



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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टेलीफैक्स 07926305136



DIN- 20220964SW0000616636

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/108/2022 -APPEAL /3631 — 3636

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC- 107/2022-23**  
दिनांक Date : **02-09-2022** जारी करने की तारीख Date of Issue : **05-09-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **Z02409210010433** dated **01.09.2021**  
issued by Assistant Commissioner, Division-V, Ahmedabad South

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

**Shri Dipesh Ichhashanker Raval of M/s. Refcast Corporation**  
**A-16, Dev I Land, Near GIDC Kathwada, Ahmedabad, Gujarat-382430**

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



**ORDER IN APPEAL**

Shri Dipesh Ichhashanker Raval, of M/s.Refcast Corporation, A 16, Dev I Land, Near GIDC, Kathwada, Ahmedabad 382 430 (hereinafter referred to as the appellant) has filed the present appeal online on dated 26-11-2021 against Order No.ZO2409210010433 dated 1-9-2021 (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 24ABLPR4103R1Z8 has filed refund claim for Rs.2,27,700/- for refund of excess payment of tax paid during the month of October 2019. The appellant was issued show cause notice reference No.ZO2408210322598 dated 25-8-2021 for rejection of the claim on the reason that tax was paid with ITC and hence refund in cash is not admissible. The adjudicating authority vide impugned order held that refund is admissible to the appellant on the ground mentioned in show cause notice advising the appellant to file PMT 03 online for recredit of ITC.

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

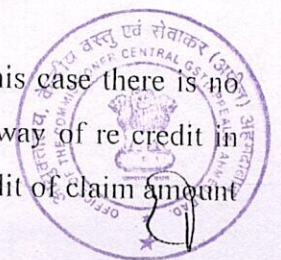
They filed Form GST RFD 01 or claim of refund of tax paid in excess for which debit has been made from electronic credit ledger which shall be re-credit to the electronic credit ledger by the proper officer by an order made in Form GST PMT 03 as per sub rule (4A) of Rule 86 of CGST Rules, 2017. They had agreed to received the amount claim as refund by way of re-credit in electronic credit ledger ; the impugned order appears to be an outcome of mistake occurred on the part of the adjudicating authority who inspire of the fact that the they agreed to the contention made in SCN rejected the entire claim by erroneously passing the order in Form GST RFD 06 instead of Form PMT 03. Hence the impugned order is bad in law, fallacious and invalid and therefore should be quashed. The contention of adjudicating authority was only to process the refund by way of re-credit in electronic credit ledger and that there was never any intention nor contention or proposal in the SCN to reject the refund claim on account of any reason. They accept the contention made in SCN and there appears to be no ground for the rejection of refund claim on any other reason. Rule 89 (4A) specifically provides for the issue of refund order in Form PMT 03 in cases where there is excess payment of taxes and where the debit has been made by debit from electronic credit ledger. Further Rule 92 (1A) has also been inserted in relation to above context. Further Circular NO.135/05/2020 dated 31-3-2020 the Board further released a clarification in this regard. From the above it is amply clear that the adjudicating authority was supposed to issue refund to the extent the excess taxes were paid by way of debit in the Electronic Credit Ledger vide Form GST PMT 03 and to the extent the excess taxes were paid in cash vide Form GST RFD -06. The adjudicating authority did not pass the order in Form PMT 03 to the extent of excess taxes paid by way of debit in electronic credit ledger and thus rejected refund claim by erroneously passing Order in Form GST RFD 06. The conduct of the adjudicating authority is contrary to the procedure and manner prescribed by the Board. The adjudicating authority actually intended to process the refund claim and re credit the electronic credit ledger. Hence the impugned order

appears to be passed accidentally and not purposefully which resulted in rejection of refund. Hence the same should be quashed and set aside. It is clearly an unintentional mistake or error on the part of the adjudicating authority for which there is no remedy on the common portal. Therefore the respondent authority is not able to rectify the order based on the mistake apparent on record. The only remedy available with the appellant is to know the doors of quasi judicial authorities and hence this appeal is filed by them. They filed PMT 03 as advised by the adjudicating authority but unfortunately the adjudicating authority mistaken not to fill Col NO.6 amount to be paid in PMT 03 for which there is no remedy on the common portal. Therefore the adjudicating authority is not able to rectify the order based on the mistake apparent on record. Due to not filled Col. NO.6, amount to be paid in PMT 03 by the adjudicating authority they were unable to get re credit of an amount of excess payment of tax in their electronic credit ledger mistake occurred at the time of issuing RFD 06. In view of ambiguity in the Order the adjudicating authority is not able to rectify the order based on the mistake apparent on records. In view of above submissions the appellant contented that the impugned order is not in accordance with the facts and legal position and not sustainable and maintainable and liable to be quashed and set aside.

4. Personal hearing was held on dated 25-8-2022. Shri Harshadbhai G Patel authorized representative appeared on behalf of the appellant on virtual mode. He asked for three working days to submit additional submission for which the request is duly granted. Accordingly the appellant vide letter dated 25-8-2022 filed additional submission wherein they re-iterated the grounds made in appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. I find that in this case refund claim was rejected on the reason that excess paid tax claimed as refund was paid through ITC and hence cash refund is not admissible. It is evident that there is no dispute with regard to admissibility of refund to the appellant on merit. From the grounds of appeal and submission made by the appellant I find that they had accepted the grounds and requested to grant refund by way of recredit in electronic credit ledger vide Form GST PMT 03 in terms of Rule 86 (4A), Rule 92 (1A) of CGST Rules, 2017 read with CBIC Circular No.135/05/2020 dated 31-3-2020 . Therefore, so far as grant of refund by way of re-credit in electronic credit register also there is no dispute or objection from the appellant. It further transpires that as advised by the adjudicating authority, they had filed PMT 03 but the adjudicating authority mistakenly not filled Col No.6 'Amount to be paid in PMT 03' for which no remedy is available on common portal to rectify the same and hence they could not get recredit of claim amount in electronic credit ledger. The appellant themselves stated that issuance of impugned order instead of Form PMT 03 is an unintentional mistake/error on the part of adjudicating authority and hence the present appeal was filed to set aside the impugned order so that they are benefitted with refund by way of re-credit in electronic credit ledger.

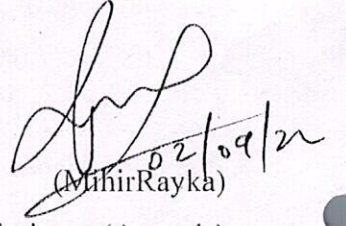
6. In view of above facts and circumstances of the case I find that in this case there is no dispute with regard to admissibility of refund and entitlement of refund by way of re credit in electronic credit register from either side. The only issue is non grant of recredit of claim amount



vide Form GST PMT 03 which apparently was due to mistake and error on the part of the adjudicating authority and which resulted in issuance of impugned order rejecting refund to the appellant. Since the impugned order was mistakenly issued denying the appellant with substantive benefit due to them, I hold that the impugned order passed by the adjudicating authority rejecting refund to the appellant is not legal and proper and deserve to be set aside. Therefore, I allow this appeal with consequential benefit to the appellant. I further Order that the appellant may be granted refund by way of re-credit in electronic credit ledger by an Order made in GST Form PMT 03. Accordingly, I set aside the impugned order and allow the present appeal filed by the appellant.

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

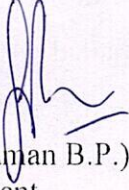
7. The appeal filed by the appellant stands disposed of in above terms.

  
(MihirRayka)

Additional Commissioner (Appeals)

Date :

Attested



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



By RPAD

To,

Shri Dipesh Ichhashanker Raval,  
of M/s.Refcast Corporation,  
A 16, Dev I Land, Near GIDC,  
Kathwada, Ahmedabad 382 430

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 Assistant Commissioner, CGST, Division V (Odhav), Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

