



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

क फाइल संख्या : File No : GAPPL/ADC/GSTP/745/2021 -APPEAL / 69444 -119

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-138/2021-22
दिनांक Date : 16-03-2022 जारी करने की तारीख Date of Issue : 21-03-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZN2403210257682 dated 17.03.2021 issued by Deputy/Assistant Commissioner, CGST, Division I, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Chirag Sales Corporation , Plot No. 115 A-B,
Piplaj Road, Piplaj, Ahmedabad 382405

(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

M/s.Chirag Sales Corporation, Plot No.115 A-B, Piplaj Pirana Road, Piplaj, Ahmedabad 382 405 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 15-4-2021 against Order No.ZN2403210257682 dated 17-3-2021 (hereinafter referred to as 'the impugned order) passed by the Assistant Commissioner, Division I (Rakhial), Ahmedabad South (hereinafter referred to as 'the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AABFC8956AZQ has filed refund claim for refund of Rs.2,01,768/- in respect of IGST paid in excess as per Form GSTR9. A deficiency memo was issued on dated 12-11-2020 against the said claim which was rectified and fresh refund application was filed on dated 25-1-2021. The appellant was issued show cause notice No.ZW2403210003648 dated 1-3-2021 proposing rejection of the claim on the ground that refund claim is inadmissible as per Notification No.16/2020-CT dated 23-3-2020. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that the appellant did not comply the objection in the SCN and rejected the claim.

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

The adjudicating authority has erred in facts and Law while rejection refund application ;

The adjudicating authority has wrongly issued show cause notice on the same grounds which were satisfied and accepted by him at the time of issuing the acknowledgement in GSTRFD 02;

The adjudicating authority has wrongly interpreted the relevant provisions of Notification NO.16/2020;

The adjudicating authority has not considered their reply to the SCN uploaded in Form GSTR 09 In view of above submissions the appellant requested to accept the appeal ; sanction refund and quash the impugned order.

4. Personal hearing was held on dated 14-3-2022. Shri J.R.Shah, authorized representative appeared on behalf of the appellant on virtual mode. He requested to consider their submissions made earlier and allow the appeal.

5. I have carefully gone through the facts of the case, ground of appeal, submissions made by the appellant and documents available on record. I find that in this case refund was rejected due to non submission of reply to the SCN vide which it was alleged that refund is inadmissible as per Notification NO.16/2020-CT dated 23-3-2020. I have gone through the Notification NO.16/2020 and find that vide said Notification amendment was made under certain Rules of Central Goods and Service Tax Rules, 2000. In the matters relating to refund amendment was made Rule 86 and under Rule 92 as under :

7. In the said rules, in rule 86, after sub-rule (4), the following sub-rule shall be inserted, namely:-



"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03."

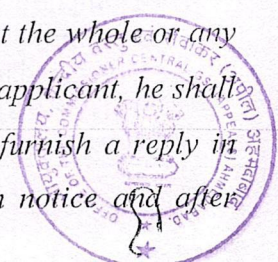
9. In the said rules, in rule 92,- (a) after sub-rule (1), the following sub-rule shall be inserted, namely:-

"(1A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.";

6. As per amendment made vide Notification No.16/2020 specific provision is incorporated under Rule 86 and Rule 92 prescribing the manner of payment of admissible refund of tax ie if the claim amount was paid by way of debit in electronic credit ledger refund is to be paid by way of re credit in electronic credit ledger or by way of cash in proportionate to the amount debited in cash against the total amount paid for discharging tax liability. Apparently, the amendment made vide Notification No.16/2020 expressly provide for payment of refund by way of re-credit in electronic credit ledger or by way of cash, if found admissible. The Notification neither made any amendment in the CGST Rules nor inserted any provisions under CGST Rules 2017 prescribing provisions for rejection of refund. In spite of the same, referring to above Notification, in the SCN it was alleged that the refund is inadmissible in terms of Notification No.16/2020 and the adjudicating authority outrightly rejected the claim due to non submission of reply to SCN, which by any means cannot be considered as a justifiable and tenable reason for rejecting refund claim.

7. I further find that the appellant has filed reply to the show cause notice vide RFD 09 on dated 17-3-2021. On going through the same, I find that the appellant has already stated that they have no objection if the refund amount applied is credited to their electronic credit ledger in terms of above Notification. I further notice that on the day of filing of reply itself the adjudicating authority has passed the impugned order at 6.07 PM stating that the appellant has not filed reply to the show cause notice. As per Rule 92 (3) of CGST Rules, 2017, it was provided 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.

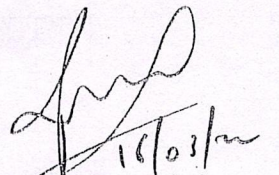
Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

8. Thus as per Rule 92 of CGST Rules, 2017, it is a statutory requirement to consider the reply filed to the show cause notice and provide opportunity of personal hearing before rejecting refund claim. However from the fact of the case it transpire that the adjudicating authority has rejected the refund claim on the day the appellant filed reply to the show cause notice, stating that the appellant has not filed reply to the show cause notice. Apparently, rejection of refund was ordered without considering reply filed by the appellant and without providing an opportunity of personal hearing in violation of Rule 92 of CGST Rules, 2017. Looking into the overall facts and circumstances, I find that the adjudicating authority has rejected the claim in a pre determined manner without adhering to the statutory provisions governing rejection of refund and thereby deprived the appellant with substantive benefit due to them. Therefore I hold that the rejection of refund on the reason of inadmissibility under Notification No.16/2020 and due to non submission of reply to show cause notice is wholly unfair and unsustainable. I further find from the facts of the case that payment of tax claimed as refund was made through ITC. No other ground/reason was raised disputing admissibility of refund under Section 54 of CGST Act, 2017 which shows that refund is otherwise admissible. In such a circumstance, the claim amount needs to be paid to the appellant in accordance with the provisions of Rule 86 and 92 of CGST Rules, 2017 read with Notification No.16/2020.

9. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting the refund claim filed by the appellant is not legal and proper and deserve to be set aside. Accordingly I set aside the impugned order and allow the appeal filed by the appellant.

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

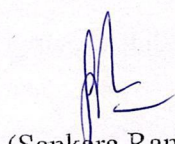
The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



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



By RPAD,

To,
M/s. Chirag Sales Corporation ,
Plot No. 115 A-B,
Piplaj Road, Piplaj,
Ahmedabad 382405

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 Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) The Asst./Deputy Commissioner, CGST, Division-I, Ahmedabad South
- 6) Guard File
- 7) PA file

