



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1115,1116 & 1117/2021 -APPEAL / 535 TO 542

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-11/2022-23
दिनांक Date : 22-04-2022 जारी करने की तारीख Date of Issue : 25-04-2022

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

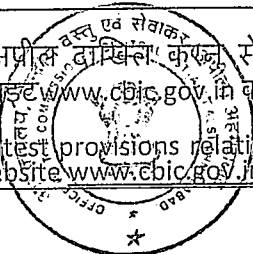
Passed by Shri: Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZV2404210298672 DT. 26.04.2021,
ZO2404210298749 DT. 26.04.2021 & ZQ2404210298961 DT. 26.04.2021 issued by
Deputy Commissioner, Division V (Odhav) Ahmedabad South

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

M/s. Nest Healthcare Private Limited, Plot No. 300, GIDC,
Behind Vallabhnagar School, Near Sarnkshan Gruh, 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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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

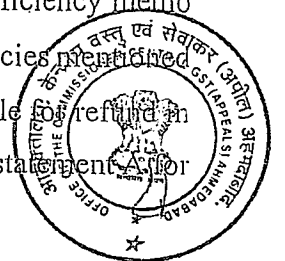
M/s.Nest Healthcare Private Limited, Plot No.300,GIDC, Behind Vallabh Nagar School, Near Sarnkshan Gruh, Odhav, Ahmedabad 382 415 (hereinafter referred to as the appellant) has filed the following appeals against Orders passed by the Deputy Commissioner, CGST, Division V (Odhav), Ahmedabad South (hereinafter referred to as the adjudicating authority), rejecting refund claim filed by the appellant.

Sr No.	Appeal No.	Date of filing of appeal	Impugned order No. and date	Amount of refund	Period
1	GAPPL/ADC/GSTP/1115/2021	22-6-2021	ZV2404210298672/ 26-4-2021	189693/-	July & Aug 2019
2	GAPPL/ADC/GSTP/1116/2021	22-6-2021	ZO2404210298749/ 26-4-2021	141150/-	Feb & March 2020
3	GAPPL/ADC/GSTP/1117/2021	22-6-2021	ZQ2404210298961/ 26-4-2021	1162537/-	Oct and Nov. 2019

2. Briefly stated the fact of the case in all the three appeals is that the appellant registered under GSTIN 24AAECN6831D1ZQ has filed refund claim for refund of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No. ZP2404210112438, ZS2404210112505 and ZU2404210112616 all dated 9-4-2021 proposing rejection of claim on the ground that Annexure B is not in proper format ; 2A for the relevant period and wrong adjusted turnover. The adjudicating authority vide impugned orders held that refund is inadmissible to the appellant on the ground that compliance to SCN not made.

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

The adjudicating authority for the reasons best known to himself instead of verifying the documents uploaded had arbitrarily issued show cause notice against the application filed by them; that the adjudicating authority had clearly abused his authority and issued show cause notice in mechanical manner; that the appellant had not received the show cause notice; that the show cause notice was not uploaded on portal by 9-5-2021 and neither the show cause notice nor the order have DIN as mandatorily required by CBIC; that the adjudicating authority merely on presumption and surmises rejected the refund application instead of issuing deficiency memo for rectification of deficiencies noticed in refund application ; that as per Circular NO.125/44/2019-GST the proper office should issue deficiency memo in form RFD 03 for any deficiencies noticed in refund application filed by the appellant which is also required under Rule 90 (3) of CGST Rules, 2017; that in case of deficiencies noticed in refund application filed by the appellant, deficiency memo should be issued and a fresh application should be filed after rectification of deficiencies mentioned therein; the fact that the appellant had submitted all the details and is rightly eligible for refund in accordance with Section 54 of CGST Act, 2017; that they submit the working and statement as per



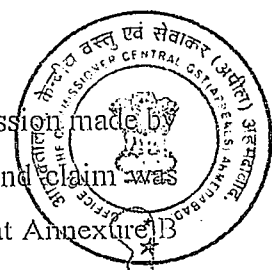
eligible refund; that the entire act of the adjudicating authority clearly exhibits his high handedness and utter disregard for the provisions of Law or perhaps even lack of knowledge of the same; that the entire proceedings are conducted in contemptuous manner and are arbitrary; that the rejection order passed by the adjudicating authority instead of issuance of deficiency memo is bad and illegal in the eyes of Law and the refund as due to the appellant may be issued. In view of above submissions, the appellant requested to quash the impugned order passed by the adjudicating authority and sanction refund to them on the ground that the order passed by the adjudicating authority is bad against Law, equity and justice and the adjudicating authority has erred in Law and on facts by rejecting refund under Rule 92 (3) of CGST Rules, 2017 vis a vis SGST Rules, 2017.

4. The appellant vide letter dated 12-4-2022 made further submission as under:

That they had annexed all the documents as prescribed in Circular No. 125/44/2019 – GST and already provided the documents filed with the application alongwith the Appeal memo. The appellant submitted screen shot of the documents submitted along with the refund application. Further the Format of Annexure B as provided in the Circular 125/44/2019 – GST was modified vide Circular No.135/05/2020 – GST. From the above, it is clear that the appellant has provided all the necessary documents along with refund application in the specified format. Further the adjudicating authority had rejected the refund application for want of GSTR-2A. The appellant submits that it had provided GSTR-2A along with the application which is clearly identifiable from the screenshot above. The appellant had also submitted the working of adjusted turnover to the Ld. Dy Commissioner; that the Ld. Dy. Commissioner had rejected the application of the appellant without pointing out any defect in the documents submitted by the appellant. The Ld. Deputy Commissioner chose to ignore the details submitted and with biased attitude rejected the refund application filed by the appellant. Further neither the SCN nor the order passed by the Ld. Dy. Commissioner is a speaking SCN or order. The SCN has not pointed out any specific defects in the submission made by the appellant merely jotted random points for want of clarification without mentioning the clarification sought for. The entire proceedings were conducted with bias and prejudiced mindset. The appellant relied upon the judgment of Hon'ble Bombay High Court in the case of Colgate Global Business Services Pvt. Ltd. vs The Union Of India And 2 Ors on 25 January, 2022, Writ Petition No. 802 OF 2021; Considering the above facts and judicial decision cited above, the appellant requested to set aside the rejection order passed by the Ld. Dy. Commissioner and issue refund to them.

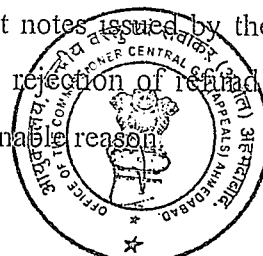
5. Personal hearing was held on dated 12-4-2022. Shri Hem Chhajed, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he has nothing more to add to their written submission till date.

6. I have carefully gone through the facts of the case; grounds of appeal; submission made by the appellant and documents available on record. I find that in this case the refund claim was rejected due to non-submission of reply to SCN under which it was pointed out that Annexure B



submitted by the appellant is not format; 2A for the relevant period and wrong adjusted turnover. I find that above reasons in fact indicates deficiency in refund application and does not point towards inadmissibility of refund under Section 54 of CGST Act, 2017 or under CGST Rules, 2017. I find that as per Rule 90 (3) of CGST Rules, in such instances the proper course of action is to issue a deficiency memo in Form RFD 03 for necessary rectification/clarification by the appellant rather than issuing a show cause notice. As per Rule 92 (3) the issuance of show cause notice necessities only in cases where the refund is found inadmissible under the statutory provisions. Rule 92 (3) further provides that in case of issuance of show cause notice, the adjudicating authority is bound to consider the reply filed against the show cause notice, give opportunity of personal hearing and to pass a reasoned order before rejecting the claim. However, in the subject cases, even before submission of reply to show cause notice by the appellant the claim was rejected. Consequently, it emerges that the refund claims were rejected without considering the reply filed by the appellant and without passing a well-reasoned order as envisaged under Rule 92 (3) of CGST Rules, 2017. Therefore, it is very much clear that in these cases the proper procedures prescribed for issuance of show cause notice or for rejection of refund was not followed. I further observe that the entire course of proceeding for finalization of refund application was completed within a period of one month. I find it difficult to comprehend the reason which prompted the adjudicating authority to reject the claim in hasty manner without even waiting for reply to the show cause notice and without observing the prescribed procedures, but it is apparent from the course of events that the adjudicating authority has rejected the claim in a pre-determined and unfair manner. In view of above, I find that impugned orders were passed by the adjudicating authority rejecting refund claim without following the statutory provisions are bad in Law and hence legally unsustainable and untenable.

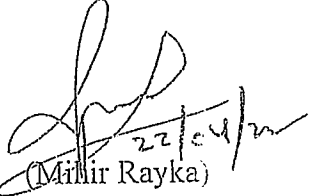
7. Nevertheless, on scrutiny of documents submitted by the appellant, I find that appellant has uploaded Form 2A along with refund claim. Further Annexure B filed with the refund claim is also in the same format prescribed vide Circular No. Circular No.135/05/2020 – GST dated 31-3-2020. Therefore, I find that the allegation raised in the show cause notice for non-submission of above documents is without any basis or without verifying the documents filed with the claim. Regarding wrong adjusted turnover ground, I find that for the purpose of arriving admissible refund under Rule 89 (5) of CGST Rules, 2017, the adjusted total turnover is defined under clause (E) of Rule 89 (5) of CGST Rules, 2017. Therefore, even if the adjusted turnover adopted by the appellant is wrong, the adjudicating authority is empowered to determine the adjusted total turnover as per definition given under Rule 89 (5) (E) rather than taking it as ground for rejection. I further find from the documents submitted by the appellant that there is difference in adjusted total turnover as per refund application with returns filed by the appellant which as per clarification given by the appellant is due to value of credit notes issued by them and tax adjustment made during the claim period. Therefore, I find that rejection of refund due to wrong adjusted total turnover is also not a justifiable and not a sustainable reason.



8. In view of above, I find that the impugned orders passed by the adjudicating authority without following the statutory provisions prescribed for rejection of claim are not legal and proper and deserve to be set aside. Therefore, I allow the appeals with consequential benefit to the appellant. I further order that any claim for refund made in consequence to this Order may be examined on the basis of documents submitted with refund claim and by observing the statutory procedures prescribed under Section 54 of CGST Act, 2017 and Rules framed thereunder. 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 |

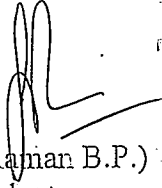
9. The appeals filed by the appellant stands disposed of in above terms.


22/04/21
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



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



By RPAD

To,

M/s.Nest Healthcare Private Limited,
Plot No.300,GIDC,
Behind Vallabh Nagar School,
Near Sarnkshan Gruh,
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 Assistant Commissioner, CGST, Division V (Odhav) Ahmedabad South
 - 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
 - 6) Guard File
- ✓ PA file

