



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

क फाइल संख्या : File No : GAPPL/ADC/GSTP/677/2021 -APPEAL /38-AM

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-162/2021-22**
दिनांक Date : **31-03-2022** जारी करने की तारीख Date of Issue : **31-03-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **CGST/WS08/Ref/Demand/12/ MK/2020-21 DT. 21.01.2021** issued by the Deputy Commissioner, Division IV, Ahmedabad South

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

**M/s. Praclad Containers LLP, B-305, 306, Infinity Tower, Profitaire,
Corporate Road, Prahaladnagar, Ahmedabad-380015**

(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 .



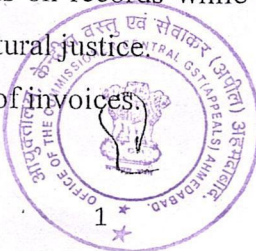
ORDER IN APPEAL

M/s.Praclad Containers LLP, B-305, 306, Infinity Tower, Profitaire, Corporate Road, Prahaladnagar, Ahmedabad 380 015 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 24-3-2021 against Order in original No.CGST/WS08/Ref/Demand/12/MK/2020-2021 dated 21-1-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, Division IV, CGST, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant made supplies to SEZ Unit on payment of tax and claimed refund of IGST of Rs.9,53,380/- paid by them. The claim was sanctioned by the vide Order No.CGST/WS08/Ref-33/BSM/2019-2020 dated 23-5-2019 by the Assistant Commissioner, Division VIII (Vejalpur), Ahmedabad South. During post audit it was noticed that the appellant has not submitted copy of invoice duly endorsed by the specified officer of SEZ unit after such goods have been admitted in full in the SEZ for authorized operations as per Rule 89 of CGST Rules, 2017. On appeal filed by the Department, the Commissioner (Appeals) vide OIA No.AHM-EXCUS-001-APP-JC-052-2019-2020 dated 28-2-2020 set aside the refund sanction order. The appellant was issued protective demand show cause notice No.CGST/GST/Ref-50/Praclad/D-VIII/2019-2020 dated 10-7-2020 to recover the erroneously sanctioned refund along with interest under Section 73 (1) and Section 50 of CGST Act, 2017. The adjudicating authority vide impugned order ordered recovery of erroneously sanctioned refund of Rs.9,53,380/- with interest and further ordered to appropriate amount of Rs.6440/- paid by the appellant on 31-1-2020.

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

- i. That the adjudicating authority has passed the impugned order without giving any opportunity of hearing to the appellant. It is settled law that whenever an adverse order is passed the party for whom such order is adverse should be allowed the opportunity of being heard.
- ii. That there has been complete breach of principles of natural justice as no opportunity of hearing was provided. Such absence may in turn amount to violation of rule of natural justice and opportunity implicit in any adjudicating process, affecting the right of the person. In such circumstances the impugned order suffers from the breach of principles of natural justice. The same is required to be set aside.
- iii. That only one shortcoming has been noticed by the Department. In the protective demand notice it has been stated that in instant case the claimant failed to submit the copy of the invoice endorsed by the specified officer of the SEZ and hence refund claim has not been cleared from post audit. However at the time of filing the original refund claim as well as when the issues were raised by the Department, the appellant time and again has provided copies of the invoices with the endorsement from the SEZ officer, but the same has not been reviewed properly by the adjudicating authority. It is the responsibility of the adjudicating authority to consider all the facts on records while issuing order in absence of which there was breach of the principle of natural justice.
- iv. That they submit endorsed copy of invoices.

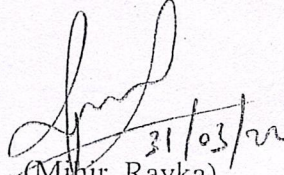


- v. That they had claimed refund of Rs.6440/- towards provision of services. The services were intangible in nature and therefore the same cannot be endorsed at the same time as is possible in the case of goods. That narrow interpretation of the adjudicating authority lead to inequality inasmuch as Section 16 (1) provides that all the services provided to SEZ unit shall be zero rated.
- vi. That it is not the case of the Department that the SEZ unit has not received the services/goods. Thus the impugned order is bad in law inasmuch as it does neither test nor discuss the veracity of certificate provided by the SEZ units.
- vii. In view of above submission the appellant requested to set aside the impugned order and allow the appeal.

4. Personal hearing was held on dated 12-1-2022. Shri Bhumit B Shah, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission.

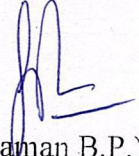
5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. I find that the impugned order against which subject appeal was filed was in fact passed in consequence to Order passed by the Joint Commissioner (Appeals) allowing prayer made by the Department for recovery of refund sanctioned to the appellant along with interest. The Order passed by the Joint Commissioner (Appeals) is undoubtedly in favor of the Department and against the appellant. In such a situation, the proper course of action to be initiated by the appellant is to challenge the Order of Joint Commissioner (Appeals) before higher Appellate Authority under Section 112 of CGST Act, 2017 for relief. Hence, without challenging the Order of Joint Commissioner (Appeals) it is not open to the appellant to challenge the impugned order which was issued in consequence to the Order of Joint Commissioner (Appeals) before this authority. Further there is no stay in operation against the order of Joint Commissioner (Appeals) and I am not vested with power to pass order against the order passed by Joint Commissioner (Appeals) which has attained finality. Therefore I find that the present appeal has no legal standing so as to take a decision on merit. Accordingly I upheld the impugned order and reject the appeal filed by the appellant.

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :
Attested


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



By RPAD,

To,
M/s. Praclad Containers LLP,
B-305, 306, Infinity Tower, Profitaire,
Corporate Road, Prahaladnagar,
Ahmedabad-380015

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 Deputy Commissioner, Division IV, Odhav, Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

