



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- 20221164SW000000ECEC

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/109/2022 -APPEAL /1257 -62

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-145/2022-23**
दिनांक Date : **03-11-2022** जारी करने की तारीख Date of Issue : **04-11-2022**

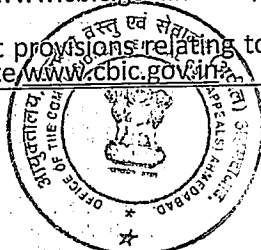
श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZS2403210424382 DT. 30.03.2021**
issued by Deputy Commissioner, CGST & CX, Division-V, Ahmedabad South.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Active Engineers, Plot No. 236/237, Road No.2,
Kathwada GIDC, Kathwada, Ahmedabad-382430**

(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।
(iii)	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. Active Engineers, Plot No. 236/237, Road No. 2, Kathwada GIDC, Kathwada, Ahmedabad 382 430 (hereinafter referred as '*Appellant*') has filed the present appeal against Order No. ZS2403210424382 dated 30.03.2021 passed in the Form-GST-RFD-06 (hereinafter referred as '*impugned order*') rejecting refund claim of Rs.4,23,000/-, issued by the Deputy Commissioner, CGST & C. Ex., Division - V Odhav, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

2(i). Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAKFA8192P1ZS has filed refund claim application for Rs.4,23,000/- *on account of Refund by Supplier of deemed export* for the period November 2020. The appellant was issued show cause notice reference No. ZS2403210129537 dated 09.03.2021 proposing refund application is liable to be rejected for the reason "*Other*". A Remark was also mentioned in the SCN that "*LUT/BOND NOT PROVIDED. SUPPLIES MADE DO NOT FALL UNDER SECTION 147 OF CGST ACT*". Further, the '*Appellant*' was asked to furnish reply to the SCN within 15 days from the date of service of SCN and a personal hearing was also offered to the '*Appellant*' on 16.03.2021. Thereafter, the *adjudicating authority* has rejected the entire refund claim vide *impugned order*. A remark is mentioned in the *impugned order* as "*REPLY OF SCN NOT MADE/ NOT VISIBLE*".

2(ii). Being aggrieved with the impugned order the appellant has filed the present appeal on dated 03.12.2021 on the following grounds :

Refund Application rejected without considering documents attached in Form GST RFD - 09 Reply of SCN. Department issued SCN on 09.03.2021 and we have replied with all supporting documents on 13.03.2021. However, refund rejected by the department with remark as "Reply of SCN Not made / Not visible".

In view of above submissions the appellant makes prayer to grant them the refund and issue Payment Advice.

3. Personal Hearing in the matter was held on 07.10.2022 wherein Sh. Harendra V. Dave, Advocate appeared on behalf of the



'Appellant' as authorized representative. During P.H. he has stated that they have nothing more to add to their written submission till date. Simultaneously, the appellant has also submitted the written submissions on 07.10.2022, wherein stated that –

- they have filed appeal on 03.12.2021 under Section 107(1) of the CGST Act, 2017 against the order dated 30.03.2021. In this regard, referred order dated 10.01.2022 of Hon'ble Supreme Court in Misc. Application No. 21 of 2022. The present appeal is quasi judicial proceedings and so the period of benevolence of exclusion of limitation from 15.03.2020 to 28.02.2022 would be available to them.
- they filed refund application under Rule 89(1) of the CGST Rules, 2017 in FORM GST RFD 01 along with relevant documents. Thereafter, SCN was issued to them that refund is liable to be rejected for the reasons that LUT/Bond not provided and the Supplies made do not fall under Section 147 of the CGST Act, 2017.
- In response to said SCN they have submitted LUT/Bond vide Reply in Form GST RFD-09 dated 13.03.2021. At the time of submission of refund application, they had submitted various documents evidencing the fact that supplies made by them falls under Section 147 of the CGST Act. They had submitted sales register, purchase register, GSTR 1 & GSTR 3B of November 2020, undertaking in Form A, Electronic Credit & Cash ledgers of November 2020, Ledger account of customer, Statement 5B as per Rule 89(2)(g) and CA Certificate as per Rule 89(2)(m).
- As per Sl. No. 3 of Notification No. 48/2017-Central Tax dated 18.10.2017 "Supply of goods by a registered person to Export Oriented Unit" shall be considered as Deemed Export. The supply made by them to M/s. Ambica Polymers Private Limited (100% EOU) falls under purview of notification. Relevant documents in this regard already submitted with refund application GST RFD 01.
- The evidences/documents which are required to be produced by supplier of deemed export supplies as per Notification No. 49/2017-Central Tax dated 18.10.2017 were already submitted with refund application.
- However, the Ld. Deputy Commissioner failed to appreciate the reply filed by them in response to SCN and rejected the claim of refund.

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 as well as additional submission. I find that the 'Appellant' had preferred the refund application "On account of Refund by Supplier of deemed export" under Rule 89(1) of the CGST Rules, 2017. In response to said refund applications Show Cause Notice was issued to them proposing rejection of refund claims for the reasons "LUT/BOND NOT PROVIDED. SUPPLIES MADE DO NOT FALL UNDER SECTION 147 OF CGST ACT". Thereafter, the said refund claim was rejected by the *adjudicating authority* vide *impugned order*. I find that in the *impugned order* a remark is also mentioned as - "REPLY OF SCN NOT MADE/ NOT VISIBLE".

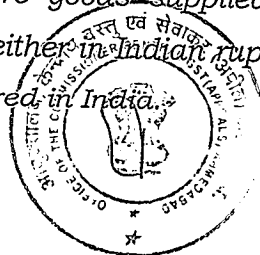
4(ii). In view of foregoing facts, I find that the refund claim is rejected for the reason that either the *appellant* failed to furnish reply of SCN or it is not visible to the *adjudicating authority*. However, I find that the *appellant* has produced the copy of reply submitted by them in Form-GST RFD-09 in response to SCN in question. On carefully going through the said reply I find that the *appellant* has furnished the reply on 13.03.2021 in respect of SCN No. ZS2403210129537 dated 09.03.2021 along with required documents.

4(iii). Further, I find that in the SCN it was alleged that the relevant supplies do not fall under Section 147 of the CGST Act, 2017. I find that in this regard the *appellant* in the present appeal has submitted that as per Sl. No. 3 of Notification No. 48/2017-Central Tax dated 18.10.2017 the supplies made by them to M/s. Ambica Polymers Private Limited (100% EOU) falls under purview of notification; therefore it is to be considered as Deemed Export. Accordingly, I find it pertinent to refer the relevant provisions and notifications. The same are reproduced in *verbatim* as under :

• **Section 147 of the CGST Act, 2017 :**

* **Section 147. Deemed exports.-**

The Government may, on the recommendations of the Council, notify certain **supplies of goods as deemed exports**, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.



• **Notification No. 48/2017-Central Tax dated 18.10.2017 :**

Notification No. 48/2017-Central Tax

New Delhi, the 18th October, 2017

G.S.R. (E).-In exercise of the powers conferred by **section 147** of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the supplies of goods listed in column(2) of the Table below **as deemed exports**, namely:-

Table	
S. No.	Description of supply
(1)	(2)
1.	Supply
2.	Supply
3.	Supply of goods by a registered person to Export Oriented Unit
4.	Supply

Explanation -

For the purposes of this notification, -

1. "Advance Authorisation"

2. Export Promotion

3. "**Export Oriented Unit**" means an **Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.**

• **Rule 89 (1) of the CGST Rules, 2017 :**

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1) Any person, except the persons covered under notification issued under section 55 claiming refund of ¹³[any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or] any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or ¹⁰[subject to the provisions of rule 10B,] an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

¹⁴[***]

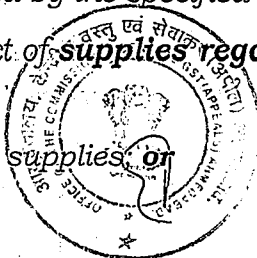
¹⁵[Provided that] in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the -

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

¹⁶[Provided further that] in respect of **supplies regarded as deemed exports**, the application **may be filed by**,

(a) the recipient of deemed export supplies, or



(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund]

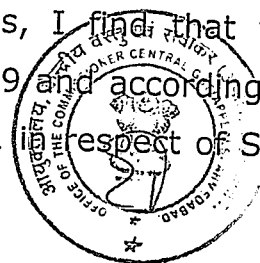
• **Para 41 of CBIC's Circular No. 125/44/2019-GST dated 18.11.2019 :**

Guidelines for refund of tax paid on deemed exports

41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax, dated 18-10-2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to **apply for refund of tax paid on such deemed export supplies**. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-Central Tax, dated 18-10-2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU)/Electronic Hardware Technology Park (EHTP) Unit/Software Technology Park (STP) Unit/Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST, dated 6-11-2017 [2017 (6) G.S.T.L. C13] needs to be complied with.

On carefully going through the above legal provisions, I find that certain supplies of goods are notified as deemed exports vide notification No. 48/2017-Central Tax, dated 18-10-2017 under section 147 of the CGST Act and the third proviso to rule 89(1) of the CGST Rules, 2017 allows the refund of tax paid on such deemed export supplies.

4(iv). Considering the foregoing facts, I find that in the present matter the refund claim is solely rejected on the ground that "REPLY OF SCN NOT MADE/ NOT VISIBLE". Whereas, I find that the appellant has produced the copy of Form - GST RFD-09 and according to which the appellant has furnished reply on 13.03.2021 in respect of SCN



No. ZS2403210129537 dated 09.03.2021 along with required documents. However, I find that the adjudicating authority has rejected the refund application on the ground that either reply to SCN not made or not visible. In this regard, 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, if the proper officer is of the view that whole or any part of refund is not admissible to the applicant he shall issue notice to the applicant and after considering the reply of applicant he can issue the order. However, in the present matter the *adjudicating authority* has issued the *impugned order* without considering the reply of *appellant*. Further, I find that "no application for refund shall be rejected without giving the applicant an opportunity of being heard". In the present matter, on going through copy of SCN, I find that opportunity of Personal Hearing was provided to the 'Appellant' on 16.03.2021 vide SCN dated 09.03.2021. However, no such evidence available on records that Personal Hearing was conducted. Therefore, I find that the *impugned order* is issued without being heard the 'Appellant' and without considering the reply of the 'Appellant' in Form GST RFD 09.

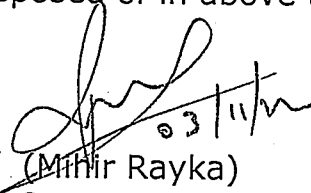
5. In view of above, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without considering *appellant's* reply and without being heard the *appellant* as well as without communicating the valid or legitimate reasons before passing said order. 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. Needless to say, since the claim was rejected on the ground of non submission of reply, 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 the Rule 89 of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017.

6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and 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*.

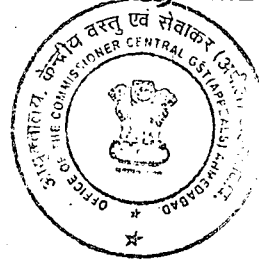
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

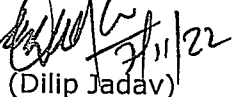

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 03.11.2022



Attested


21/11/22

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

By R.P.A.D.

To,
M/s.Active Engineers,
Plote No. 236/237, Road No. 2,
Kathwada GIDC, Kathwada,
Ahmedabad 382 430

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 Odhav, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File

