



# 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- 20221164SW0000333BF3

रजिस्टर्ड डाक ए.डी. द्वारा

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क फाइल संख्या : File No : GAPPL/ADC/GSTP/1607, 1605, 1606, 1604, 1602 & 1603/2022 -APPEAL

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-161 to 166/2022-23  
दिनांक Date : 18-11-2022 जारी करने की तारीख Date of Issue : 21-11-2022

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

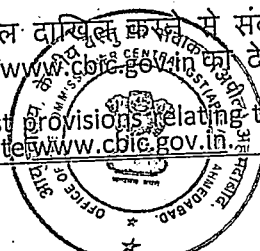
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. ZV2401220247625, ZZ2401220247570, ZP2401220247636, ZV2401220247603, ZR2401220247525 & ZS2401220247658 all Dated 27-01-2022 issued by Assistant Commissioner, CGST, Division-VI, Ahmedabad South

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

**M/s. Singapore Airlines Limited, Office No.2, 2nd Floor, Setu Complex, Off C.G. Road, S. P. Nagar Road, Navrangpura, 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 दायर 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> का 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. Singapore Airlines Limited**, Office No. 2, 2<sup>nd</sup> Floor, Setu Complex, Off C. G. Road, S. P. Nagar Road, Navrangpura, Ahmedabad – 380 009 (hereinafter referred as 'Appellant') has filed the following appeals against the Refund Sanction/Rejection orders in the form RFD-06 (hereinafter referred as 'impugned orders') passed by the Assistant Commissioner, CGST, Division – VI Vastrapur, Ahmedabad South (hereinafter referred as 'adjudicating authority').

Appeal Nos. (All Dated 05.05.2022)	RFD-06 Order Nos. (All Dated 27.01.2022)	Amount of Refund Rejected	Refund Claim period
GAPPL/ADC/GSTP/1607/2022	ZV2401220247625	Rs.14,98,344/-	March'20
GAPPL/ADC/GSTP/1605/2022	ZZ2401220247570	Rs.41,33,376/-	February'20
GAPPL/ADC/GSTP/1606/2022	ZP2401220247636	Rs.37,83,274/-	January'20
GAPPL/ADC/GSTP/1604/2022	ZV2401220247603	Rs.16,20,878/-	December'19
GAPPL/ADC/GSTP/1602/2022	ZR2401220247525	Rs.5,92,453/-	November'19
GAPPL/ADC/GSTP/1603/2022	ZS2401220247658	Rs.1,65,324/-	October'19

**2(i).** Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAACS5269A1ZP had filed the refund claims for the period as mentioned in above table. In response to said refund applications, SCNs were issued to the appellant, wherein it was proposed that refund applications are liable to be rejected for the reasons "Other". Further, in the SCNs following Remark was also mentioned :

*"As per cancellation policy of airlines some tickets are fully refundable and some are partial refundable subject to certain conditions. On perusal of documents submitted actual amount of refund made to the customers is unascertainable, please clarify."*

Thereafter, the refund claims were rejected vide 'impugned orders' in Form RFD-06 all dated 27.01.2022 as mentioned in above table on the following grounds :

*"The claimant neither replied to the SCN nor attended P.H., On perusal of documents submitted, actual amount of refund paid to the customers is not known. Hence it is unascertainable whether burden of tax has been borne by the claimant, hence rejected."*

**2(ii).** Being aggrieved with the impugned orders the appellant has filed all the six appeals on dated 05.05.2022. In the appeal memorandum the appellant has submitted that –

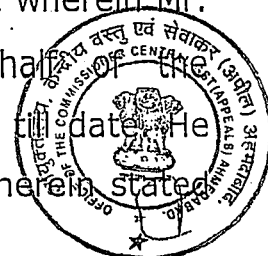
- The appellant is a foreign international airline engaged in transportation of passengers and goods by air.



- The frequency of flights embarking from India declined drastically due to recent pandemic. Further, due to ongoing travel restriction they had received number of requests for ticket cancellation for the ticket sold earlier. Due to the unusual amount of cancellation requests being received from customers, the refunds have exceeded sales.
- Since GSTR 3B does not allow to report negative amounts, these unabsorbed credit notes were being carried forward and adjusted to the extent possible against sales being booked in subsequent months.
- Owing to the restrictions in place by virtue of Proviso 1 to Section 37(3), these unabsorbed credit notes could only be adjusted with sale in GSTR 3B till the due date of filing the return for the month of September of the succeeding financial year.
- Since these unabsorbed credit notes could now no longer be adjusted against sales in the GST returns, refund applications for the same were filed in Form RFD-01.
- They have filed extension request for time till 05.02.2022 to respond SCNs. However, no response was received from the Officer on their extension request.
- Reply was filed by them on 05.02.2022 in which they drew a correlation between the month in which sale was reported in GSTR 1 and the month in which respective credit notes were reported in GSTR 1. A transaction wise list of all transactions reported in GSTR 1 was also shared on email address [cgstdivisionvi@gmail.com](mailto:cgstdivisionvi@gmail.com) on 04.02.2022 in which all line items for which refund was applied for had been highlighted.
- However, they received rejection orders in Form RFD-06 dated 27.01.2022 with observation :
  - o "The claimant neither replied to the SCN nor attended P.H., On perusal of documents submitted actual amount of refund paid to the customers is not known. Hence, it is unascertainable whether burden of tax has been borne by the claimant, hence rejected."

In view of above submissions the appellant makes prayer that "The rejection orders passed by the learned Assistant Commissioner may be cancelled or the same be remanded back for clear understanding or as your honor deem fit."

**3.** Personal Hearing in the matter was held on 09.11.2022 wherein Mr. Rajiv Puri, Authorized Representative appeared on behalf of the 'Appellant'. During P.H. he has reiterated submissions made till date. He has also submitted written submission dated 06.11.2022, wherein stated that -



- On receiving SCN they filed request for extension of due date for replying to SCN. No response was received by them from department in this regard. Hence, they filed reply in Form GST-RFD-09 on 04.02.2022.
- However, to their surprise they received rejection order with remark that claimant neither appeared for PH nor submitted reply to SCN.
- All details in connection with refund applications were filed at the time of filing of refund.
- The learned Assistant Commissioner has not appreciated the process of sale of tickets and its refund in correct perspective by not appreciating the amount of refund which is repaid to the customer is not the same as the amount being reported in GSTR 1 returns.

In view of above, the appellant has requested that impugned orders may be quashed and the order for the issue of refund may be passed.

### **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. All the appeals are filed on 05.05.2022 against impugned orders dated 27.01.2022 i.e. filed beyond 3 months period as prescribed under Section 107 of the CGST Act, 2017. However, in light of Hon'ble Supreme Court's order dated 10.01.2022 in the matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020 I find that the appeals are filed in time. Further, I find that the 'Appellant' is a foreign international airline and engaged in transportation of passengers and goods by air. Due to travel restriction on account of Covid-19 Pandemic situation the appellant had received number of requests for ticket cancellation. Accordingly, due to the cancellation of tickets, the refunds have exceeded sales. Further, I find that the appellant in the present appeals has submitted that the credit notes were being carried forward and adjusted to the extent possible against sales being booked in subsequent months. However, in view of Section 37(3), these credit notes could only be adjusted with sale in GSTR 3B till the due date of filing the return for the month of September of the succeeding financial year. Accordingly, as the appellant could not able to adjust the credit notes against sales in the GST returns, they filed the subject refund applications in Form RFD-01.

**4(ii).** Further, I find that in response to said refund applications, Show Cause Notices were issued to the appellant with following remarks :



*"As per cancellation policy of airlines some tickets are fully refundable and some are partial refundable subject to certain conditions. On perusal of documents submitted actual amount of refund made to the customers is unascertainable, please clarify".*

I find that the appellant in the present appeals contended that on receiving SCNs they filed request for extension of due date for replying to SCNs. However, no response was received by them from department. Further, they filed reply in Form GST-RFD-09 on 04.02.2022, however by the time the refund applications were rejected vide impugned orders dated 27.01.2022 with following remark:

*"The claimant neither replied to the SCN nor attended P.H., On perusal of documents submitted actual amount of refund paid to the customers is not known. Hence, it is unascertainable whether burden of tax has been borne by the claimant, hence rejected."*

**4(iii).** In view of foregoing facts, I find that the refund claims are rejected without being heard the appellant and without considering the request of appellant for extension of time limit for reply to SCN. Further, I find that the appellant in present appeal proceedings produced the copy of reply to SCN submitted by them in GST RFD-09 dated 04.02.2022. However, I find that the adjudicating authority has passed the impugned orders on 27.01.2022 without being heard the *appellant*. and without considering the request of appellant for extension of time limit for filing reply to SCN. 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 orders* without considering the request of appellant for extension of time for reply to SCNs. Further, I find that "no application for refund shall be rejected without giving the



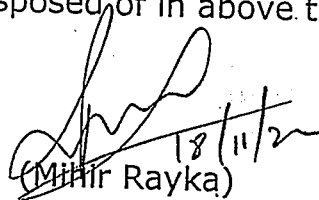
*applicant an opportunity of being heard*". However, on going through the remarks in impugned orders it is clear that the refund claims are rejected without being heard the appellant.

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 orders. 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 applications of the *appellant* by following the principle of natural justice. Needless to say, since the claims were rejected on the ground of non submission of reply and not attended PH, the admissibility of refunds on merit are not examined in this proceeding. Therefore, any claim of refunds 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 orders* passed by the *adjudicating authority* are set aside for being not legal and proper and accordingly, I allow all the six appeals 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।

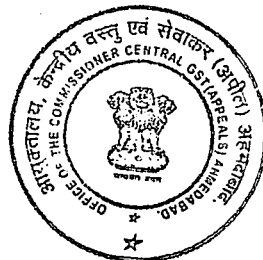
The appeal filed by the appellant stands disposed of in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date : 18.11.2022

Attested  
  
(Dimp Jadav)  
Superintendent (Appeals)  
Central Tax, Ahmedabad



By R.P.A.D.

To,  
M/s. Singapore Airlines Limited,  
Office No. 2, 2<sup>nd</sup> Floor, Setu Complex,  
Off C. G. Road, S. P. Nagar Road,  
Navrangpura, Ahmedabad - 380 009

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

