

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-20220564SW0000999D09

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2067/2021 -APPEAL / 1158 - 1163

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-17/2022-23
दिनांक Date : 12-05-2022 जारी करने की तारीख Date of Issue : 19-05-2022

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZZZ408210165276 DT. 12.08.2021 issued by
Assistant Commissioner, Division V (Odhav), Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Shri Arvindbhai Harjibhai Khukhar of M/s. Shreenath Industries, Shed No. 23, Arihant
Estate, Girnar Scooter Compound, Nr GMMM SP Ring Road, Odhav, 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 दायर 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

Shri Arvindbhai Harjibhai Khukhar of M/s.Shreenath Industries, Shed No.23, Arihant Estate, Ginnar Scooter Compound, Nr GVMM SP Ring Road, Odhav, Ahmedabad 382.415 (hereinafter referred to as 'the appellant) has filed the present appeal on dated 25-8-2021 against Order No. ZZ2408210165276 dated 12-8-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Division V (Odhav), Ahmedabad South (hereinafter referred to as 'the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24ANJPK8401F1Z8 has filed refund claim for Rs.2,46,322/- for refund of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No. ZN2407210347442 dated 27-7-2021 proposing rejection of claim on the ground of 'wrong inverted turnover'. The adjudicating authority vide impugned order held that the refund is inadmissible to the appellant on the ground that *the tax payer claims to have attached the reply to SCN. However, no reply has been attached.*

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

That they had filed reply to show cause notice on dated 5-8-2021 duly along with supporting documents.

The proper officer without appreciating the reply furnished clarifying the facts merely on the basis of supporting documents is not attached rejected the refund and passed rejection order.

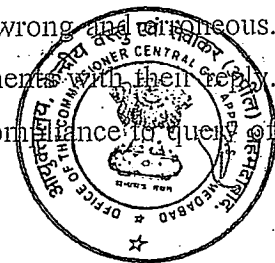
The order rejecting refund passed was in mechanical way as just not showing the attachment, the refund was rejected.

The adjudicating authority has erred in rejecting the refund due to them.

The order rejecting refund may be quashed and refund may be allowed.

4. Personal hearing was held on dated 19-4-2022. Shri Bhavin N Sansaniya, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission 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 was rejected due to non-submission of reply to show cause notice. Countering the same the appellant claimed that they had furnished reply on 5-8-2021 along with supporting documents. I find from the documents submitted in appeal that the appellant has filed reply to SCN in Form GSTR RFD 09 on 5-8-2021 under Reference Number ZN2407210347442, but not attached any supporting documents. Since the appellant has filed reply to show cause notice before issuance of impugned order, I find that rejection of refund due to non- submission of reply to SCN is factually wrong and unjust. However, I find that the appellant has not attached any supporting documents with their reply. During appeal the appellant has submitted the supporting documents in compliance to query.

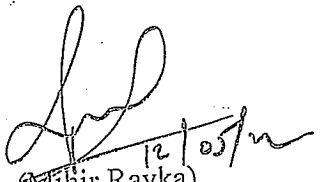


wrong inverted turnover. On scrutiny of the same I find that the appellant has claimed refund for Rs.2,46,322/- taking into account the turnover of inverted rated supply of goods at Rs.37,04,837/-; adjusted total turnover at Rs.37,04,837/-; net ITC at Rs.4,38,415/- and tax payable on such inverted rated supply of goods at Rs.1,92,093/-. I further find from GSTR3B and GSTR1 returns filed for the claim period that total taxable value is also Rs.37,04,837/-. However, from the sale summary sheet submitted by the appellant I find that the appellant has made outward supply of some goods valued at Rs.52,700/- paying tax of Rs.9,486/- @ 18% which will not form part of turnover of inverted rated supply of goods. Accordingly, the actual turnover of inverted rated supply of goods comes to Rs.36,52,137/- (3704837 - 52700) and tax payable on inverted supply of goods comes to Rs.1,82,607/- (192093 - 9486). Since, there is no dispute with regard to adjusted total turnover and Net ITC, the admissible refund determined as per formula prescribed under Rule 89 (5) of CGST Rules, 2017 comes to Rs.2,49,572/-, (3652137 x 438415/3704837 - 182607) which is more than the claimed amount. However, the appellant vide their letter dated 5-8-2021 has intimated that they intend to claim refund of Rs.2,46,322/- instead of Rs.2,49,572/-.

6. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting refund claim on the ground non submission of reply to SCN is not legal and proper and deserve to be set aside. Further during appeal, the appellant has also complied with query raised in the show cause notice. Therefore, I allow this appeal with consequential benefit to the appellant in terms of Section 54 of CGST Act, 2017 read with Rules framed thereunder. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


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

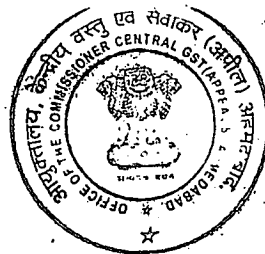

12/05/21
(Anilhir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad



By RPAD

To,
Shri Arvindbhai Harjibhai Khukhar
Of M/s. Shreenath Industries,
Shed No.23, Arihant Estate,
Girnar Scooter Compound,
Nr GVMM SP Ring Road,
Odhav, Ahmedabad 382 415

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-V(Odhav), Ahmedabad South
- 6) Guard File
- 7) PA file

