



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/675/2021 -APPEAL / 45-50

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-167/2021-22**

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. **ZV2403210305159 DT. 22.03.2021** issued by the Deputy Commissioner, Division V (Odhav), Ahmedabad South

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

Shri Suthar Jigneshkumar of M/s. Shree Chamunda Engineering Works, 22, Arun Industrial estate, Nr Jay Chemicals, GIDC, 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) 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

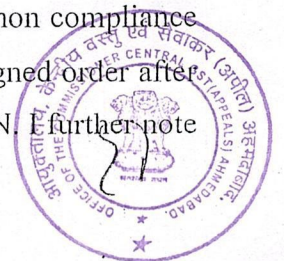
Shri Suthar Jigneshkumar of M/s.Shree Chamunda Engineering Works, 22, Arun Industrial estate, Nr Jay Chemicals, GIDC, Odhav, Ahmedabad 382 415 (hereinafter referred to as 'the appellant') has filed the present appeal online on dated 3-4-2021 against Order No.ZV2403210305159 dated 22-3-2021 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Division V Odhav, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24KAKPS6883M1ZJ, has filed refund application for Rs.93478/- for refund of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No.ZP2403210230082 dated 16-3-2021 proposing rejection of refund on the ground of ITC available is more than ITC availed in GSTR2A. The adjudicating authority vide impugned order held that refund of Rs.93475/- is inadmissible due to non compliance to SCN.

3. Being aggrieved the appellant filed the present appeal on following grounds :
The refund order is bad in law since it does not contain any Section under which the refund application is rejected ; that the refund application rejection is without providing proper details in SCN and conveying specific cause in SCN ; Refund has not been provided even after submitting proper documents to proper officer as response to SCN ; that the adjudicating authority has erred in Law and facts by wrongly/not calculating the ITC as per month wise report of GSTR2A, whereas month wise GSTR2A report was uploaded in response to SCN and such report has not taken place to considering the refund amount ; that refund was rejected by ignoring table 8 of GSTR 9 that is auto populated on GSTN portal ; the adjudicating authority has erred in Law and facts of the case by ITC mismatch is accruing due to technical error on GST portal ; that technical error cannot be the reason of rejection of refund application. In view of above submission the appellant requested to quash the impugned order and allow refund.

4. Personal hearing was granted on dated 10-3-2022, 17-3-2022 and 28-3-2022. No one appeared for personal hearing on behalf of appellant. As per Section 107 of CGST Act, 2017 this authority is empowered to grant three opportunity of personal hearing which has been granted to the appellant. Since neither the appellant nor their authorized representative has appeared for personal hearing on any of the three dates, I proceed to decide the case ex parte on merit.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. In this case refund was rejected due to non compliance of SCN wherein objection of ITC mismatch was alleged. As per documents submitted in appeal I find that the appellant has filed reply to SCN on dated 16-3-2021 in Form GSTR RFD 09 and the impugned Order was passed on dated 22-3-2021 due to non compliance of show cause notice. Apparently the adjudicating authority has passed the impugned order after submission of reply to show cause notice on the ground of non compliance to SCN. **Further note**



that in the show cause notice personal hearing was fixed on dated 23-3-2021 but the impugned order was passed on dated 22-3-2021 ie before the schedule date of personal hearing.

6. The provisions governing sanction and rejection of refund is given under Rule 92 of CGST Rules, 2017, as under :

(1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable:

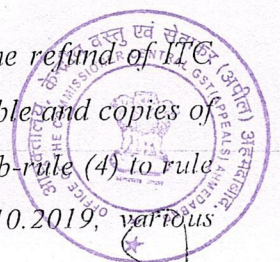
(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST 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.

7. In view of above, provisions of Rule 92 of CGST Rules, provide for sanction of admissible refund and rejection of refund after considering reply filed to the show cause notice and after granting personal hearing. However in the subject case, inspite of filing reply to show cause notice the claim was rejected on the ground of non submission of reply. Moreover, the impugned order was passed on the date prior to the schedule date of personal hearing. Therefore it is apparent that the order was passed without considering the reply filed by the appellant and without granting personal hearing. The adjudicating authority functioning as a quasi judicial authority is required to follow statutory procedures prescribed under Act and Rules and to observe principles of natural justice before deciding the refund application. However, it transpires that the adjudicating authority has decided the claim in pre-determined manner without following any of the provisions governing adjudication proceedings and also in violation of provisions of Rule 92 of CGST Rules, 2017. Therefore I find that impugned order is bad in Law and unlawful which itself a sufficient reason to set aside the order.

8. On the merit of case, I refer to CBIC Circular No. 135/05/2020 – GST dated 31-3-2020 wherein it was clarified as under :

5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various



references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

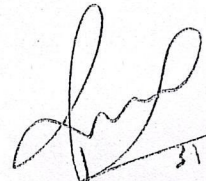
5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

9. In the subject case, I find that the appellant has filed refund claim taking into account the Net ITC at Rs.1,68,818/-. During appeal the appellant has submitted GSTR2A as per which Net ITC is Rs.1,69,512/- and Annexure B shows eligible ITC at Rs.1,69,449/-. Thus the Net ITC considered for determining the admissible refund is less than the ITC as per GSTR2A and Annexure B. The Circular cited above further clarifies that for the purpose of determining admissible refund, ITC availed under invoices which are reflected in GSTR2A only needs to be considered. Therefore, even if mismatch in ITC is noticed in the documents submitted by the appellant, the adjudicating authority ought to have sanctioned admissible refund taking into account the ITC reflected in GSTR 2A rather than rejecting the whole amount of refund. I also find that the appellant in reply to show cause notice has also clarified the mismatch in ITC but even the filing of reply was not considered by the adjudicating authority before ordering rejection. Therefore, I firmly hold that the entire claim of refund rejected by the adjudicating authority on the ground mentioned in impugned order is totally unjustifiable and unsustainable in the eyes of Law.

10. In view of above I hold that the impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside not only on merit but also being issued in violation of statutory provisions and circular. Therefore, I allow this appeal with consequential benefit in accordance with the provisions of Rule 92 of CGST Rules read with Circular No. 135/05/2020 – GST dated 31-3-2020. Accordingly I set aside the impugned order and allow the appeal filed by the appellant.

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

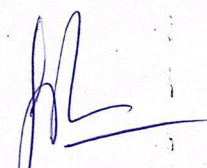
11. The appeal filed by the appellant stands disposed of in above terms.


31/08/22
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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



By RPAD,

To,
Shri Suthar Jigneshkumar
M/s. Shree Chamunda Engineering
Works, 22, Arun Industrial estate,
Nr Jay Chemicals, GIDC,
Odhav, Ahmedabad 382415

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 V, Odhav, Ahmedabad South
- 2) 6) Guard File
- 7) PA file

