



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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रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTD/232/2021 -APPEAL /3637 42
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC- 108 /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. **ZU2405210461984 DT.26.05.2021**
issued by Deputy Commissioner, Division-VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Assistant Commissioner,CGST, Division-VII, Ahmedabad South

(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



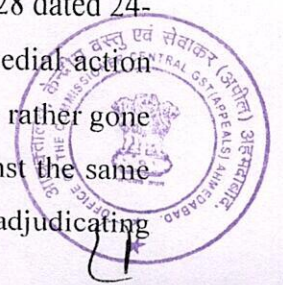
ORDER IN APPEAL

Assistant Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the appellant) has filed the present appeal on dated 25-11-2021 against Order No.ZU2405210461984 dated 26-5-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division VII, Ahmedabad South (hereinafter referred to as the adjudicating authority) sanctioning refund of Rs.1,09,86,643/- to M/s.Alvita Pharma Pvt Ltd B-203, B Wing, Gopal Palace, Satellite, Ahmedabad 380 015 (hereinafter referred to as the respondent).

2. Briefly stated the fact of the case is that the respondent registered under GSTIN 24AAICA1744Q2ZD has filed refund claim for Rs.1,09,86,643/- under head 'others' due to erroneous rejection of SGST vide Order No.ZU2405210422728 dated 24-5-2021 passed for unutilized input credit on export of goods under LUT for the FY 2019-2020 filed vide ARN No.AA2405210628856 dated 24-5-2021 under Section 54 (3) of CGST Act, 2017. Earlier the respondent vide ARN No.AA240521026336N dated 11-5-2021 has filed refund for unutilized input credit on account of export of goods under LUT for the period 1-4-2019 to 31-3-2020 for Rs.2,19,73,286/-. The adjudicating authority after scrutiny of the claim sanctioned Rs.1,04,52,212/- and rejected Rs.1,15,21,074/- vide Order No.ZU2405210422728 dated 24-5-2021. The respondent then filed the present claim vide ARN NO.AA2405210628856 dated 4-5-2021 for the amount of Rs.1,09,86,643/- in any other category out of the rejected amount of Rs.1,15,21,074/- which was rejected vide Order dated 24-5-2021. After verification, the adjudicating authority found deficiency and issued show cause notice on dated 25-5-2021 calling for the DRC 03 for Rs.1,09,86,643/- and electronic credit ledger showing debit entry against DRC 03. The respondent vide reply dated 25-5-2021 submitted the same and accordingly the adjudicating authority found the claim in order and sanctioned an amount of Rs.1,09,86,643/- only (out of Rs.1,15,21,074/- rejected vide earlier order dated 24-5-2021 vide impugned order. During review of the claim it was observed that the respondent had again filed refund claim for the rejected amount vide ARN dated 24-5-2021 under 'any other' category due to erroneous rejection of SGST refund vide Order No.ZU2405210422728 passed for unutilized ITC on export of goods under LUT and the said claim was sanctioned vide Order dated 26-5-2021. However on going through the refund claim it is noticed that the adjudicating authority instead of rectifying the earlier order dated 24-5-2021 sanctioned the present claim ignoring the remedial action available under Section 161 of CGST Act, 2017 . Therefore the impugned order became non est and is not proper and legal.

3. In view of above facts the appellant filed the present appeal on the following grounds:

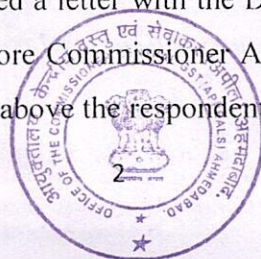
The adjudicating authority instead of rectifying the earlier order No.ZU2405210422728 dated 24-5-2021 sanctioned the present claim of Rs.1,09,86,643/- even though option for remedial action under Section 161 of the CGST Act, 2017 was available. Also the claimant could have rather gone into appeal against the previous refund order if the claimant has any grievance against the same order. Therefore impugned order became non est and not proper and legal. Thus the adjudicating



authority failed to follow appropriate course of action and the present claim for Rs.1,09,86,643/- which was required to be rejected has been erroneously sanctioned to the claimant. In view of above grounds the appellant prayed to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned refund of Rs.1,09,86,643/- ; to pass an order directing the original authority to demand and recover the amount of erroneously refunded of Rs.1,09,86,643/- with interest and to pass any other deem fit in the interest of justice.

4. The respondent vide letter dated 19-8-2022 made submission against the present appeal as under :

They had filed refund claim for CGST of Rs.1,09,86,643/- and SGST of Rs.1,09,86,643/- (Rs.2,19,73,286/-) vide ARN AA240521026336 dated 11-5-2021 out of it refund of CGST of Rs.5,43,431/- was held inadmissible and refund of CGST of Rs.1,04,52,212/- was sanctioned. However, refund of SGST of Rs.1,09,86,643/- was erroneously held inadmissible vide Order dated 24-5-2021 due to type error. Immediately on receipt of refund order they had approached the office of the adjudicating authority and expressed their concern on erroneous rejection of SGST refund. The adjudicating authority tried to make correction in the above mentioned order but due to system restrictions and facility for correcting the same was not possible at that time as functionality for passing rectification order was not operations. Since the error happened was apparent on the face of the record, the adjudicating authority has suggested them to file application for refund of erroneous rejected amount under 'other category' following principal of natural justice as order passed by him was adversely impacting the respondent of refund. On the same day on 24-5-2021 they furnished a letter based on above and filed refund of 'erroneous rejected amount' under 'other category' explaining complete facts. They based on the advice of the adjudicating authority filed application for erroneous rejection of SGST refund of Rs.1,09,86,643/- under 'other category' vide ARN AA2405210628856 dated 24-5-2021 on common portal. Basis the documents available and facts in this case the officer passed the captioned speaking order in original No.ZU2405210461984 dated 26-5-2021. The said order for sanctioning refund under 'other category' is self-explanatory and clearly indicating the fact by the officer that sanctioning of refund of Rs.1,0,86,643/- was already admissible to them as per erstwhile refund application for export of goods under LUT but erroneously got rejected due to type error. The adjudicating authority has adopted principle of natural justice while allowing their claim. Alternate remedy for rectification of error was there under Section 161 of CGST Act, 2017 as the mistake/error was apparent from the face of the record but due to system limitations at that time, the same could not be worked out by the adjudicating authority. As an aggrieved/affected person, they had an alternate remedy available approaching the Commissioner (Appeals) against such rejection but resorting to such remedy usually takes longer time and it also has elements of time and costs to both the Department and aggrieved person. With a view to avoid litigation and to buy peace of mind, the adjudicating authority suggested them to file aforesaid application for erroneous rejected refund under 'other category'. Post receipt of the aforesaid order they had also filed a letter with the Department on dated 27-5-2021 about intimation for non filing of appeal before Commissioner Appeals GST for short grant of SGST refund of Rs.1,09,86,643/-. In view of above the respondent requested to consider their aforesaid



submission and decide the matter considering the principles of natural justice. The impugned order passed by the adjudicating authority is in accordance with the provisions of the Law following principles of natural justice and it vindicates clear facts about erroneous rejection and claim of refund was legitimately admissible to the claimant.

5. Personal hearing was fixed on dated 11-8-2022. No one appeared on behalf of the appellant or respondent. The personal hearing was then held on dated 23-8-2022. No one appeared on behalf of the appellant. Shri Niraj Sanghavi, authorized representative appeared on behalf of the respondent on virtual mode. He stated that they have nothing more to add to their written submission till date.

6. I have carefully gone through the facts of the case, grounds of appeal, submission made by respondent and documents available on record. I find that in this case refund amount of Rs.1,09,86,603/- sanctioned to the respondent vide impugned order was in consequence to fresh refund application filed by them against rejection of same amount of refund ordered vide Order No.ZU2405210422728 dated 24-5-2021. On scrutiny of Order No.ZU2405210422728 I find that out of total claim amount of Rs.2,19,73,286/-, refund amounting to Rs.1,04,52,212/- was sanctioned and refund amounting to Rs.1,15,21,074/- was held inadmissible and rejected. However in the said Order no reason/ground was mentioned for rejection of refund amounting to Rs.1,15,21,074/-. Out of rejected amount of refund, the respondent has accepted rejection of refund amount of Rs.5,34,431/-. From the facts of the case I find that the respondent has filed fresh refund application seeking balance refund of Rs.1,09,86,643/- and adjudicating authority vide impugned order sanctioned the same. It transpires from the grounds of appeal and submission made by the respondent that the adjudicating authority has rejected refund of Rs,1,09,86,643/- due to typographical error but instead of resorting to remedy provided under Section 161 of CGST Act, 2017 for rectifying such errors considered fresh refund application filed by the respondent and sanctioned refund vide impugned order. The respondent, though aggrieved with the rejection of refund chose to file fresh refund application rather than filing appeal before appellate authority to set aside the rejection order. The respondent in their written submission further contended that they had filed fresh refund application as per direction of adjudicating authority when they pointed out that refund was wrongly rejected and facility to rectify the error under Section 161 of CGST Act, 2017 was not operational in the system at the material time.

7. In this regard I refer to Section 161 of CGST Act, 2017 wherein provisions for rectifying such errors was given as under :

Section 161. Rectification of errors apparent on the face of record.-

Without prejudice to the provisions of Section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order for



notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

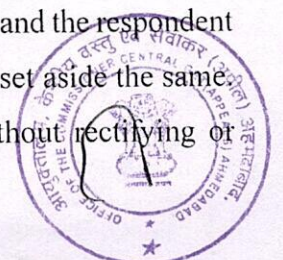
Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

8. As per above statutory provisions time period three/six months was provided for rectifying error in any decision or order or notice or any other document which is apparent on the face of record. In the subject case the Order for erroneous rejection of refund was passed on dated 24-5-2021, the respondent filed fresh refund application on the same day on 24-5-2021 and adjudicating authority vide impugned order sanctioned refund on 26-5-2021. Thus it is apparent that though error in Order dated 24-5-2021 was apparent on record and sufficient time limit is provided and available for rectifying the same, the respondent instead of seeking remedy under Section 161 of CGST Act, 2017 chose to file fresh refund application and the adjudicating authority instead of rectifying the error under Section 161 considered the fresh refund application filed by the respondent and sanctioned the refund within a span of two days. The respondent in their submission contended that due to system restrictions rectification could not be carried out on the date of issuance of order and that fresh refund application was filed as per advice given by the Assistant Commissioner. Since sufficient time period is provided under Section 161 of the Act, I failed to comprehend the reason for not taking recourse or remedial measures on subsequent days. Further, the respondent has also chose not to seek remedy in appeal due to time consuming procedure which I find is also a frivolous and not a justifiable reason.

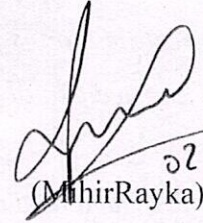
8. In view of facts and circumstances of the case, I find that the proper course of action provided under GST Law was not followed either by the adjudicating authority or by the respondent inasmuch as adjudicating authority has not resorted to rectify the Order No.ZU2405210422728 dated 24-5-2021 in terms of Section 161 of CGST Act, 2017 instead sanctioned refund vide impugned order considering the fresh refund application and the respondent has not sought remedy in appeal challenging the refund rejection Order and to set aside the same. By any means filing of fresh refund application and sanction of refund without rectifying or



challenging the Order passed for rejection was not in consonance with the statutory provisions and thus rendered the impugned order legally unsustainable and untenable. Therefore, I find merit in the present appeal filed by the appellant to set aside the impugned order and hold that the impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant. I further order to recover refund of Rs.1,09,86,643/- erroneously sanctioned to the respondent along with interest under CGST Act and Rules made thereunder.

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

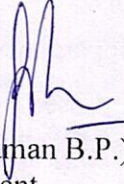
9. The appeal filed by the appellant stands disposed of in above terms.


(MihirRayka) 02/09/22

Additional Commissioner (Appeals)

Date :

Attested



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



By RPAD

To,

The Assistant Commissioner,
CGST, Division VII,
Ahmedabad South

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) M/s.Alvita Pharma Pvt Ltd B-203, B Wing, Gopal Palace, Satellite, Ahmedabad 380 015
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

