



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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DIN-20220364SW0000444AC5

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/1373/2021 -APPEAL/6539-HH
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-128/2021-22**  
दिनांक Date : **02-03-2022** जारी करने की तारीख Date of Issue : **02-03-2022**
- श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित
- Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **ZZ2407210018908 DT. 02.07.2021** issued by Assistant Commissioner, Division V (Odhav), Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Shri Rajeshbhai Valjibhai Dabhi of M/s. Krishna Enterprises, 14, Tapshil Society, Viratnagar, Odhav, Ahmedabad-382415**

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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> .

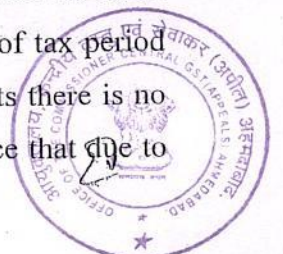




**ORDER IN APPEAL**

Shri Rajeshbhai Valjibhai Dabhi of M/s.Krishna Enterprises, 14, Tapshil Society, Viratnagar, Odhav, Ahmedabad 382 415 (hereinafter referred to as the 'appellant') has filed the present appeal on dated 23-7-2021 against Order No.ZZ2407210018908 dated 2-7-2021 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Division V (Odhav), Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant has filed refund application for refund of ITC accumulated on account of inverted duty structure for Rs.13,33,262/-. The appellant was issued show cause notice No.ZP24062101968552 proposing rejection of the claim on the ground that ITC of services availed. The appellant has filed reply to the SCN but failed to attached supporting documents. The adjudicating authority held that refund of Rs.13,33,262/- is inadmissible on the ground that the taxpayer claim to have submitted the amended Annexure B, however no Annexure of any sort attached with the reply to show cause notice.
3. Being aggrieved the appellant filed the present appeal, wherein they submitted that while submitted reply in RFD '09 by mistake supporting documents were not attached and refund claim was rejected ; that they are eligible for refund and it was due to bonafide mistake that he forgot to attach the documents as requested in the SCN ; that ITC claim of huge amount has been blocked due to inverted duty structure and due to rejection of refund claim undue hardship is faced because of insufficient fund. Therefore the appellant requested to allow to file refund application again for refund.
4. Personal hearing was held on 17-2-2022. Ms Preeti Shah, Authorized Representative appeared on behalf of the appellant on virtual mode. She stated that they have nothing more to add to it.
5. I have gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. I find that in this case refund claim was rejected on the sole ground of non submission of Annexure B along with reply to show cause notice. The appellant has also admitted that by mistake they had not filed Annexure B along with reply to show cause notice. Therefore, the ground mentioned in the impugned order stands admitted and not disputed.
6. I find that the appellant in their refund application has determined admissible refund amount at Rs.23,76,174/- as per formula prescribed under Rule 89 (5) of CGST Rules, 2017 taking into account Net ITC of Rs.58,84,975/- which include ITC on input services also. In consequence to SCN, the appellant revised their refund amount to Rs. 15,98,053/-, as per formula, taking into account ITC availed on inputs of Rs.47,49,601/-. However claim was made only for Rs.13,33,262/- which is the balance in electronic credit ledger at the end of tax period for which refund is claimed. Therefore, even by considering ITC availed on inputs there is no change in quantum of claim amount, which remain at lower amount. I further notice that due to

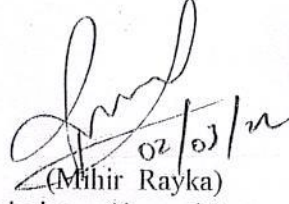




bonafide mistake on their part the appellant had not attached the revised Annexure B along with reply to show cause notice which deprived them with the substantive benefit otherwise due to them. During the current proceedings the appellant had submitted revised Annexure B showing Net ITC on inputs amounting to Rs.47,49,601/- in compliance to impugned order. In view of above, taking a lenient stand, I allow this appeal and restore their entitlement for refund subject to verification of Annexure B by the sanctioning authority. Accordingly I set aside the impugned order and allow this appeal.

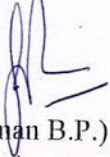
अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

7. 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 Rajeshbhai Valjibhai Dabhi  
of M/s.Krishna Enterprises, 14,  
Tapshil Society, Viratnagar,  
Odhav, Ahmedabad 382 415

Received  
C. A. Preeti Sial  
Date - 2/3/2022.



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 Deputy/Assistant Commissioner, CGST, Division V (Odhav ) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

