



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/211/2021-APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-106/2021-22

दिनांक Date : 13-01-2022 जारी करने की तारीख Date of Issue : 17-01-2022

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. ZX2401210044357 दिनांक: 06-01-2021 issued by Assistant Commissioner, CGST, Division IV-Narol, Ahmedabad South

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

Shri Farahan Mohammed Shezad Dhakkanjiwala of M/s. Eessa Textiles, Survey No. 170,178,186, Plot No. 135/1 to 135/6, Paiki SP 58, Lokhandwala Estate, Suex Farm Road, Behrampura, Ahmedabad

(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

Shri Farhana Mohammed Shezad Dhakkanjiwala of M/s.Eesaa Textiles, Survey No.170,178,186, Plot No.135/1 to 135/6, Paiki SP 58, Lokhandwala Estate, Suex Farm Road, Behrampur, Ahmedabad (hereinafter referred to as the appellant) has filed the present appeal on dated 1-2-2021 against Order No.ZX2401210044357 dated 6-1-2021 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Division IV, Narol, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24BGQPD6706B1ZQ has filed refund claim for refund of Rs.242000/- on account of ITC accumulated due to inverted tax structure for the period from October 2019 to September 2020. The appellant was issued show cause notice reference No.ZV2412200250924 DATED 23-12-2020 proposing rejecting of the claim on the reason that there is difference in turnover as per RFD 01 and turnover as per records available. The adjudicating authority vide impugned order rejected the claim on the ground that the appellant did not appear for personal hearing and neither submitted proper reply to the show cause notice.

3. Being aggrieved the appellant filed the present appeal on the following grounds :

That the adjudicating authority has erred in law in passing refund rejection order without giving opportunity of personal hearing and against principle of natural justice. The authorized representative remain present on all the occasion which called for but due to non availability of amendment function/facility on GSTN portal the appellant could not amend such inadvertent human mistake which is nothing but typographical error in data in Form GSTR RFD 01. The adjudicating authority could not accept their submission dated 6-1-2021 and rejected their refund application on account of incomplete details. In view of above the appellant requested to admit their refund application; grant refund ; to set aside the impugned order and allow appeal.

4. The appellant vide their letter dated 4-1-2022 further submitted that while filing refund application the dealer have made genuine and bonafide typographical error by mentioning the turnover of inverted rated supply of goods and services as Rs.5,91,88,177/- instead of Rs.59,18,177/-. The said mistake was made in RFD 01 and Statement 1. That they had filed reply to show cause notice within the stipulated time period; that the in charge officer has not accepted manual RFD 01 filed on 23-12-2020 for correction of turnover due to typographic error; that the adjudicating authority has rejected their refund claim without providing any opportunity of hearing and again principle of natural justice; the adjudicating authority has rejected their claim only on technical mistake inadvertently.

5. Personal hearing was held on dated 6-1-2022. Shri Faizan Kholiyawala, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he had nothing more to add to their written submission till date.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. In this case the claim was rejected due to non appearance for personal hearing and unsatisfactory reply to the show cause notice. I find that in this case the claim was filed on dated 14-11-2020 and show cause notice was issued on dated 23-12-2020 ie after 40 days period from the date of filing refund claim. The appellant has filed reply to the show cause notice on 23-12-2020 itself. Similarly opportunity of personal hearing was also granted only once on dated 31-12-2021 and no further opportunity was granted. Thereafter refund rejection order was issued on 6-1-2021. Thus after delay of 40 days from the date of filing of refund application, the entire course of action of issuance of SCN, grant of personal hearing, verification of reply and issue of rejection order was done within a span of 13 days. I also notice that no reason was recorded for non acceptance of reply filed by the appellant in the refund rejection order. As per provisions of sub rule (3) of Rule 92 of CGST Rules, it is a mandatory requirement to record the reasons in writing for issuance of show cause notice as well as for passing Order rejecting the refund claim and as per proviso to Rule 92 (3) of CGST Rules, no application for refund shall be rejected without giving the applicant an opportunity of being heard. Thus I find that impugned order issued for rejection of refund claim without recording the reasons for rejection and without granting opportunity of personal hearing is against the governing provisions of CGST Rules, 2017 for rejection of refund claim and against the principles of natural justice and hence deserve to be set aside.

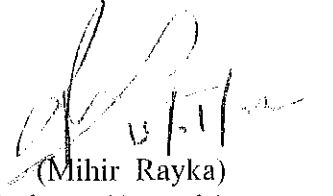
7. Regarding merit of the case, I find that the appellant's contention is that instead of showing turnover of inverted supply of goods as Rs.59,18,817/- they inadvertently shown the amount as Rs.5,91,88,177/-. The claim in this case pertains to the period October 2019 to September 2020. The appellant has submitted copy of GSTR3B return for the above period alongwith appeal. I have scrutinized the same and find that total taxable value shown in the return for the period from October 2019 to September 2020 was Rs.59,18,871/-. Therefore, it is evident that amount of Rs.59188177/- mentioned in the refund application is due to typographical error. I also notice that the turnover over inverted rated supply of goods and adjusted turnover was same. Therefore there will not be any difference in refund amount determined as per formula prescribed under Rule 89 (5) even if higher turnover value is shown.

8. In view of above discussions I do not find any justification in rejecting refund claim on the ground of non appearance for personal hearing and unsatisfactory reply to the show cause notice. I further hold that the impugned order passed by the adjudicating authority is against governing provisions of CGST Rules, 2017 and hence legally unsustainable. On the merit side I

find that there is no dispute with regard to tax paid amount or net ITC amount or any other conditions or procedures governing admissibility of refund. Hence, the appellant is entitled to refund taking into account the turnover value of inverted rated supply of goods and adjusted total turnover as Rs.59,18,817/-. Needless to say the refund will be admissible taking into account ITC availed on inputs only under invoices which are reflected in their GSTR2A returns and in accordance with provisions of CGST Act and Rules framed thereunder. Accordingly I set aside the impugned order and allow the appeal.

अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

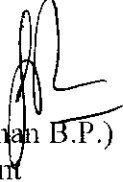
9. The appeal filed by the appellant stands disposed of in above terms.



(Mihir Rayka)
Additional Commissioner (Appeals)

Date :

Attested


(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,

Shri Farhana Mohammed Shezad Dhakkanjiwala
of M/s. Eesaa Textiles,
Survey No.170,178,186, Plot No.135/1 to 135/6,
Paiki SP 58, Lokhandwala Estate, Suex Farm Road,
Behrampura, Ahmedabad 380 002

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division IV (Narol) Ahmedabad
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

