



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

7/16/23

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2051,2052,2053,2054,2055 & 2095/2021 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-146/2021-22**  
दिनांक Date : **23-03-2022** जारी करने की तारीख Date of Issue : **24-03-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZR2405210553284 DT. 31.05.2021,**  
**ZP2405210553195 DT. 31.05.2021, ZY2405210553239 DT. 31.05.2021,**  
**ZX2405210553340 DT. 31.05.2021, ZZ2405210553395 DT. 31.05.2021 &**  
**ZV2405210553139 DT. 31.05.2021** issued by Assistant Commissioner, CGST, Division IV  
(Narol), Ahmedabad South

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

**J.P. Developers , Nr. Indira Nagar, Dascroi, Labhagam, Ahmedabad, Gujarat-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) <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**

M/s. J.P Developers, B 1, Shantam, Near Havmor Restaurant, Navranapura, Ahmedabad (hereinafter referred to as 'the appellant') has filed the following appeals against Order passed by the Assistant Commissioner, Division IV, Narol, Ahmedabad South (hereinafter referred to as 'the adjudicating authority) rejecting refund claim filed by the appellant.

Sr No.	Appeal file number	Date of filing of appeal	Impugned order number and date	Amount of refund
1	GAPPL/ADC/GSTP/2051/2021	2-9-2021	ZR2405210553284/31-5-2021	185316/-
2	GAPPL/ADC/GSTP/2052/2021	2-9-2021	ZP2405210553195/31-5-2021	198214/-
3	GAPPL/ADC/GSTP/2053/2021	2-9-2021	ZT2405210553239/31-5-2021	119504/-
4	GAPPL/ADC/GSTP/2054/2021	2-9-2021	ZX2405210553340/31-5-2021	15000/-
5	GAPPL/ADC/GSTP/2055/2021	2-9-2021	<td>70606/-</td>	70606/-
6	GAPPL/ADC/GSTP/2095/2021	2-9-2021	ZV2405210553139/31-5-2021	106070/-

2. Briefly stated the fact of the case in all these appeals is that the appellant registered under GSTIN 24AAHFJ1413D1Z1, has filed refund claim for refund of excess payment of tax. The appellant was issued show cause notice proposing rejection of refund on the ground that *the payment of tax was made through ITC, the claimant is trying to convert the ITC into cash*. The adjudicating authority vide impugned orders held that the refund is inadmissible to the appellant on the ground that *compliance to SCN not made*.

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

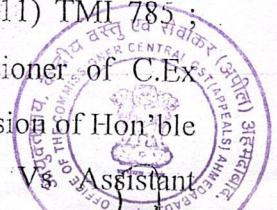
- i. The order passed by the adjudicating authority rejecting refund is without following Law and application of mind ;
- ii. As per press release dated 3-7-2019 it is clearly stated that the taxpayer is eligible for the refund of excess amount paid and required to file RFD 01 ;
- iii. Referring to CBIC Circular No.26/26/2017-GST dated 29-12-2017 and case Law of M/s.Alkraft Thermotechnologies Pvt.ltd Vs Commissioner of CGST and C.Ex Chennai 2019 (30) GSTL 433 (Mad), the appellant contended that in the current situation the adjudicating authority failed to take note of the press release issued by the CBIC and fails to apply the Law which causes miscarriage of justice to the honest taxpayer ;
- iv. Referring to Circular No.7/7/2017-GST dated 1-9-2017 wherein it is stated that where the output tax liability of the registered person as per the details furnished in Form GSTR1 and Form GSTR2 is less than the output tax liability as per the details furnished in Form GSTR3B and the same is not offset by a corresponding reduction in the input tax credit to which he is entitled, the excess shall be carried forward to the next month's return to be off set against the output tax liability of the next month by the tax payer when he signs and submits the return in Form GSTR3. However through Notification No.54/2017-GT





dated 15-11-2017 the facility of filing of Form GSTR3 has been temporarily extended to 11<sup>th</sup> December 2017 and thereafter the tax payers are not required to file GSTR3.

- v. The appellant further contended that the rectification in GSTR3B is not possible and therefore the petitioner is allowed to rectify Form GSTR3B for the period to which the error had occurred. Applying the same ratio, the appellant is eligible for the refund for the excess amount paid which is established by GSTR9 Annual Return and GSTR9C reconciliation statement as the excess amount is deposited and the Government cannot retain the same. Copy of GSTR9 and GSTR9C are attached ; that they had paid excess amount to Government account and hence eligible for refund ; that they had already given all working and documents related to refund at the time of filing of Form GST RFD 01 and at the time of SCN reply ; that once it is not payable in Law there is no authority for the department to retain such amount and hence the amount is required to be refunded ; that when they are not liable to pay tax such payment is not amount to payment of tax and Department cannot retain the same ; that they had made excess payment of tax and for that they have provided all necessary working, information and documents and that the revenue cannot retain excess amount paid by mistake by them and hence eligible for refund.
- vi. The adjudicating authority has rejected the order without stating any reasons and failed to elaborate the reason why the said amount is not admissible for refund;
- vii. Any authority taking any action prejudicial to the appellant shall before taking such action may give an opportunity of being heard as per Section 54 (11) of CGST Act, 2017;
- viii. The appellant shall be given a personal hearing before rejecting refund and hence the principles of natural justice does not follow;
- ix. That they had made excess payment of tax to the exchequer and as per Section 54 (1) and Section 54 (8) (e) of the CGST Act, 2017 read with Rule 89 (1) of CGST Rules, 2017 the said excess amount is required to be refunded. Since the amount paid is in excess the question of incidence of tax passed to other does not arise and that they had not passed any incidence of tax and interest to another person and hence they are eligible for GST.
- x. They relied upon the decision of Hon'ble Delhi High Court in the case of M/s.Bharti Airtel Ltd Vs UOI and Othrs 2020 (5) TMI 169 Hon'ble Commissioner (Appeals) in the case of M/s.Honda Motorcycle and Scooter India Pvt.Ltd Vs Assistant Commissioner, CGST Division D, Bhiwandi II 2020 (10) TMI 895 ; decision of Hon'ble Sikkim High Court in the case of M/s.Sun Pharma Laboratories Ltd Vs UOI 2020 (11) TMI 785 ; decision of Hon'ble Karnataka High Court in the case of Commissioner of C.Ex (Appeals) Bangalore Vs KVR Construction 2012 (26) STR 195 (Kar) decision of Hon'ble Telangana High Court in the case of M/s.Vasudha Bommireddy Vs Assistant





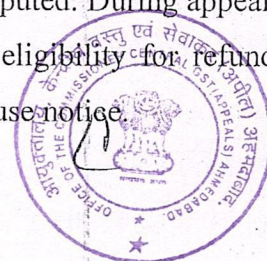
Commissioner of ST, Hyderabad 2020 (35) GSTL 52 (Telangna), decision of Hon'ble CESTAT, Bangalore in the case of M/s.Radha R Deshpande Vs Commissioner of CT, Bangalore North 2019 (27) GSTL 215 (Tri.Bang.) and decision of Hon'ble CESTAT, Chennai in the case of M/s.UR Options Vs the Commissioner of GST and Central Excise (Final Order 41021/2019) in support of their submissions.

xi. In view of above submissions the appellant requested to set aside the impugned order ; sanction the refund claim and to grant personal hearing.

4. Personal hearing was held on dated 3-3-2022. Shri Bishan Shah, Authorized Representative appeared on behalf of the appellant on virtual mode. He stated that he wants to file additional submissions for which he was granted 3 working days. Accordingly, the appellant via email dated 15-3-2022 made following additional submission;

The appellant referring to decision of Hon'ble Ahmedabad Tribunal in the case of M/s Pramukh Realty Limited reported at 2022(3) TMI Cestat, Ahmedabad ; M/s Nirbhay Developers Private Limited reported at 2018 (2) TMI 483 - CESTAT Ahmedabad ; M/s. Arang Constructions, Shyam Construction Co And Standard Buildcon reported at 2021 (6) TMI 947 -CESTAT Ahmedabad and Hon'ble Supreme Court in the case of Oswal Chemicals & Fertilizers Ltd. reported at 2015 (4) TMI 352 – SC contended that in light of the judgments, it is to submit that all the ingredients of the above case are similar with the appellant's case. The said judgments are similar to the appellant's case and therefore it is equally applicable to them; the refund application is filed on the basis of the ground of unjust enrichment and the locus standi for the GST already deposited in the intervening period, as the GST was no longer payable and the incidence of tax is borne by the applicant. It is settled principle of law that the person who has borne the incidence of tax shall be competent to apply for the refund. Therefore, in the current case the issue of locus standi and the issue of unjust enrichment both survive and the applicant has been properly authorized to apply for refund ; that they had rightly applied for the refund and that they are rightly eligible for the refund of excess amount paid by them for various period as mentioned in all the above stated appeal memos shall be refunded along with the interest.

5. I have gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. In above appeals the appellant has claimed refund of excess tax paid by them. In the show cause notice issued to the appellant, claim was proposed for rejection only on the ground that the payment of tax was made through ITC and the adjudicating authority vide impugned orders rejected the claim due to non submission of reply to show cause notice. It transpires from the show cause notice and impugned order that admissibility of refund under Section 54 of the Act was not disputed. During appeal proceedings, the appellant has also made submission in support of their eligibility for refund referring to various case Laws countering the charges made in the show cause notice.





6. In this regard, I find that vide Notification No. 16/2020-CT dated 23-3-2020, Rule (4A) was inserted under Rule 86 of CGST Rules, 2017 and Rule (1A) was inserted under Rule 92 of CGST Rules, 2017 as under :

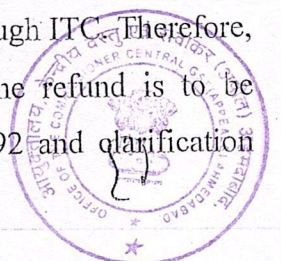
*“(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made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

*“(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.”;*

7. Consequent to above amendment, CBIC vide Circular No.135/05/2020 – GST dated 31-3-2020 has also issued clarification as under :

*4.4 The combined effect the abovementioned changes is that any such refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. in cases of refund, where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers (other than the refund of tax paid on zero-rated supplies or deemed export), the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed. Such amount, shall be accordingly paid by issuance of order in FORM GST RFD-06 for amount refundable in cash and FORM GST PMT-03 to re-credit the amount attributable to credit as ITC in the electronic credit ledger.*

8. I find that above amendments made under CGST Rules, 2017 and clarification issued by the Board settles the issue in hand and prescribe the manner of payment of refund of tax paid through electronic credit ledger and by way of cash. I further notice that there is no provision prescribed under CGST Act and Rules for rejection of refund of tax paid through ITC. Therefore, considering manner of payment of tax made during the claim period, the refund is to be sanctioned and paid in accordance with provisions of Rule 86 and Rule 92 and clarification issued by the Board.

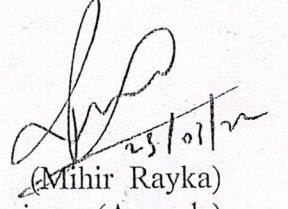




9. In view of above, I find that the adjudicating authority has rejected the refund claim on the ground of non submission of reply to show cause notice, wherein claim was rejected on the ground of payment of tax through ITC, which I find is not a justifiable and sustainable reason for rejecting refund claim. Consequently it emerge that the refund claim was rejected without considering reply to show cause notice and without granting opportunity of personal hearing in violation of provisions of Rule 92 of CGST Rules, 2017. Therefore I hold that the impugned orders passed by the adjudicating authority are not legal and proper and deserve to be set aside. Accordingly I set aside the impugned orders and allow the appeal.

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

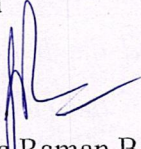
10. The appeals filed by the appellant stands disposed of in above terms.



(Mihir Rayka)

Additional Commissioner (Appeals)

Date :  
Attested



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



To,  
M/s. J.P Developers,  
B 1, Shantam, Near Havmor Restaurant,  
Navranapura, Ahmedabad -380 009

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, Ahmedabad South:
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

