



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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DIN-202112645W000000C085

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/171/2021-APPEAL /5133 TC 5133
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-85/2021-22**
दिनांक Date : **15-12-2021** जारी करने की तारीख Date of Issue : **15-12-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZQ2411200025867** DT. **03.11.2020**
issued by Assistant Commissioner, CGST, Division V-Odhav, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Shri Ajaykumar Sumermalji Bhansali of M/s. ASB Steels, Shed No. 06,
Sanskar Industrial Estate, Ring Road, 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 की 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 .

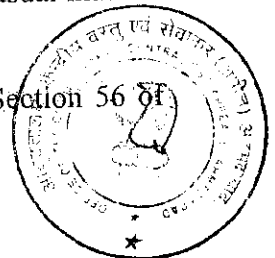
ORDER IN APPEAL

Shri Ajaykumar Sumermalji Bhansali of M/s.ASB Steels, Shed No.06, Sanskar Industrial Estate, Ring Road, Odhav, Ahmedabad -382 415 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 27-1-2021 against Order No.ZQ2411200025867 dated 3-11-2020 (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, registered under GSTIN 24AWXPB8976F1ZX, has filed refund claim for Rs.335650/- for refund of unutilized ITC on account of accumulation due to inverted tax structure for the period April 2019 to March 2020. The appellant was issued SCN on dated 16-10-2020 asking them to provide the amount of ITC available in GSTR2A. The adjudicating authority vide impugned order rejected the claim on the ground that 'Time Bound matter: GSTR2A not submitted'.

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

- i) That they has filed refund claim along with all the documents which includes GSTR2A in portable document format ;
- ii) That they had submitted all the details like GST reconciliation between GSTR3B and GSTR2A at the time of filing of refund application which shows that mismatch arises between above two returns is clearly described and mentioned in the reconciliation report and which is clearly explained by authorized representative at the time of appearing before the adjudicating authority and additionally for the facilitation of the adjudicating authority they have demanded GSTR2A in excel format but at the time of filing reply in GSTRFD 09 due to some error or mistake it was not attached in supporting documents. Therefore they attached reconciliation between GSTR3B and GSTR2A and GSTR2A in excel format for clarifying the mismatch of ITC and amount of ITC available in GSTR2A along with their appeal.
- iii) That they had filed the refund claim within the time limit prescribed under Section 54 of CGST Act, 2017 ;
- iv) That all the documents except GSTR2A in excel format was submitted at the filing of refund application ;
- v) That the impugned order was passed without according personal hearing as required under proviso to Rule 92 (3) of CGST Rules 2017 ;
- vi) That the claim was rejected without giving another opportunity to rectify the mistake and also without giving additional opportunity of being heard violating the principles of natural justice ;
- vii) That the refund rejection order was passed in haste and in mechanical and casual manner without following the proper refund procedures ;
- viii) That the refund should be granted along with interest in terms of Section 56 of CGST Act, 2017 ;



- ix) That the beneficial provisions should be construed liberally and considering various relief provided by the Government due to COVID 19 pandemic, the appellant should be granted benefit of refund claim ;
- x) That the if refund is not admissible then debit entry made in electronic credit ledger to be restored ;

4. In view of above submissions the appellant requested to set aside the refund order and grant them entire refund claim with applicable interest.

5. Personal hearing was held on dated 9-12-2021. Shri Rushabh Singvi, Authorized representative appeared on behalf of the appellant on virtual mode. He stated that he have to add more submissions for which they have been given 7 working days to do so.

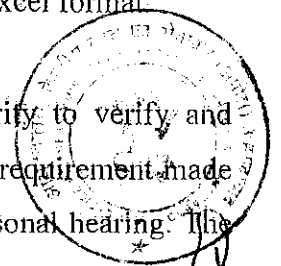
6. Accordingly, vide letter dated 9-12-2021 Shri Rushabh Singhvi submitted that in GST RFD 01 application they have attached GSTR2A in supporting document at the time of filing of GST refund application. Hence he requested to sanction this refund. Copy of RFD 01 was also attached.

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the authorized representative and documents available on record. I find that in this case refund claim was rejected on the ground of time bound matter and non submission of GSTR2A.

8. I find that refund claim was filed for refund of ITC accumulated on account of inverted duty structure in terms of Section 54 (3) of CGST Act, 2017. As per Section 54 of CGST Act, 2017, refund claim is to be filed within two years from relevant date. The relevant date in respect of claim filed under 54 (3) of CGST 2017 prescribed under clause (e) to Explanation 2 to Section 54 is due date for furnishing of refund under Section 39 for the period in which such claim of refund arises. In this case claim pertains to the period April 2019 to March 2020 and hence relevant date for filing refund claim pertaining to each month is on or before 19th day of succeeding month in the year 2021-2021 ie two years from due date of filing of returns in respective months. In this case the claim was filed on dated 29-9-2020 and hence the claim is filed within the time limit prescribed under Section 54 of the Act.

9. Regarding non filing of GSTR2A returns I find that along with their refund application the appellant has attached GSTR2A in PDF form. However, it transpires from their submission that they were asked to submit GSTR2A return in excel format which they had not provided in reply to SCN due to which the claim was rejected. However in appeal proceedings the appellant has attached reconciliation between GSTR 3B and GSTR2A and GSTR2A in excel format.

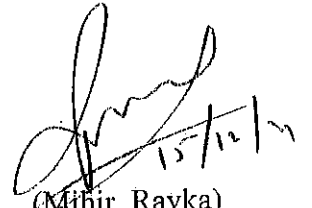
10. In this regard a report was called for from the adjudicating authority to verify and confirm as to whether the aforesaid documents submitted in appeal fulfils the requirement made in SCN and also comments on the appellant's submission of non grant of personal hearing. The



adjudicating authority vide letter File No. V/Div/GST Refund/Misc/2021-2022 dated 8-12-2021 confirmed that the appellant was granted personal hearing on dated 30-10-2020 and that the refund portal doesn't allow SCN to be issued without granting personal hearing. Regarding verification of reconciliation statement and copy of GSTR2A returns the adjudicating authority confirmed that the above documents furnished in appeal fulfils the requirement made in the SCN and that the appellant is entitled for refund.


11. In view of above, I hold that since the appellant has complied with the requirement of SCN and consequential refund rejection order, the appellant is entitled for refund claimed by them. With regard to their request for grant of refund along with interest, I find that as per Section 56 of CGST Act, 2017, the liability to pay interest arise in cases where tax ordered to be refunded under sub section (5) of Section 54 is not refunded within sixty days from the date of receipt of application under sub section (1) of Section 54 till the date of refund of such tax. In the subject case at this stage of proceedings no order was passed yet ordering refund of tax necessitating payment of interest. Further non grant of interest is also not a part of Order appealed against in this appeal. Therefore, I do not intend to make any further discussion on this ground. Accordingly, I allow the appeal to the extent of grant of refund and set aside the impugned order.

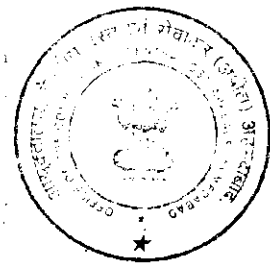
12. अपीलकर्ता द्वारा दर्ज की गई अपील को कानिपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.


(Mihir Rayka)

Joint Commissioner (Appeals)

Date :
Attested


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



To,

Shri Ajaykumar Sumermalji Bhansali of M/s.ASB Steels,
Shed No.06, Sanskar Industrial Estate, Ring Road,
Odhav, Ahmedabad -382 415

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 Assistant Commissioner, Division V (odhav), Ahmedabad South
- 6) Guard File
- 7) PA file