



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/840/2022 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-121/2022-23**

दिनांक Date : **19-09-2022** जारी करने की तारीख Date of Issue : **20-09-2022**

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. **OIO No. Div-V/ Refund/Createch/21-22 DT.**

27.10.2021 issued by Assistant Commissioner, CGST, Division-V, Ahmedabad South

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

**ParagBhai Tribhuvandas Thakrar of M/s. Createch Controls ,L-553, 554,
Odhav GIDC, Nr Odhav Police Station, 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) 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

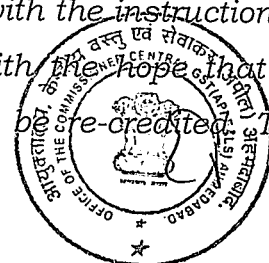


ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Createch Controls, (Legal name - Paragbhai Tribhuvandas Thakarar), L-553 & 554, Odhav GIDC, Near Odhav Police Station, Ahmedabad - 382 415 (hereinafter referred as 'Appellant') has filed the present appeal against Order No. V/Div.-V/REFUND/Createch/21-22 dated 27.10.2021 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division - V, Ahmedabad South (hereinafter referred as 'adjudicating authority').

2. Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AARPT3590M1ZV has filed the present appeal on 28.01.2022. The 'Appellant' in the appeal memo has submitted that during the month of August 2017 they have exported services on payment of IGST. Accordingly, they have applied for refund of said IGST of Rs.2,03,513/- vide ARN AB2408171332111 dated 22.10.2018. The said refund claim is rejected vide impugned order. Accordingly, the appellant has preferred the present appeal on the following grounds :

1. *The learned adjudicating authority has not re-credited the amount of refund so rejected. In this regard, the appellant has referred and relied upon the Rule 93 of the CGST Rules, 2017.*
2. *The appellant is surprised to fight for his rightful refund again and again. No shortcoming noticed by the Department for more than three years period i.e. 22.03.2018 to October 2021. In the impugned order it is stated that the claimant has not submitted the relevant documents at the relevant time. However, the department has never communicated to the appellant about any deficiency in subject refund claim.*
3. *No show cause notice was issued to the appellant to point out any documents were required.*
4. *Suddenly after 3 years the appellant was called and asked certain details. The appellant had a discussion with the officer and he was informed to withdraw the refund claim as it is too old now to accept the documents.*
5. *The appellant is not a big corporate with separate taxation and finance department. He is a proprietor and not well versed with legal due dates, hence, assuming he was wrong, he in accordance with the instruction of the officer opted to withdraw the refund claim with the hope that at least the amount if not received in cash it would be re-credited. The*



appellant has also mentioned this fact in letter dated 08.10.2021 that he had not received the refund for more than 3 years as well as no queries were raised.

6. *It is astonishing to find that the adjudicating authority instead of issuance of show cause notice or issuing deficiency memo same has not been reviewed properly by the learned adjudicating authority. The learned adjudicating authority has violated the principle of natural justice.*
7. *To prove that refund was rightly claimed the appellant has submitted the copies of GSTR 3B, GSTR1, excerpts of GST portal, necessary declarations etc. with the present appeal.*

In view of above facts and legal position the appellant has prayed that -

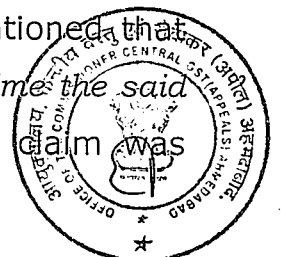
- *Allow the appeal and set aside the impugned order in the light of above submissions.*
- *Amount of Rs.2,03,513/- should be refunded along with interest.*
- *The hon'ble appellate authority may allow any other relief it deems proper and beneficial to the appellant in terms of grounds taken in the memorandum of appeal and as per the circumstances of the case.*

3. Personal Hearing in the matter was through virtual mode held on 08.09.2022 wherein Sh. Gunjan H. Shah, C.A. appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has reiterated the submissions made till date.

Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the 'Appellant' had preferred the refund application on 22.10.2018 on account of "Export of services with payment of tax" for the amount of Rs.2,03,513/- for the period August'2017. I find that in the present appeal the appellant has contended that till October'2021 they have neither received refund nor any query in this regard. I find that the appellant in the letter dated 08.10.2021 to the department has informed that their working cycle is badly affected due to blockage of funds. Accordingly, appellant has informed to the department to proceed to reject their refund application and re-credit the said amount into their credit ledger without offering personal hearing to them.

4(ii). I find that in the impugned order it is mentioned that "the claimant has not submitted the documents at the relevant time the said refund claim is time barred". Accordingly, I find that refund claim was



rejected solely on time limitation ground and non submission of documents at the relevant time. From the facts of the case I find that the refund claim for the period August'2017 was filed on 22.10.18, so filed within two years from the relevant date prescribed under explanation (2) to Section 54 of the CGST Act, 2017 and hence filed within time limit prescribed under Section 54(1) of the CGST Act, 2017.

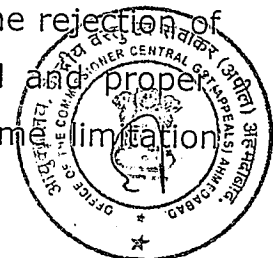
4(iii). In view of foregoing facts, I find that the refund claim is also rejected for the reason that appellant failed to submit relevant documents at relevant time. However, the appellant in the present appeal contended that neither any show cause notice nor deficiency memo issued by the department in this regard. In this context, I have referred the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under :

*(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08** to the applicant, requiring him to furnish a reply in **FORM GST RFD-09** within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06** sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:*

***Provided** that no application for refund shall be rejected without giving the applicant an opportunity of being heard.*

In view of above legal provisions, "no application for refund shall be rejected without giving the applicant an opportunity of being heard". Further, I find that if "refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08**". However, I find that in the present matter, neither any deficiency memo nor any Show Cause Notice is issued to the appellant in connection with requirement of documents. Further, I find that the *impugned order* is issued without being heard the 'Appellant'.

4(iv). Further, I find that the appellant in the present appeal contended that they are eligible for refund and they have filed the refund application in time. I find that the adjudicating authority has rejected the refund claim on sole ground of non submission of required documents and time limit. Therefore, it transpires that there is no other dispute with regard to refund claim. I find that in the present matter the claim was filed for the period August'2017 on 22.10.2018 I hold that the rejection of refund claim on the ground of time limitation is not legal and proper. Hence, the appeal filed by the appellant succeeds on time limitation.



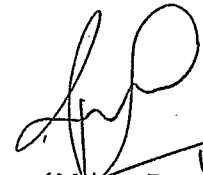
ground. Needless to say, since the claim was rejected on the ground of time limitation and non submission of required documents, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequence to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with Section 54 of the CGST Act, 2017 and Rules made thereunder.

5. In view of foregoing facts, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without being heard the *appellant* as well as without communicating the valid or legitimate reasons before passing said order. I find that the refund claim is rejected without issuing any deficiency memo or SCN. Further, I am of the view that proper speaking order should have been passed by giving proper opportunity of personal hearing in the matter to the '*Appellant*' and detailing factors leading to rejection of refund claim should have been discussed. Else such order would not be sustainable in the eyes of law. Therefore, the *adjudicating authority* is hereby directed to process the refund application of the *appellant* by following the principle of natural justice.


6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper. Accordingly, I allow the appeal of the "*Appellant*" without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017. The '*Appellant*' is also directed to submit all relevant documents/submission before the *adjudicating authority*.

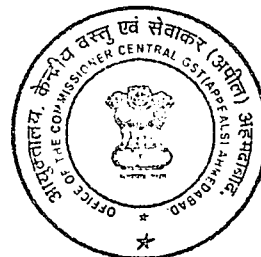
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Attested

(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad



Date: 19.09.2022

By R.P.A.D.

To,

M/s. Createch Controls,
(Legal name – Paragbhai Tribhuvandas Thakarar),
L-553 & 554, Odhav GIDC, Near Odhav Police Station,
Ahmedabad – 382 415

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division-V, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File

