



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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DIN-20211264SW0000838127

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2101/2021-APPEAL / 5256 To 5261

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-94/2021-22**
दिनांक Date : **22-12-2021** जारी करने की तारीख Date of Issue : **22-12-2021**

श्री मिहिर रायका संयुक्त आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No **ZX2409210207544** दिनांक: **15-9-2021** issued by
Assistant Commissioner, CGST, Division-I, Ahmedabad South

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

M/s. Narsi Interior Infrastructures, 1.1, C/O Nirmat Atul Bhavsar,
Bala Hanuman Naka, Pushpkarna Pole, Gandhi Road, Ahmedabad-380001

(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

This appeal has been filed under Section 107 of the Central Goods and Service Tax Act, 2017 (hereinafter also referred to as " the Act") by M/s. Narsi Interior Infrastructures , 1.1, C/O Nirmit Atul Bhavsar, Bala Hanuman Naka, Pushpkarna Pole, Gandhi Road, Ahmedabad-380001(hereinafter also referred to as " the appellant ") against the Order-in -Original No. ZX2409210207544 dated 15.09.2021 (hereinafter as "the impugned order") passed by the Assistant Commissioner, Central Goods & Service Tax, Division-1, Ahmedabad- South (hereinafter called as "the adjudicating authority").

Sr. No.	Appeal No.	Order in Original No. & date(Impugned order)	Period of dispute	Order rejecting amount
1	2	3	4	5
1	GAPPL/ADC/GSTP /2101/2021- APPEAL	ZX2409210207 544 dated 15.09.2021	March 2021 to June 2021(accumulation of ITC due Zero rated supply.	Rs. 3,23,89,0 38/-

2. BRIEF FACTS OF THE CASE

2.1 The appellant having GSTIN No. 24AACCN8311Q1Z6 has filed refund application vides ARN No. AA2407211188863 dated 30.07.2021 under Section 54 of CGST Act, 2017 in respect of ITC on export of goods and services to the SEZ without payment of tax for the period and amount are mentioned in Para (1) above in column No. (4) and (5) .

2.2. On examination of refund claim filed by the appellant, the adjudicating authority observed and issued a show cause notice in FORM-RFD-08 dated 09.09.2021 on account of the following reasons:

"The appellant has not submitted the payment particulars for supply of services made. Unit was not found at the declared address. Hence, it appears that the unit is not in existence. "

2.3 Further, the adjudicating authority has rejected the refund claim vide RFD-06 dated 15.09.2021 on the ground that "Claimants reply to the SCN is not found satisfactory. During physical verification of Principal place of business of tax payer premises had been verified and not found in existence as per CGST Act, 2017. Hence claim is rejected u/s 54 of CGST Act, 2017.



2.4 Being aggrieved with the impugned order dated 15.09.2021, the appellant has filed the appeal on 30.07.2021 on the following grounds which are summarized as under:-

- (i) that the refund claim is eligible to the appellant in terms of Section 16 of IGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 subject to conditions (a) Services provided are eligible for refund as Zero-rates services (b) Supplier has unutilised input tax credit (c) Supplier has furnished the requisite documents to process the refund and the prescribed refund form. Appellant have argued that they have complied with all the conditions, hence there is no ground to reject the refund claim filed by the Appellant. Further, it has been argued by the appellant that the refund provisions do not mandate an assessee to prove physical and working office at the time of filing of refund.
- (ii) that there is no provision in the GST law as well rules made there under provides for the physical verification of the principal place of business before processing of refund. The act of rejection of refund claim on the basis of *suo motu* verification of principal place of business by adjudicating authority before processing of refund is arbitrary and beyond the provisions of GST law.
- (iii). that the adjudication authority has rejected the refund claim merely on the ground that at the time of physical visit, the place of business was found closed; it is further submitted that the finding is merely bases upon apprehension and not supported by any corroborative evidence; the place of business in Gujarat state is taken by the appellant on rent; merely because on a particular date said premise found closed, it does not mean that the place of business does not exists; further it has been deposed that pandemic caused by COVID-19 has changed the way of working in which business used to work, the majority of staff works directly at the site to execute the contract; the employees undertakes other business activities. Employees works from home and come to office occasionally; they were following guidelines issued by the Central /State Government for the containment of the Covid-Pandemic ; merely because their office was closed on a particular day, it does not mean that the place of business does not exists.; the appellant has enclosed copy of letter from whom the appellant had taken the premises on rent to further substantiate that the said premises were taken on rent by the appellant during the said period and that the Appellant was operating its office from the said location.
- (iv) that the adjudicating authority has not challenged the validity of rent agreement at the time of GST registration; once the adjudicating accepts the rent agreement submitted by the appellant as valid rent agreement then it is deemed that the appellant has valid place of business as declared in the GST registration certificate; the act of taking registration at the said place has not been challenged.
- (v) that the adjudicating authority did not follow the proper procedure for physical verification of the place of Business as explained as follows (a) the adjudicating authority did not give any prior intimation regarding physical verification of PPS to the



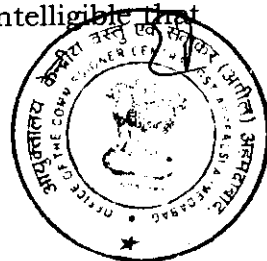
appellant (b) as per Rules 25 of CGST Rules 2017 physical verification of the premises needs to be done in the presence of the registered person.ules 2017.

(vi) that the adjudicating authority only disputed the existence of premises but does not dispute the provision of the Zero-rated service as well tax paid on the receipt of inward supply of goods/services by the appellant; the Appellant is a reputed company undertaking business since last 13 years; the work order is issued buy a SEZ unit at the premises of the Appellant in Gujarat; the SEZ officer has also certified the provisions of services by the Appellant; the appellant has raised proper E-invoices; the appellant has also been providing services to various non-sez customers; no dispute has been raised in respect of any other transaction.

(vii) that as per section 26 (a) of SEZ Act, 2005, Services supplied to SEZ unit carry on authorized operations is exempted from Goods and Service Tax. Section 51 of the Special Economic Zone Act, 2005 provides that the provisions of this Act shall have an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any other law other than this Act; to give effect to the provisions of section 26 of SEZ Act 2005, GST law provides option of supplying services to SEZ unit under LUT and claim refund by the supplier of services of unutilised input tax credit pertaining to inward supply of goods/services. It is not in disputes that appellant has provided the services to SEZ unit for their authorized option under LUT and has paid taxes on the inward supply of goods/services; once the refund is denied to the appellant on the ground of non-existence of place of business will amount to taxing the supply of services t SEZ unit and same will contrary to section 51of SEZ Act 2005 hence finding given by the adjudicating authority is not sustainable and order in original to be set aside.

(viii) that the appellant had submitted its response to the SCN. However, the department without considering the reply and without negating the submission of the appellant issued present order. No reasons have been adduced in the impugned order; it has been submitted that any order issued without considering overall material on records and submissions is in violation of principles of natural justice and against the settled legal position. The appellant has relies on the judgment in case of Himalaya Construction Pvt. Ltd. 2016 (41) STR 587 (P & H) wherein Hon'ble Supreme Court in case of Kranti Associates Pvt. Ltd v. Masood Khan - 2011(273) E.L.T. 345(S. C.) has held that any order cannot be passed without considering overall material on records including SCN reply.

(ix) Further the appellant has submitted that SCN issued to the Appellant is not specific, vague and lack details. SCN merely alleges regarding non- existing of place of business without any corporative evidence. The Appellant has relied upon the Hon'ble Supreme Court ' Judgment in case of Commissioner of Central Excise , Bangalore Vs. Brindavan Beverages (P) Ltd. 2007 (213) E.L.T. 487 (S.C) held that show cause notice is the foundation on which the department has to build up its case. If allegations are not specific in SCN and are on contrary vague, lack details and /or unintelligible that

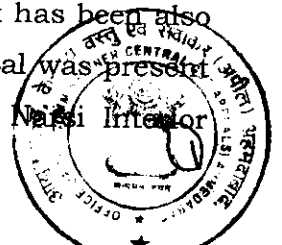


is sufficient to hold that the noticee was not given proper opportunity to meet the allegations.

3. Personal Hearing

Personal hearing in virtual mode through video conference was held on 14.10.2021. Shri Lovelesh Maheshwari authorized Representative on behalf of the appellant has attended the personal hearing. They have said that the decision may be taken on the basis details submitted by them till date.

4. I have gone through the facts of the case and written submissions made by the appellant in their appeal memo as well as oral submission at the time of personal hearing and accordingly, I proceeded for deciding the appeal.
5. At the outset, I find that the appellant is engaged in the providing service of works contract services which involves various activities in respect of immovable property including flooring work, electrical work, HAVC work, and plumbing work.
6. I find that the appellant has filed refund claim under Section 54 of the GST Act, 2017 on account of supplies made to SEZ unit / SEZ developers made (without payment of duty.) for the tax period from March 2021 to June 2021. I find that the Adjudicating Authority vide SCN reference No. ZP2409210137511 dated 09.09.2021 rejected the refund application on the ground that the Appellant have not submitted the payment particulars for supply of services made and unit was not found at the declared address. Hence, it appears that the unit is not in existence. I found that the SCN dated 09.09.2021 adjudicated by the JAC and rejected the refund claim on account that during physical verification of Pr. Place of business of tax payer, premises had been verified and not found in existence as per CGST Act, 2017, hence the claim is rejected U/s. Section 54 of CGST Act, 2017.
7. I find that there is no allegation in SCN / OIO that the appellant has not provided the works contract services to the SEZ without payment of duty and tax paid on receipt of inward supply.
8. I find that the appellant has also submitted the Letter of undertaking for export of goods or services without payment of integrated tax.
9. A letter dated 21.10.2021 was written to the Adjudicating authority for clarification on existence of the unit the same was replied by the adjudicative authority vide letter dated 26.10.2021 and reiterated that at the time of physical verification the unit was found non existence; in response to the letter dated 26.10.2021, another letter dated 17.11.2021 was sent to adjudicating authority seeking more clarification; the adjudicating authority vide letter dated 15.12.2021 has submitted that the premises of appellant was again verified and it was found that a small flex banner was pasted upon on old banner above main gate of the premises mentioning name of unit, GSTIN No. and address of the unit; further it has been also been noticed that a person namely Shri Manohar Lal S/o Shri Iswar Lal was present in the office and he informed that he is the employee of the M/s. Narsi Interior



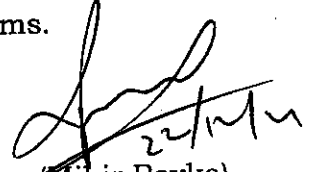
Infrastructures Pvt. Ltd; he further informed that the premises has been taken on rent by the company but did not have rent agreement copy in the office and the office has been shifted here 03 months ago for records keeping. Further, it has been observed various dusty books and files were lying on the ground. The appellant have also submitted rent agreement dated 17th February 2020 executed between M/s. Narsi Infrastructures Private Limited and Nirmal Atul Bhavsar.

10 I find that in the present case, there is no dispute by the adjudicating authority on the facts of provision of service by the appellant to the SEZ, use of inputs for provision of output service and the eligibility of ITC on the said inputs under the Act. The adjudicating authority has rejected the refund claim solely on the ground that the unit was not found in existence during physical verification. I find that from the letter submitted by the Adjudicating authority it seems that the unit is in existence and letter is also vague in nature. It transpires that no action has been initiated by the concerned officer regarding non existence of the unit. As stated above, there is no such allegation against the appellant in the facts of the present case. In the facts of the case, the appellant seems to have complied with all the requirements for claiming refund as stipulated under the provisions of law. Therefore, the adjudicating authority's decision of rejection of refund claimed by the appellant on the ground that the unit was found non-existence is not a valid ground to deny the benefit of refund and I have no other option but to set aside order-in-original out rightly for being not sustainable in law.

11. In view of the above discussions, I set aside the Order- in Original passed by the adjudicating authority and allow the appeal filed the Appellant

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

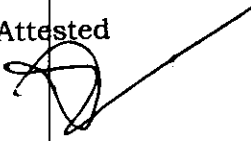
The appeal filed by the appellant stands disposed of in above terms.



(Mihir Rayka)
Joint Commissioner
(Appeals)

Date: .12.2021

Attested



(H. S. Meena)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,

M/s. Narsi Interior Infrastructures , 1.1,
C/O Nirmat Atul Bhavsar, Bala Hanuman Naka, Pushpkarna Pole,
Gandhi Road, Ahmedabad-380001

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C.Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Commissionerate- Ahmedabad -South
4. The Assistant Commissioner, CGST & C.Ex, Division-I. Ahmedabad, South
Commissionerate-
5. The Additional Commissioner, Central Tax (System), Ahmedabad South
Commissionerate-.
26. Guard File.
7. P.A. File

