goods and Service Tax Act, 2017 read with CGST and SGST Rules for refund of ITC accumulated due to Inverted tax Structure. On scrutiny of the claim, it was not forthcoming to the adjudicating authority that the claimant is an independent job worker or otherwise. Accordingly a show cause notice dated 08.04.2020 in FORM RFD-08 was issued to the appellant. The appellant submitted reply to the show cause notice vide letter dated 17.04.2020 in FORM RFD-09 stating that they have already made online application for amendment of HSN code and attached screenshot of online portal wherein HSN code 998821 was mentioned. Then after, the refund claim was rejected under the impugned order for the reasons as mentioned in the remark *"The claimant's submission is not acceptable as amendment has been made recently and no proof of past period submitted. Accordingly, claim is rejected as per Section 54(3) of CGST Act, 2017."*

3. Being aggrieved with the impugned order the appellant preferred this appeal contesting *inter alia*, that the impugned order is passed during the nationwide lockdown due to COVID-19 pandemic, and hence the principle of natural justice has not been followed; that Personal hearing dated 21.04.2020 was given in relaxed period between 20.03.2020 to 29.06.2020 (extended up to 30.08.2020) and hence it was not possible for the appellant to attend personal hearing; that in the online reply dated 17.04.2020, sample invoices and reference of approval amendment with regard to addition of HSN was submitted which was not appreciated by the adjudicating authority;



that the personal hearing was not attended due to genuine and sufficient reason and no second opportunity was provided.

3.2 The appellant further contested that non updating of service related data on GSTN portal is merely a procedural breach and does not affect substantive right of the appellant; that without providing second opportunity of personal hearing to a bona-fide tax payer, rejection of refund claim by defeating the principle of intelligible differentia, is not sustainable; they cited case law Alluminium Corporation of India v/s UOI 1978(2)ELT (J 320) (SC) in this regard; that not updating the service list on GSTN portal is a procedural mistake for which substantive benefit could not be denied; that requirement of passing speaking order under Section 75(6) of the act is not followed; that the appellant is regular in tax payment/filing returns, the error of non-updation of service list in GSTN portal may be considered as an inadvertent error and pardoned in the interest of justice.

4. In the personal hearing in the matter was held on 01.09.2020 wherein Shri Jaikishn Vidhwani CA reiterated the grounds of appeal memorandum. They submitted additional ground of appeal mainly stating that HSN/SAC code mentioned in the invoice 998821 was completely ignored by the adjudicating authority and provided sample invoices. They also submitted FORM 26As showing deduction of TDS as proof of provision of job work service.

5. I have gone through the facts of the case, the impugned order, the grounds raised under appeal memorandum and the oral averments made during the course of personal hearing. I find that on scrutiny by adjudicating authority, the claim was found deficient on the issue whether the claimant is an independent job worker or otherwise and accordingly deficiency was communicated to the claimant/appellant. Reply received from the appellant was not found acceptable to the adjudicating authority for the reason that amendment made in HSN code does not pertain to the past period for which refund is claimed. Therefore, the moot question in the matter is whether the adjudicating authority was right or not in rejecting the refund for the reasons of non availability of said HSN code during the period for which refund was claimed.



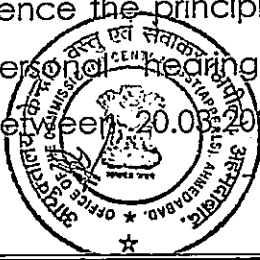
6. It is argued by the appellant that non updating of service related data on GSTN portal is merely a procedural breach and does not affect substantive right of the appellant. In this context, I observe that after raising the query by the adjudicating authority, the appellant had provided details of online application made by them for amendment of HSN code wherein HSN code 998821(approved) was clearly mentioned. Therefore, after dealing with such reply, it was open for the adjudicating authority to verify other crucial aspects such as whether the claim falls under inverted tax structure as claimed and also to scrutinize the eligibility of claim on all other aspects in term of refund provisions and if found eligible, the same could have been processed accordingly. I observe that non-mentioning of HSN code is a procedural lapse only and the same cannot be the prime reason for denying the refund if the claim satisfies all other mandatory aspects required in term of provisions for refund. Substantive right of refund of tax of the appellant cannot be denied based on such procedural breach. The present claim pertains to refund of ITC accumulated on account of inverted tax structure, the admissibility of which needs to be scrutinized by the adjudicating authority in term of Section 54(3) of CGST Act, 2017 read with rule 89(5) of the CGST Rules,2017 and notifications, instructions issued time to time in this regard. However, in so far as the claim has been rejected solely for the reason that the amendment made in HSN code does not pertain to the past period for which refund is claimed, it is not forthcoming as to whether all such other aspects needed for ascertaining eligibility of the refund claim has been dealt with or addressed suitably by the adjudicating authority or not. Therefore, all such mandatory aspects which were required to be checked suitably by the adjudicating authority before deciding the refund claim, which in the present claim does not appears to have been checked or addressed as the impugned order is silent on the same. It is further observed from sample copies of invoices that HSN 998821 is mentioned therein. One of such invoice is shown below for ease of reference:



TAX INVOICE												DUPLICATE FOR TRANSPORT TRIPLICATE FOR SUPPLIER				
<b>STIN : 24AAGCS5568J1ZY</b> <b>SHREE NAKODA SYNTHETICS PVT. LTD.</b> ADDRESS : SHOP NO-2, NEW CLOTH MARKET, GROUND FLOOR, SARANGPUR, AHMEDABAD-380002 Telephone No. (F) 9978628254 (M) 9825113589 Email : nakoda8020@yahoo.co.in												<b>Invoice No. : SH-433</b> <b>Date: 05/01/2019</b>				
<b>INDENT NO</b> <b>L.R.NO</b>												<b>TRANSPORT</b> <b>STATION LOCAL</b>				
<b>Place of Supply To : 24 (GUJARAT)</b> <b>Tax Is Payable On Reverse Charge : No</b>																
<b>Details of Receiver (Billed To)</b> <b>M/s KOTHARI BROTHERS (JOB)</b> <b>TPS-14, 201 A 683,684,775</b> <b>CITY CENTER NEAR IDGAH GATE, NR</b> <b>NEAR IDGAH CHOWKI, PREM DARWAJA</b> <b>AHMEDABAD</b>												<b>Details of Consignee (Shipped To)</b> <b>KOTHARI BROTHERS (JOB)</b> <b>TPS-14, 201 A 683,684,775</b> <b>CITY CENTER NEAR IDGAH GATE, NR</b> <b>NEAR IDGAH CHOWKI, PREM DARWAJA</b> <b>AHMEDABAD</b>				
<b>State Code : 24 GUJARAT</b> <b>GSTIN : 24ACFPK3291C1ZZ</b>												<b>State Code : 24 GUJARAT</b> <b>GSTIN : 24ACFPK3291C1ZZ</b> <b>Broker Name : SELF</b>				
Sr	Lot No.	Bale No	Pcs	Quantity	Unit	Rate	Discount	Taxable Amt	CGST%	CGST Amt	SGST%	SGST Amt	IGST%	IGST Amt	Amount	
<b>Quality Name : 120X100 POPLIN HSN : 998821</b>																
1	SN-4210		29	9987.500	MTR	15.25		152309.38	2.50 %	3807.73	2.50 %	3807.73			159924.84	
2	SN-4211		29	9987.500	MTR	15.25		152309.38	2.50 %	3807.73	2.50 %	3807.73			159924.84	
<b>Total</b>			<b>58</b>	<b>19975.000</b>				<b>304618.76</b>		<b>7615.46</b>		<b>7615.46</b>			<b>319849.68</b>	
We hereby certify that my/our registration certificate under the Gujarat Value Added Tax Act, 2002 is in force on the date on which the sale of goods specified in this Tax Invoice is made by me/us and that the transaction of sale covered by this Tax Invoice has been effected by me/us and it shall be accounted for in the														<b>ROUNDING OFF</b>		<b>0.32</b>
<b>Total Invoice Value (In Figure)</b>														<b>₹ 319850.00</b>		
<b>Total Invoice Value (In Words)</b>														<b>₹ Three Lakh Nineteen Thousand Eight Hundred Fifty Only</b>		
<b>For, Shree Nakoda Synthetics (P) Ltd.</b>														<b>For SHREE NAKODA SYNTHETICS PVT. LTD.</b>		

In addition to the above, Form 26AS also reveals deduction of TDS. In view of all such evidence, the status of the appellant as job work are not disputable and hence in this context it is further observed that non updating of HSN on GSTN portal is merely a procedural breach.

7. It is further contested by the appellant that the impugned order is passed during the nationwide lockdown due to COVID-19 pandemic and hence the principle of natural justice has not been followed; that Personal Hearing dated 21.04.2020 was given in relaxed period between 20.03.2020 to 29.06.2020 (extended up to



30.08.2020) and hence it was not possible for the appellant to attend personal hearing; that the order for rejection of refund claim without providing second opportunity of personal hearing is not sustainable. In this context, I observe that the adjudication proceedings shall be conducted by observing principles of natural justice. Order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence for fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. The Show Cause Notice is the first limb of this principle. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. The Hon'ble Supreme Court has elaborated the legal position in the case of Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr. [AIR 1976 SC 1785], as under: -

*" If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."*

8. The adjudicating authority should, therefore, bear in mind that no material should be relied upon in the adjudication order to support a finding



against the interests of the party unless the party has been given proper opportunity to rebut that material. I observe that in the present case, the personal hearing was conducted during the nationwide lockdown due to COVID-19 pandemic which the appellant could not attend. Therefore, looking such circumstances, the plea of the appellant for second opportunity of personal hearing is justifiable, more particularly for the reasons of nationwide lockdown due to COVID-19 pandemic. I rely on judgement of Hon'ble Apex Court in case of M/s. Alluminium Corporation of India v/s UOI reported in 1978(2)ELT (J 320) (SC), relevant para of the same is reproduced below:

*4. It appears to us that the order under appeal must be set aside because there was no fair opportunity to the Company to represent its case. It is no doubt true that the Company was given personal hearing and was also allowed to make written representations. Perhaps, this would have been sufficient if two other things had not taken place. The officer hearing the revision called for reports from the Collector and if any reliance was going to be placed upon such reports they ought to have been placed in the hands of Company so that it might explain anything capable of explanation. Similarly, if the stock books etc. of the Company were inspected the results of such inspection should have been made available to the Company for its comments. The Government has undertaken quasi-judicial or curial functions and a fair hearing means a hearing, however, given, which is adequate for the purpose of bringing before the officer, who makes the decision, all the relevant submissions pertaining to the case. This is the least that is expected of any one who decides and in this case this requirement has not been fulfilled. If fresh factual evidence is brought in, and it is likely to influence the decision, a fresh hearing should be given. In our opinion, there has not been a reasonable opportunity to the Company and a fresh opportunity must be given. We accordingly set aside the order of the Government and send back the case to Government for decision after affording the Company a fair opportunity of making such submissions on the material in the possession of Government, as it may choose to make. The respondents shall bear the cost of the appellant Company.*

9. In view of the discussions above, I reject the ground of the impugned order based on which the refund claim of the appellant is rejected and allow the appeal filed by the appellant to the extent the issue of late amendment of HSN code and the issue of natural justice as discussed above, without going in to merit of all other aspects which requires to be complied by the claimant in term of Section 54(3) of the CGST Act,2017 read with Rule 89(5) of the CGST Rules,2017.



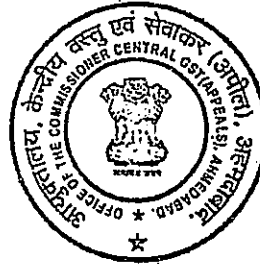
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(Mukesh Rathore)

Joint Commissioner, CGST, Appeals.

Date:



Attested

(D.A.Parmar)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad.

By R.P.A.D.

To,

M/s. Shree Nakoda Synthetics Pvt Ltd.,  
2- New Cloth Market, Ghantakarna Mahadev  
Market Road, Sarangpur, Ahmedabad-380002.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Principal Commissioner of Central Tax, Ahmedabad-South.
3. The Commissioner, SGST, Government of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad.
4. The Commissioner, CGST, Appeals, Ahmedabad.
5. The Additional /Joint Commissioner, Central Tax (System), Ahmedabad-South.
6. The Deputy Commissioner, CGST Division-I(Rakhiyal), Ahmedabad-South.
- ✓ 7. Guard File.
8. P.A. File