



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-20220464SW0000889808

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2458 & 2456/2021 -APPEAL /311-316

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-01/2022-23**
दिनांक Date : **07-04-2022** जारी करने की तारीख Date of Issue : **08-04-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZR2405210429573 DT. 24.05.2021 & ZQ2405210528317 DT. 24.05.2021** issued by Deputy Commissioner, Division V (Odhav) Ahmedabad South

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

Shri Ravindrakumar Shyamsundar Agrawal of M/s. Agrawal Metal, 36/A, Udhay Industrial Estate, Opp Police Station, 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 Ravindrakumar Shyamsundar Agrawal of M/s.Agrawal 'Metal, 36/A, Udhay Industrial Estate, opp Police Station, Odhav, Ahmedabad 382 415 (hereinafter referred to as 'the appellant') has filed the present appeals on dated 16-11-2021 against Order No.ZR2405210429573 and ZQ2405210528317 both dated 24-5-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, Division V Odhav, Ahmedabad South (hereinafter the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AJWPA4083E1Z9, has filed two refund claims for refund of Rs.6,92,736/- and for Rs.5,55,291/-. The appellant was issued show cause notice No.ZW2405210378006 dated 21-5-2021 and No.ZS2405210347384 dated 20-5-2021 proposing rejection of the claim on the ground that *"latest return not filed, please provide sum of ITC available in GSTR2A."* The adjudicating authority vide impugned orders held that refund is inadmissible to the appellant on the ground that *Time bound matter. Reply to SCN not made/not visible on the portal.*

3. Being aggrieved the appellant filed the present appeal on the ground that refund was rejected without a valid reason. The appellant further requested to admit the appeal and grant refund.

4. Personal hearing was held on dated 1-4-2022 in both the appeals. Shri Rajiv Yadav, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission till date.

5. I have carefully gone through the facts of the case, ground of appeal, submissions made by the appellant and documents available on record. I find that the adjudicating authority has rejected the refund due to reason that compliance to SCN not made/not visible on the portal. I find the findings itself is very contradictory inasmuch as it does not pin point as to whether the appellant has not filed reply to SCN or filed reply to SCN but it is not visible on portal. However, I find that the appellant has filed reply to SCN in Form GST RFD 09 under Ref No.ZW2405210378006 dated 22-5-2021 and No.ZS2405210347384 dated 22-5-2021 wherein they have attached copy of return and GSTR2A with sum in compliance to show cause notice. Therefore it is clear that the appellant has filed reply to SCN but due to invisibility of reply to the adjudicating authority in the portal the refund was rejected. In such a situation as an alternative mode the adjudicating authority could have obtained a physical copy of the reply uploaded in the portal and verified the same but instead of doing so rejected the entire claim without even looking into the reply filed by the appellant. I further note that personal hearing was fixed on dated 28-5-2021 and 27-5-2021 but the impugned orders were passed on dated 24-5-2021 ie before the schedule date of personal hearing which further indicates that no personal hearing was held before rejecting the refund claims. I further note that the claim was also rejected due to time bound matter. I find from the records that the claims were filed by the

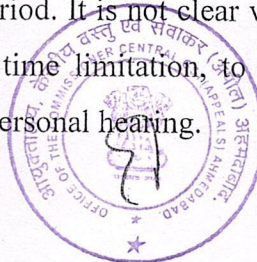
appellant on dated 3-5-2021 and 1-5-2021 and the impugned orders rejecting the claim was passed on dated 24-5-2021 ie with 20-22 days time period. It is not clear what prompted the adjudicating authority to consider the claim bound by time limitation, to take a hasty decision without considering the reply and without granting personal hearing.

6. In this regard, I refer to the provisions governing rejection of refund contained under Rule 92 (3) is as under:

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.

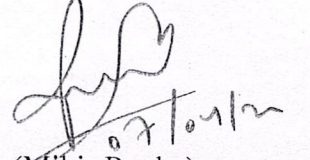
7. As per provisions of sub rule (3) of Rule 92 of CGST Rules, it is mandatory requirement to issue show cause notice; consider the reply filed by the claimant; provide opportunity of personal hearing and record the reasons in writing for rejection of refund claim. In the subject case it is evident that except issuance of show cause notice, no other procedures were followed by the adjudicating authority before rejecting the refund claim. Thus, I find that the impugned orders were passed without following the statutory provisions denying substantive benefit due to the appellant. Therefore, I hold that the impugned orders passed in violation of provisions of Rule 92 of CGST Rules 2017 are bad in Law and hence legally untenable and unsustainable. I find from the records that the claims were filed by the appellant on dated 3-5-2021 and 1-5-2021 and the impugned orders rejecting the claim was passed on dated 24-5-2021 ie with 20-22 days time period. It is not clear what prompted the adjudicating authority to consider the claim bound by time limitation, to take a hasty decision without considering the reply and without granting personal hearing.



8. In view of above, I hold that the impugned orders passed by the adjudicating authority without following the procedures prescribed under Rule 92 of CGST Rules, 2017, are not legal and proper and deserve to be set aside. Accordingly I set aside the impugned orders and allow the appeals filed by the appellant.

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

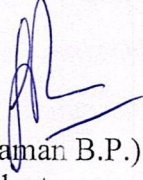
9. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



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



By RPAD

To,

Shri Ravindrakumar Shyamsundar Agrawal
of M/s.Agrawal Metal,
36/A, Udhay Industrial Estate,
opp Police Station,
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 Deputy Commissioner, CGST, Division I (Rakhial) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

