



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

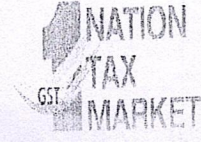
Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : V2(GST)40 to 44/AHD-SOUTH/2020-21

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-01 to 05/21-22

दिनांक Date : 17-05-2021 जारी करने की तारीख Date of Issue : 20/05/2021

श्री मोहित अग्रवाल, अपर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Mohit Agrawal, Additioanl Commissioner (Appeals)

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Arising out of Order-in-Original No ZR2404200283782, ZU2404200283726, ZR2404200283682, ZU2404200283604 and ZV2404200283760 दिनांक: 15.04.2020 issued by Deputy Commissioner, Central GST, Division-VI, Ahmedabad-South

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अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s . Amplus Capital Advisors Private Limited, 24, Government Servant Society, Near Municipal Market, C.G.Road, Ahmedabad-380009

(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

1. This order arises out of appeals (5 nos.), as mentioned in the table below filed by M/s Amplus Capital Advisors Private Limited, 24, Government Servant Society, Near Municipal Market, C.G.Road, Ahmedabad-380009 (herein referred to as the 'appellant') against the Refund Sanction/Rejection Orders issued in "FORM-GST-RFD-06" shown against the respective Appeal in the table below (hereinafter referred to as "impugned orders"), passed by the Deputy Commissioner, Central GST, Division-VI, Ahmedabad South (hereinafter referred to as 'the adjudicating authority') rejecting refund claim filed by the appellant. Since the impugned orders have been passed by the adjudicating authority in respect of the refund claims filed by the appellant in the same matter, the relevant appeals are being taken up for consideration under common appeal proceedings.

Sr. no.	Appeal No.	Filed against Order No. & Date	Period of Dispute	Central Tax (Rs.)	State Tax (Rs.)
1	44/Ahd-South/20-21	ZV2404200283760 dated 15.04.2020	May-2018	6,29,691	6,29,691
2	43/Ahd-South/20-21	ZU2404200283604 dated 15.04.2020	August-2018	1,80,000	1,80,000
3	42/Ahd-South/20-21	ZR2404200283682 dated 15.04.2020	September-2018	3,60,000	3,60,000
4	41/Ahd-South/20-21	ZU2404200283726 dated 15.04.2020	October-2018	62,616	62,616
5	40/Ahd-South/20-21	ZR2404200283782 dated 15.04.2020	November-2018	5,73,434	5,73,434

2. Facts of the case, in brief are that the appellant is having GSTIN-24AAKCA0426F1Z6 and engaged in providing "Management or Business Consultant Service". The current committed corpus of Amplus Realty Fund-II is Rs. 183.50 Crores. Amplus Realty Fund-II has agreed to pay a prescribed percentage of such amount to the applicant as management fees. The details of the taxable amount received towards management fees charged to Amplus Realty Fund-II in respect of service provided by the applicant and payment of the amounts of CGST & SGST leviable thereon being reflected in the relevant forms GSTR-1 & GSTR-3B, as submitted by the appellant are reproduced as below:



Invoice date	Invoice No.	Base Amount (Rs.)	CGST @ 9% (Rs.)	SGST @ 9% (Rs.)	Relevant Appeal no.
11.5.2018	Fund-II-1	6996562	629691	629691	44/Ahd-South/20-21
22.10.2018	Fund-II-2	6695734	602616	602616	41to43/Ahd-South/20-21
30.11.2018	Fund-II-3	6371493	573434	573434	40/Ahd-South/20-21

2.1 Subsequently, because of sluggishness in the real estate sector, Amplus Realty Fund-II decided to wind up and to restrict its capital commitment from investors to 20% and accordingly, total capital commitment drawdown is to the tune of Rs. 36.70 Crores. As a result, the the appellant is entitled to the management fees calculated at the prescribed percentage on Rs. 36.70 Crores. Therefore, it was mutually agreed that the appellant would refund the management fees to Amplus Realty Fund-II. Accordingly, by issuing credit notes as mentioned below, the appellant refunded the management fees (alongwith applicable GST) to Amplus Realty Fund-II.

Invoice No. & Date	Credit Note No.	Credit Note issued on date	Base Amount (Rs.)	CGST @ 9% (Rs.)	SGST @ 9% (Rs.)	Relevant Appeal no.
Fund-II-1 11.5.2018	3/2019-20	10.06.2019	6996562	629691	629691	44/Ahd-South/20-21
Fund-II-2 22.10.2018	2/2019-20	10.06.2019	6695734	602616	602616	41 to 43/Ahd-South/20-21
Fund-II-3 30.11.2018	1/2019-20	10.06.2019	6371493	573434	573434	40/Ahd-South/20-21

2.2 After issuance of the Credit Notes, the appellant filed refund claims for refund of CGST and SGST already paid by them against the respective invoices. The refund claims filed by the appellant have been rejected by the adjudicating authority vide the impugned orders, details of which are mentioned as below:



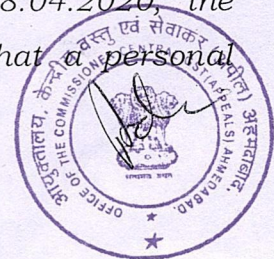
Invoice No.	Credit Note No. & Date	Impugned Order No. & Date, passed against respective refund claim	CGST @ 9% (Rs.)	SGST @ 9% (Rs.)	Relevant Appeal no.
Fund-II-1 11.5.2018	3/2019-20	ZV2404200283760 dated 15.04.2020	629691	629691	44/Ahd-South/20-21
Fund-II-2 22.10.2018	2/2019-20	ZU2404200283604 dated 15.04.2020	180000	180000	43/Ahd-South/20-21
		ZR2404200283682 dated 15.04.2020	360000	360000	42/Ahd-South/20-21
		ZU2404200283726 dated 15.04.2020	62616	62616	41/Ahd-South/20-21
Fund-II-3 30.11.2018	1/2019-20	ZR2404200283782 dated 15.04.2020	573434	573434	40/Ahd-South/20-21

In all the five cases mentioned above, the impugned orders have been issued by the adjudicating authority in prescribed form i.e. Form-GST-RFD-06, rejecting the refund claim of the appellant on the ground that:

“Additional documents asks in SCN is not submitted by the claimant. Hence, the refund claim filed by the claimant is rejected.”

3. Being aggrieved, the appellant has filed the present appeals on the grounds re-produced as under:

- (i) *The impugned order has been passed without granting an opportunity of being heard to them and therefore, violated the principles of natural justice.*
- (ii) *The adjudicating authority issued “Notice for rejection of application for refund” dated 20.03.2020 in Form GST-RFD-08 vide which the appellant was requested to submit the details and documents specified therein. Further they were directed to furnish a reply to the notice within 15 days from the date of service of the same.*
- (iii) *The appellant was also directed to appear before the adjudicating authority on 26.03.2020. The appellant furnished “Reply to show cause notice” in Form GST-RFD-09 on 24.03.2020 vide which the appellant informed that due to the COVID-19 epidemic and the lockdown, the personal hearing granted on 26.03.2020 was not possible. They further requested to grant a fresh date of personal hearing as well as fresh date for submission after a reasonable period of time after normalcy resumed. On 08.04.2020, the department informed them by way of e-mail that a personal*



hearing could be held through electronic media and if the appellant did not wish to attend the hearing through electronic media, they could submit their written submission through e-mail. Thereafter, within a short duration of a week, the adjudicating authority passed the impugned order in form GST-RFD-06 on 15.04.2020 which was passed without giving the appellant an opportunity of being heard.

(iv) They relied upon the following case laws wherein it has been held that personal hearing is required as per principle of natural justice to prevent miscarriage of justice:

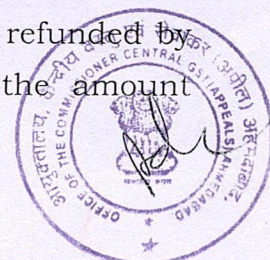
➤ M/s. Sri Gayatri Cashews Versus The Assistant Commissioner of GST and Central Excise 2019 (1) TMI 610-Madras High Court

➤ Uma Nath Pandey Versus State of UP 2009 (3) TMI 526-Supreme Court

(v) Since they expects the future GST liability to be insufficient (either Nil or very minor), it is not possible to adjust the excess amount of GST paid towards future tax liability of GST. Therefore, they do not have any other option except claiming refund of the excess amount of GST paid.

4. Personal Hearing in the matter was through virtual mode held on 25.02.2021 before the then Joint Commissioner (Appeals). Shri Parag Shah, Chartered Accountant, appeared on behalf of the appellant (for total 08 nos. appeals which also includes the 05 nos. of appeals, as mentioned in para-1 above) and re-iterated the written submissions made in the appeal memorandum of the said appeals. Subsequently, due to transfer of the earlier appellate authority, the appellants have been again granted personal hearing on 31.03.2021. However, the appellant has vide their letter dated 15.04.2021 (through e-mail) submitted that the personal hearing for all the above mentioned 05 nos. of appeals was already held on 25.02.2021 and they are not desirous of having any further personal hearing and also requested to decide the case on the basis of the appeals and further submissions already made by them.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the present appeal and oral submissions made at the time of Personal Hearing on 25.02.2021. After going through the facts of the case, it is seen that the issue raised in the appeal pertains to refund claim filed by the appellant in respect of the management fees refunded by them to the service recipient, by issuing credit notes for the amount



refunded alongwith applicable GST.

5.1 In the present issue, it is observed that the appellant has raised their contention that the impugned orders have been passed by the adjudicating authority, without granting an opportunity of being heard to them and therefore, violated the principles of natural justice. It is observed from the records attached with the appeal memorandum that in respect of all the five cases, notices for rejection of application for refund in "FORM-GST-RFD-08" have been issued by the adjudicating authority on date 20.03.2020 vide which the appellant was requested to submit the following documents:

- 1) Copy of Agreement
- 2) Details of the credit availed.
- 3) According to Circular No. 26/26/2017-GST dated 29.12.2010, the claimant has to amend GSTR-1 and in GSTR-3B, over reported liability adjusted in subsequent month's return.

Further, it was also directed to the appellant to furnish a reply to the notice within fifteen days from the date of service of the notice and the appellant was also directed to appear before the adjudicating authority on 26.03.2020 for personal hearing.

5.2 Further, as per the details submitted under appeal memorandum by the appellant, it is observed that the appellant vide their reply to show cause notice in Form GST-RFD-09 dated 24.03.2020 informed that due to the Covid-19 epidemic and the lock down, the personal hearing granted on 26.03.2020 was not possible. The appellant also requested to grant a fresh date of personal hearing as well as fresh date for submission after a reasonable period of time. Accordingly, they were informed by the department through e-mail dated 08.04.2020 that a personal hearing could be held through electronic media and if the appellant did not wish to attend the hearing through electronic media, they could submit their written submission through e-mail. However, I also find that the appellant has neither submitted any of the documents called for by the adjudicating authority as per the show cause notice nor made any submission to the adjudicating authority till the issuance of the impugned orders.

5.3 I also find that as per Section 54 (7) of the CGST Act, 2017, "The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects." Further, the provisions of Rule 92 (3) of CGST Rules, 2017 also provides that:

"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.”

Accordingly, I find that the adjudicating authority is also bound to process the refund claim and to issue the orders in a time bound manner, as prescribed under the provisions of Section 54 of the CGST Act, 2017 and Rule 92 of the CGST Rules, 2017. In the present case, I observed that the appellant has neither submitted proper reply to the notice issued to them in “FORM GST RFD-08” within prescribed time limit nor they appeared for personal hearing granted to them before the adjudicating authority. Hence, I do not find any force in the said contention of the appellant that the principles of natural justice have not been followed by the adjudicating authority while issuing the impugned orders.

6. Further, I find that the provisions of Section 54 (1) of the CGST Act, 2017 are as reproduced below:

“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:*

(4) *The application shall be accompanied by—*

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

(8) *Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—*

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or”

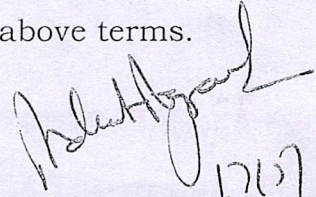
6.1 In all the present cases, it is observed that the appellant was also directed by the adjudicating authority to submit the relevant documents vide show cause notice issued in Form-GST-RFD-08. However, the appellant has not submitted the documentary evidences substantiating their refund claims in terms of the provisions of Section 54 of the CGST Act, 2017, neither



before the adjudicating authority nor even during the present appeal proceedings. Further, it is also observed that in any of the case, the appellant has not produced the relevant documentary evidences showing that whether the Input Tax Credit has been availed by the recipient or otherwise. If so, the details of the ITC reversed by the recipients and interest leviable thereon, if any, have not been submitted by the appellant alongwith relevant documents.

7. Accordingly, I do not find any merit in the contention of the appellant so as to interfere in the impugned orders issued by the adjudicating authority (as mentioned in the table under Para-1 above) and therefore, I reject all the Appeals (5 Nos.) (as mentioned in the table under Para-1 above) filed by the appellant.

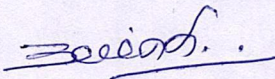
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.


(Mohit Agrawal)

Additional Commissioner (Appeals)

Date: .05.2021.

Attested



(M.P.Sisodiya)
Superintendent (Appeals)
CGST, Ahmedabad.



By Regd. Post A. D/Speed Post

To
M/s . Amplus Capital Advisors Pvt. Ltd,
Plot No. 24, Government Servant Society,
Adjoining Municipal Market, C.G.Road,
Navrangpura, Ahmedabad-380009

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Commissioner, CGST Appeals, Ahmedabad.
4. The Dy./Asst. Commissioner, Central GST, Division-VI, Vastrapur, Ahmedabad South.
5. The Dy./Asstt. Commissioner, CGST, HQ (Systems), Ahmedabad South.
(for uploading OIA)
6. Guard File.
7. P.A. File.