



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- 20220964SW0000499983

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फाइल संख्या : File No : GAPPL/ADC/GSTP/216/2022 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-113/2022-23**

दिनांक Date : **08-09-2022** जारी करने की तारीख Date of Issue : **12-09-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. **ZP2404210267483 DT. 23.04.2021**

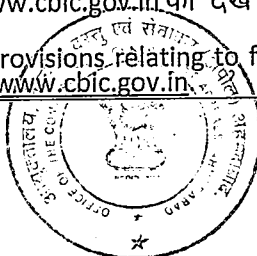
issued by Deputy Commissioner, Division-V, Ahmedabad South

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

**M/s. Anup Engineering Limited, B/H 66 KV, Electric Substation,
Odhav Road, Ahmedabad, Gujarat-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

M/s.The Anup Engineering Limited, B/H 66 KV Electric substation, Odhave, Ahmedabad 382 415 (hereinafter referred to as the appellant) has filed the present appeal online on dated 6-12-2021 against Order No.ZP2404210267483 dated 23-4-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division V, Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAACT5733A1ZV has filed refund of excess balance in electronic cash ledger amounting to Rs.7,71,314/- due to merger with M/s.Anveshan Heavy Engineering. The appellant was issued show cause notice reference NO.ZR2404210083194 dated 7-4-2021 for rejection of refund on the ground that there are arrears against them. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant due non compliance to show cause notice.

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

The reason given in the impugned order is erroneous and against the principles of natural justice ; they had merged with the M/s.Anveshan Heavy Engineering Ltd as per NCLT Order. They had balance in cash ledger which is not allowed to transfer to new Company and hence they claimed refund. The rejection of refund is erroneous and without validation of documents submitted by them. The cash ledger balance arise on account of TDS deducted by HPCL and IOCL which is legitimate receipt as deducted by the said PSUs from their sales proceeds and same cannot be denied to refund for any invalid reasons. They does not have any arrear of demand outstanding against them as till date no demand letter or show cause notice issued by the Department; that their refund application is legitimate and hence the appellant requested to set aside the impugned order and pass refund order. They also filed application for condonation of delay citing Covid 19 situations and business disruption.

4. Personal hearing was held on dated 23-8-2022. Shri Amit Jain authorized representative appeared on behalf of 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, grounds of appeal, submission made by the appellant and documents available on record. At the outset, I find that the impugned order was communicated to the appellant on dated 23-4-2021 and present appeal was filed online on dated 6-12-2021 (physical copy submitted on dated 21-1-2022) ie beyond the three months time limit prescribed under Section 107 of the Act. However as per Hon'ble Supreme Court's Order dated 10-1-2022 in suo motu writ petition (C) NO.3 of 2020 in MA No.665/2021, excluding the period from 15-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 1-3-2022 in filing appeals, I hold that the present appeal is not hit by time limitation factor.

6. In the subject case refund claim was filed for refund of excess credit balance in electronic cash ledger. The availability of credit balance claimed as refund and admissibility of refund of same is not disputed by the adjudicating authority. However, refund was rejected due to non submission of compliance to show cause notice wherein rejection was proposed on the only reason of pending Government arrears from the appellant. I have tracked the refund application status in GST portal and find that the appellant has not filed any reply to the show cause notice. However, I find that in the show cause notice issued on dated 7-4-2021 the appellant was asked to file reply within fifteen days which falls on or before 22-4-2021 and the impugned order rejecting refund was passed on the very next day on 23-4-2021. Therefore, it is apparent that no further opportunity of time was provided to the appellant for submission of reply and the impugned order was passed without waiting for reply from the appellant. By doing so it emerge that claim was rejected without considering reply filed to the show cause notice and without recording reasons for rejection. As per Rule 92 of CGST Rules, 2017 it is a statutory 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. Since the claim was rejected due to non filing of reply to show cause notice, I also have the reason to believe that no personal hearing was held before rejecting the refund claim. Thus, except issuance of show cause notice no other procedures were followed by the adjudicating authority before rejecting the refund claim which I find is against the statutory provisions and against the principles of natural justice.

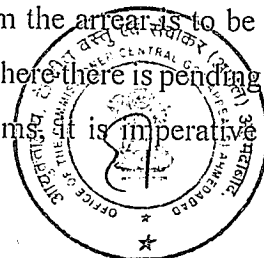
7. I further find that in the show cause notice the claim was proposed for rejection due to pending arrears against the appellant, whereas the appellant in their written submission stated that no arrear is pending against them. In this regard I also refer to relevant provisions contained under Section 54 of CGST Act, 2017 in such situations as under:

(10) Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

8. As per above statutory provisions the proper officer is empowered to deduct from the refund due to the registered person against tax, interest, penalty which the claimant is liable to pay but which remain unpaid under CGST Act or under existing Law and such recovery is not stayed by higher appellate authorities. Thus, the above statutory provisions envisage to deduct the claim amount from pending arrears and does not provide for rejection of refund due to pending arrears. Accordingly on the face of the facts of the case, I find that in this case issue of rejection of refund does not arise at all and only reduction of refund amount from the arrear is to be ordered unless stayed by the higher appellate authorities. Therefore, in cases where there is pending arrears against the claimant which were not stayed by higher appellate forums it is imperative on the part of



proper officer to put to notice the claimant the details of arrears viz amount of arrears, order number and date and amount proposed for deduction from claim amount enabling them to give compliance. In the subject case no such details were mentioned in the show cause notice and the show cause notice is silent as to whether the arrear due from the appellant fall within the above statutory provisions or otherwise. In the absence of such details in the show cause notice, rejection of refund due to non compliance to such vague and ambiguous show cause notice I find is not a justifiable and tenable reason for rejection.

9. In view of above, I hold that impugned order passed by the adjudicating authority rejecting refund on the grounds mentioned therein is not legal and proper and deserve to be set aside. Hence I allow this appeal. I further order that any claim of refund made in consequence to this Order may be dealt with by the proper officer in accordance with CGST Act and Rules made thereunder and observing principles of natural justice and considering the observations made in preceding para. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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


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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


12-09-22
(~~Signature~~)
Superintendent
Central Tax (Appeals),
Ahmedabad
By RPAD

To,

M/s.The Anup Engineering Limited,
B/H 66 KV Electric substation,
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 V (Odhav) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file