



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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टेलिफैक्स 07926305136



DIN- 20221064SW000011601D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/112/2022 -APPEAL / 4097 - 4101

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-140/2022-23**  
दिनांक Date : **21-10-2022** जारी करने की तारीख Date of Issue : **21-10-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZU2410210160090 DT. 12.10.2021**  
issued by Assistant Commissioner, Division-VI, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**M/s. BRR Enterprises Pvt. Ltd. 308, 3rd floor, Sukun Business Centre,  
Nr. Fairdeal House, Swastik Cross Roads, C.G. 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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



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

M/s. BRR Enterprise Private Limited, 308, III Floor, Sukuan Business Centre, Swastik Cross Road, CG Road, Ahmedabad 380009 (hereinafter referred as 'Appellant') has filed the present appeal against Order No. ZU2410210160090 dated 12.10.2021 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, CGST, Division VI (Vastrapur), Ahmedabad South (hereinafter referred as 'adjudicating authority').

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAJCB1706E1Z7 has filed refund claim for Rs.16,30,446/- refund of ITC accumulated on account of export of goods without payment of tax for the tax period May 2021. The appellant was issued Show Cause Notice Reference No. ZX2409210054511 dated 03.09.2021 for rejection of refund on the ground that "DGGSTI, AZU, Ahmedabad informed that ITC taken by you from various/some supplies are not in existence. In view of this you are show caused as to why your refund should not be rejected." The adjudicating authority vide impugned order held that refund of Rs.16,30,446/- was inadmissible on the ground 'Other' and on the ground that "it is observed by DGGI, AZU, Ahmedabad that some of the suppliers from whom ITC availed by you are not in existence and hence ITC availed by you is not found genuine. The reply filed by you does not cover the details of all suppliers and hence not proper".

3. Being aggrieved the appellant filed the present appeal on 23.12.2021 on the following grounds:

The adjudicating authority has violated the principles of natural justice by passing the impugned order wherein the entire refund claim was rejected and without giving an opportunity of being heard. The entire application of refund is complete as per Section 54 read with CGST Rules as evidenced by the acknowledgement in Form RFD 02 ; the impugned order was passed without considering the facts of the case and providing sufficient opportunity of being heard to a bona-fide tax payer thereby defeating the principle of intelligible differentia. The appellant relied upon decision in the case of M/s. Aluminium Corporation of India Vs UOI 1978 (2) ELT (J 320) (SC). They had submitted status of GSTIN of suppliers on 15.09.2021 wherein it was clearly mentioned that the status of the all its suppliers is 'active' and all suppliers have correctly



discharged tax liability. The adjudicating authority has failed to appreciate this fact. The adjudicating authority failed to acknowledge the declaration made by them that no demand/recovery proceedings have been initiated against them. The impugned order was passed on the basis of assumptions, presumptions, conjectures and surmises and without proper consideration of facts, records, opportunity of being heard and submissions therein and hence liable to be set aside. On the contention of compulsory sanction of provisional refund, the appellant relied upon decision of Hon'ble High Court of Telangana in the case of M/s. Bhagyanagar Copper Private Ltd Vs CBIC (Writ Petition No. 15804 of 2021); on the contention of vague and unclear show cause notice the appellant relied upon the decision of Hon'ble High Court of Gujarat in the case of M/s. Arcelor Mittal Nippon Steel India Ltd Vs Assistant Commissioner (SCA No. 11043 of 2020) and on the contention of protecting interest of revenue, the appellant relied upon decision in the case of M/s. Radha Krishna Industries Vs State of Himachal Pradesh and Ors. (2021-VIL-50-SC). The appellant further contended that the basic purpose behind bringing GST into the Indian Economy is to remove cascading effect of taxes by providing for ITC on all inputs and input services which can be used for payment of output tax to avoid unnecessary blockage of working capital, avoid double taxation and allowing free flow of credit in the system ; that the scheme of CGST Act makes aforementioned object very clear since Section 16 and 49 of the Act clearly provide for ITC on any supply of goods or services used or intended to be used in the course of furtherance of business which can be used for payment of tax. The impugned order passed by the adjudicating authority is liable to set aside as it is contrary to the facts on records and has been passed without considering the statutory provisions and without application of mind and on the basis of assumptions, presumptions, conjectures and surmises without proper consideration of facts, records and opportunity of being heard and submissions therein and hence rejection of refund claim without providing sufficient opportunity of being heard is illegal, unjustified, bad in law and hence needs to be summarily quashed to meet the ends of justice. In view of above submissions the appellant requested to quash and set aside the impugned order and grant refund to them along with interest.

4. Personal hearing was held on dated 19.07.2022. Shri Jaykishan Vidhwani, authorized representative appeared on behalf of the appellant on virtual mode and stated that they have nothing more to add to their written submission till date.



**Discussion and Findings :**

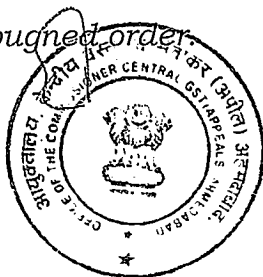
**5(i).** I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the 'Appellant' had preferred the refund application on 05.07.2021 on account of "Refund of ITC on Export of Goods & Services without Payment of Tax" for the amount of Rs.16,30,446/- for the period May'2021. I find that the adjudicating authority has mainly rejected the said refund claim on the ground that -

- DGGI, AZU, Ahmedabad has observed that some of the suppliers from whom the appellant has availed ITC are nonexistent, hence ITC availed is not found genuine.
- Reply filed by appellant does not cover details of all suppliers and hence not proper.

**5(ii).** I find that the appellant in the present appeal contended that the entire refund application is complete as per provisions of Section 54 of the CGST Act, 2017 ; that refund claim is rejected without providing opportunity of being heard ; that they have submitted status of GSTIN of all its suppliers as on 15.09.2021, wherein status is 'Active' and all its suppliers have correctly discharged tax liability as on 15.09.21 ; that as on 16.09.21 no demand/recovery proceedings initiated against appellant ; that impugned order is passed on the basis of assumptions, presumptions without proper consideration of facts, records, opportunity of being heard; refund claim rejected without considering statutory provisions ; rejection of refund claim without providing sufficient opportunity of being heard is illegal, unjustified, bad in law and hence needs to be summarily quashed to meet the ends of justice.

**5(iii).** In view of above facts, report/comments were called for from the Assistant Commissioner, CGST, Div. VI (Vastrapur), Ahmedabad South on the following points :

- I. Gist of case booked by DGGI, AZU, Ahmedabad
- II. Copy of communication received from DGGI, AZU regarding wrong availment of ITC by the Appellant.
- III. Present status of case i.e. details of SCN issued and OIO passed by the adjudicating authority, if any, against the appellant.
- IV. The statutory provisions under which refund claim merit rejection on the grounds mentioned in the impugned order.

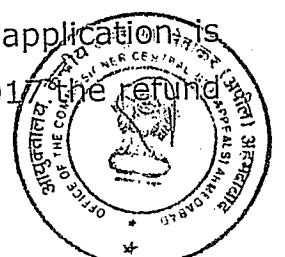


In response to above, the AC, Div. VI (Vastrapur) via email dated 17.10.2022 has forwarded the copy of communication dated 02.08.2021 of the DGGI, AZU, Ahmedabad. However, regarding other points no reply received from him.

The DGGI, AZU, Ahmedabad vide above letter to AC, Div. VI, A'bad South informed that during investigation of a firm/company and its associates which is found as non-existent, they found some more firms/companies also as non-existent. The DGGI has further informed that fake ITC from these entities was flowing to the different taxpayers including present appellant firm, which are making zero rated supply with or without payment of tax and availing the refund of accumulated ITC on account of same. Accordingly, the AC, Division - VI, A'bad South was requested not to disburse any refund to the taxpayer till the clearance from DGGI, AZU, Ahmedabad.

**5(iv).** Further, I find that in the present matter the adjudicating authority has rejected the refund claim on the ground that the appellant has availed ITC from non-existent suppliers, hence ITC is found to be not genuine and also on the ground that reply of Appellant is not proper as it does not cover details of all suppliers. In this regard, I find that the appellant has submitted the Reply to SCN under Form-GST-RFD-09 on 16.09.2021, wherein submitted the copy of GSTR 2A of May-2021 i.e. of claim period. Therefore, while examining admissibility of refund claim it was at all not difficult to ascertain whether any ITC is pertains to said non-existent suppliers or not from the copy of said GSTR 2A. However, I do not find any such findings or grounds for rejection of refund in the impugned order. Further, I find that the appellant has submitted in the present appeal that the status of GSTIN are Active of all their suppliers as on 15.09.2021 and all suppliers have correctly discharged the tax liability as on 15.09.2021. The appellant has submitted the copies of said GSTIN status of suppliers. On going through same, I do not find the name of non-existent suppliers as informed by the DGGI, AZU, Ahmedabad in their letter.

**5(v).** In view of foregoing facts, I find that the refund claim is also rejected for the reason that appellant failed to submit proper reply i.e. reply does not cover details of all suppliers. The appellant in the present appeal contended that though the entire refund application is complete as per provisions of Section 54 of the CGST Act, 2017, the refund



claim is rejected without providing opportunity of being heard. 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, the *impugned order* is issued without being heard the 'Appellant'.

**5(vi).** Further, I find that the appellant in the present appeal contended that they are eligible for refund and they have filed the complete refund application as per provisions of Section 54 of the CGST Act, 2017. I find that the adjudicating authority has rejected the refund claim on sole ground of information received from DGGI, AZU, Ahmedabad as well as reply of appellant is not proper. Therefore, it transpires that there is no other dispute with regard to refund claim. I find that the adjudicating authority has erred in rejecting refund claim without verifying the facts whether any ITC of claim period pertains to non-existent suppliers as informed by DGGI, AZU or not. Therefore, I am of the view that the *impugned order* is not legal and proper.

**6.** 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*. 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. However, as the DGGI, AZU, Ahmedabad has informed that without their clearance no refund to be disbursed to the appellant, therefore, refund claim may be disbursed only after proper consultation with the DGGI, AZU about facts of present case.

7. 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*.


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.

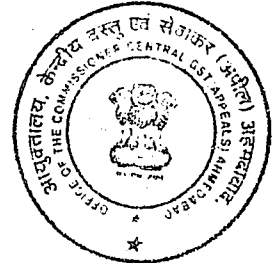
  
(Mihir Rayka)

Additional Commissioner (Appeals)

Attested

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

Date: 21.10.2022



By R.P.A.D.

To,  
M/s. BRR Enterprise Private Limited,  
308, III Floor, Sukuan Business Centre,  
Swastik Cross Road, CG Road, Ahmedabad 380009

Copy to:

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

