



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

07926305065-

टेलिफैक्स 07926305136



DIN- 20220964SW00003833A0

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/844/2022 -APPEAL

/ 3381 - 86

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-116/2022-23**

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)

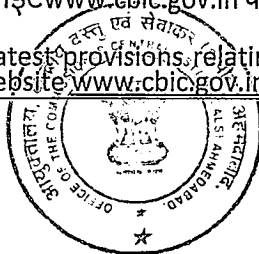
ग Arising out of Order-in-Original No. **ZO2411210014913 DT. 01.11.2021**

issued by Assistant Commissioner, CGST, Division VI (Vastrapur) Ahmedabad South

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

M/s. Edelweiss Rural & Corporate Services Limited, 2nd Floor, Office No. 201 to 203, Zodiac Plaza, St. Xavier College Road, Off. CG Road, Ahmedabad-380009

(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 .



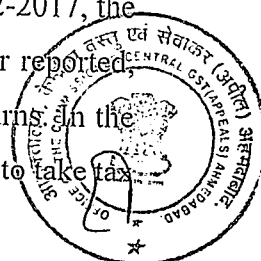
ORDER IN APPEAL

M/s.Edelweiss Rural and Corporate Services Limited, 201 to 203, II Floor, Zodiac Plaza, St Xaviers Collage Road, Ahmedabad 380 009 (hereinafter referred to as the appellant) has filed the present appeal on dated 17-1-2022 against Order No.ZO2411210014913 dated 1-11-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division VI (Vastrapura), Ahmedabad South (hereinafter referred to as the adjudicating authority).

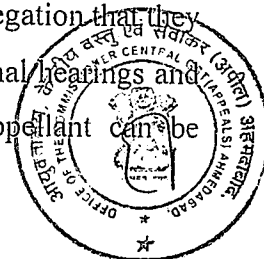
2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAKCS7311R1ZT has filed refund claim for Rs.1,52,71,324/- due to excess payment of tax for the month of March 2020. The appellant was issued show cause notice reference No.ZP2409210396833 dated 29-9-2021 for rejection of claim on the reason that it is not forthcoming from the refund claim papers as to how excess payment of tax occurred. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that reply dated 29-9-2021 filed by the appellant is not acceptable as it is not clarify as to how excess payment of tax occurred. The appellant also did not attended personal hearing. Accordingly, the adjudicating authority rejected the refund claim.

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

- i. The impugned order rejecting refund is unsustainable and bad in Law and therefore liable to be dropped. The impugned order is arbitrary and has been issued without appreciation of the facts. The refund claim is on account of an inadvertent manual error that occurred in the system where two invoices were inadvertently issued to its branch on 19-2-2019. On realizing the error, they immediately cancelled the invoices in the system. However they inadvertently discharged GST of Rs.1,52,71,324/- on the said invoices in the GST return ie in Form GSTR3B and GSTR1 of March 2020.
- ii. In the absence of supply, there was no liability to pay tax on these invoices under GST but it was paid on account of manual error by an employee of the Company. The branch has not availed any ITC on these two invoices wrongly reported by them in their GST returns. This payment by them resulted in an excess deposit of money by the appellant in GSTR3B returns which they intend to now rightfully claim as refund. They had attended all the personal hearing conducted on the aforesaid matter and made detailed submission with respect to the facts stated above. The adjudicating authority has blatantly ignored all the submission made and issued impugned order without appreciation of the complete facts.
- iii. CGST Act provides an option to the registered person to issue credit note in specific scenarios such as deficient supply, change in taxable value or tax or in case of goods returns. However, the Law does not anticipate a scenario where the registered personal makes an error and issued invoice where there is no supply taking place which result in excess payment of tax. As per CBIC Circular NO.26/26/2017-GST dated 29-12-2017, the CBIC has provided a mechanism to take refund in case where liability is over reported, given that currently the GST returns do not provide a facility to revise the returns. In the present case only remedy available with them was to opt for refund mechanism to take tax



- adjustment, merely because GST Law does not cover a specific scenario for system error, the refund must not be denied.
- iv. Referring to erstwhile regime under service tax and case laws the appellant reiterated that all the documents had been made available at the time of refund application and while filing reply to show cause notice with a detailed background of facts. The adjudicating authority has not perused any of these documents and has merely issued impugned order rejecting the refund claim which is to be set aside on merits.
 - v. The GST paid on two invoices on account of inadvertent error cannot be classified as tax. In the present case there was no supply provided by them to its branch and hence there can be no levy of GST. Hence the powers of the adjudicating authority to collect tax and retain such amount is void. Relying on decision of Hon'ble CESTAT in the case of M/s.Monnet International Ltd Vs Commissioner of Central Excise, New Delhi ; decision of Hon'ble High Court of Karnataka in CCE (Appeals) Bangalore Vs KVR Construction, the appellant contended that in cases where tax has been paid as a mistake of law or where there was no levy to pay tax, but tax has been paid it must not be retained by the Department but must be refunded. In the present case they had paid GST on two invoices based on an inadvertent error, hence in essence tax paid was not payable resulted in excess payment. That in the present case no tax was payable by them and hence the amount deposited with the Department was merely in the nature of deposit and not in the nature of GST. It is a settled legal position that any amount collected as tax must be relatable to the taxable event ie provision of supply. As the amount deposited by them was not in the nature of tax, the adjudicating authority is not entitled to retain and consequently it should be refunded to them.
 - vi. The retention of excess amount shall result in unjust enrichment of the State. Just as an assessee cannot be permitted to evade payment of rightful tax, the authority that recovers tax without any authority of Law cannot be permitted to retain the amount merely because the tax payer has erroneously paid such sums. In such case there is an obligation on the part of the adjudicating authority to refund the amount paid in excess to the party. Referring to decision of Hon'ble Punjab and Haryana High Court in the case of M/s.IOC Vs CCE New Delhi the appellant contended that in the present case where the benefit of ITC has not been passed on to any other person as confirmed in the submissions above, it is established that the tax has been paid out of a system error on the part of the appellant, hence the excess tax paid is liable to be refunded to them because it would ultimately result in unjust enrichment of the state.
 - vii. The impugned order is a non speaking and unreasoned order and is issued in violation of principles of natural justice and has been issued without taking into consideration their submissions but on concluding that they had not attended the personal hearing. There is no reasoning provided for the findings and this in itself demonstrated non application of mind by the adjudicating authority. They relied upon various case laws. The allegation that they did not attended PH is completely false. They had attended all the personal hearings and cooperated with the adjudicating authority. The attendance of the appellant can be



substantiated by the PH record copies that were signed by them at the time of attending the hearings.

viii. Hence the impugned order based on a false statement is itself bad in Law and cannot hold good. In view of above the impugned order passed by the adjudicating authority on non consideration of the submissions therein reflects that the order suffers from non application of mind and demonstrates that the adjudicating authority failed to fulfill its obligation to consider the submissions made by them. Further the order is based on the premises of a false statement which is completed in violation of principles of natural justice. Hence the impugned order is liable to be set aside.

4. Personal hearing was held on dated 24-8-2022. Ms Ruchita Shah, Advocate and authorized representative appeared on behalf of appellant on virtual mode. She stated that they have nothing more to add to their written reply till date.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. In this case refund claim filed for excess payment of tax was rejected on the ground that the appellant in their reply dated 29-9-2021 could not clarify the reasons as to how the excess payment of tax has occurred. I find that there is clerical error in mentioning date of reply as 29-9-2021 inasmuch as in this case show cause notice was issued on dated 29-9-2021 and the appellant has filed reply on dated 12-10-2021 in RFD 09. Therefore, I find that the date of reply is wrongly mentioned as date of show cause notice. I have gone through reply dated 11-10-2021 filed to the show cause notice and find that the appellant has given reply as under:

We have filed this refund in the category of 'excess payment' instead of 'any other (specify) due to technical error faced when we earlier filed refund claim on GSTIN portal. The category was changed post discussion with your goodself.

We were having two GST registrations in the state of Gujarat based on the nature of business carried on. The details of the two registration are as under:

1) 24AAKCS7311R1ZT

2) 24AAKCS7311R2ZS

One of our team member, had wrongly prepared invoice number MANECSLGJ18191 dated 19-2-2019 and MANECSLGJ18192 dated 19-2-2019 from ERCSL GSTIN 24aakcs7311r1zt TO ERCSL GSTIN 24AAKCS7311R2Z. The said wrong invoices were also removed from the system but unfortunately, our tax team has reported theses invoices in GSTR1 of Mar 2020 and the GST liability was wrongly paid by us while filing GSTR3B.

As we have wrongly paid GST liability of Rs. 1,52,71,324/- of the invoices which was never raised. Therefore there is an excess payment of GST amount by us for which we have filed a refund claim.

The details working of the refund claim is attached as Exhibit I. GSTR 1 and GSTR3B of Mar 2020

were we have considered those wrong invoices are also attached as Exhibit II. Therefore, we hereby request your good self to approve our refund claim at the earliest.

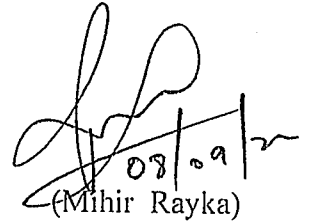


6. The above reply clearly and unambiguously indicates the reason for excess payment of tax and claiming refund of the same. The appellant has inadvertently raised two invoices to their branch office and paid tax on the same and claimed refund of same. The payment of tax was also reflected in GSTR1 and GSTR3B returns for the month of March 2020. However, the claim was rejected on the ground that the appellant could not clarify the reasons for excess payment of tax while on the other hand the reason for the same was very clearly narrated in their reply. Therefore, it is apparent that being unable to comprehend the contents of the letter the adjudicating authority has outrightly rejected the claim. By doing so it also emerge that claim was rejected without considering reply filed by the appellant and without recording reasons for rejections which I find is against the provisions of Rule 92 of CGST Rules, 2017 and principles of natural justice. It is also pertinent to note that non attendance of personal hearing was also taken as reason for rejection of claim. However, the appellant strongly opposed this ground and contended that they attended the person hearing and also explained the facts and circumstances of the claim to the adjudicating authority. No finding was recorded on this aspect also. Therefore, the reasons given in the impugned order I find are not justifiable and sustainable reasons for rejection of refund.

7. In view of above, I hold that the 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. Therefore I allow this appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequence to this Order may be dealt with in accordance with CGST Act and Rules framed thereunder and observing the principals of natural justice. 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 |

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


(Mihir Rayka)

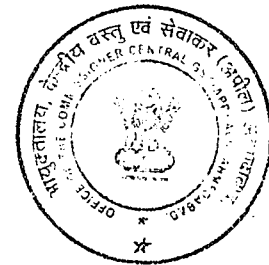
Additional Commissioner (Appeals)

Date :

Attested


12-09-22

(P. P. JADHAV)
Superintendent
Central Tax (Appeals),
Ahmedabad
By R.PAD



To,

M/s.Edelweiss Rural and Corporate Services Limited,
201 to 203, II Floor, Zodiac Plaza,
St Xaviers Collage Road,
Ahmedabad 380 009

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 Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) The Asst./Deputy Commissioner, CGST, Division-VI, Ahmedabad South
- 6) Guard File
- 7) PA file

