



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- 20221264SW0000555BFE

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1673 & 1674/2022 -APPEAL / 5492 - 92

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-172 to 173/2022-23**  
दिनांक Date : **01-12-2022** जारी करने की तारीख Date of Issue : **02-12-2022**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZP2404210364338 DT. 30.04.2021 & ZW2405200043727 DT. 06.05.2020** issued by Deputy Commissioner, CGST & CX, Division-V, Ahmedabad South

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

**M/s. Kamlesh Dungarmal Bohra of Kalash Metal, Shed No. 5, Anmol Industrial Estate, Nr. Kailash Industrial Estate, Opp. Shivam Industrial Estate, 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) <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., Kalash Metal** (Legal name - **Kamlesh Dungarmal Bohra**), 4, Sitaram Ind. Estate Hub, B/h. Sitaram Estate, B/s. Gopinath Estate, 100 Feet TP Road, Odhav, Ahmedabad - 382 415 (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 Deputy Commissioner, CGST, Division - V Odhav, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

Appeal Nos.	RFD-06 Order Nos.	Amount of Rs Refund Rejected	Refund Claim period
GAPPL/ADC/GSTP/1673/2022 Dated 28.05.2022	ZP2404210364338 Dated 30.04.2021	Rs.2,00,000/-	April'20 to December'20
GAPPL/ADC/GSTP/1674/2022 Dated 28.05.2022	ZW2405200043727 Dated 06.05.2020	Rs.1,08,504/-	February'19 to March'19

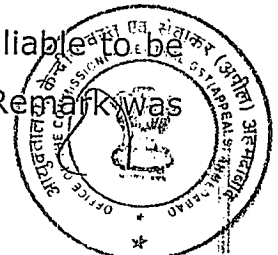
**2(i).** Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No.24ATOPK4460D1ZS has filed the present appeals. The '*Appellant*' had filed following refund applications on account of "*Refund on account of ITC accumulated due to Inverted Tax Structure*".

Refund ARN / Date of Refund Application	Period of Refund Claim	Amount of Refund Claim (IGST)
AA240421034663M / Dated 10.04.2021	April'20 to December'20	Rs.2,00,000/-
AA2404200021553 / Dated 07.04.2020	February'19 to March'19	Rs.1,08,504/-

In response to aforesaid refund claim for the period April'20 to December'20 Show Cause Notice dated 27.04.2021 was issued to the '*Appellant*'. It was proposed that refund application is liable to be rejected for the reasons "*Other*". Further, in the SCN following Remark was also mentioned :

*"Wrong ITC claimed. WRONG INVERTED TURNOVER, FORGED GSTR 2A"*

Further, in response to aforesaid refund claim for the period February'19 to March'19 a Show Cause Notice dated 20.04.2020 was issued to the '*Appellant*' wherein it was proposed that refund applications is liable to be rejected for the reasons "*Other*". Further, in the SCN following Remark was also mentioned :



**"ANNEXURE 'B' & GSTR-2A (PORTAL) COPY NOT UPLOADED"**

Thereafter, the *adjudicating authority* has rejected both the refund claims of Rs.2,00,000/- & Rs.1,08,504/- with Remarks as under :  
Remark in respect of rejection of Refund Claim of Rs.2,00,000/- for the period April'20 to December'20 :

**"COMPLIANCE TO SCN NOT MADE NOT VISIBLE ON THE PORTAL"**

Remark in respect of rejection of Refund Claim of Rs.1,08,504/- for the period February'19 to March'19 :

**"RFD-06 IS BEING ISSUED FOR REJECTION AS THE CLAIMANT HAS NOT SUBMITTED PRESCRIBED DOCUMENTS & REPLY TO SCN"**

**2(ii).** Being aggrieved with the impugned order the appellant has filed the present appeal on dated 28.05.2022 on the following grounds :

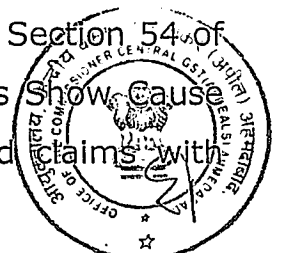
- *Apply for refund regarding inverted tax structure*
- *In respect of SCN dated 27.04.2021 they have replied in time in RFD-09 on 29.04.2021 with supporting documents. However, without considering their reply and without considering the documents submitted by them refund is rejected.*
- *In respect of SCN dated 20.04.2020, PORTAL not allowed to rectify as per deficiencies memo.*
- *Due to COVID-19 Pandemic department not given permission to meet officer.*
- *Without examining the refund application their refund claims were rejected.*

In view of above submissions the appellant has requested for refund.

**3.** Personal Hearing in the matter was held on 07.10.2022 wherein Yogesh M. Jain 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.

**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 applications "Refund on account of ITC accumulated due to Inverted Tax Structure" under Rule 89 of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017. In response to said refund applications Notices were issued to them proposing rejection of refund claims with



Remarks as "Wrong ITC claimed. WRONG INVERTED TURNOVER, FORGED GSTR 2A" and "ANNEXURE 'B' & GSTR-2A (PORTAL) COPY NOT UPLOADED". Thereafter, the said refund claims were rejected by the adjudicating authority vide impugned orders with Remark mentioned as -

- "COMPLIANCE TO SCN NOT MADE NOT VISIBLE ON THE PORTAL"
- "RFD-06 IS BEING ISSUED FOR REJECTION AS THE CLAIMANT HAS NOT SUBMITTED PRESCRIBED DOCUMENTS & REPLY TO SCN".

**4(ii).** Further, before deciding the issue of filing the appeal on merits, it is imperative that the statutory provisions be gone through, which are reproduced, below:

**SECTION 107. Appeals to Appellate Authority.** — (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) .....

(3) .....

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a **further period of one month.**

**4(iii).** I observed that in the instant case the appeal has been filed by delay from the normal period prescribed under Section 107(1) of the CGST Act, 2017. I find that though the delay in filing the appeal is condonable only for a further period of one month provided that the appellant was prevented by sufficient cause from presenting the appeal is shown and the delay of more than one month is not condonable under the provisions of sub section (4) of Section 107 of the Central Goods and Service Tax Act, 2017.

**4(iv).** However, in the above context, I find that the Hon'ble Supreme Court has passed order on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020. Hon'ble Supreme Court vide Order dated 10.01.2022 ordered that for computing period of limitation for any suit, appeal, application or proceedings the period from 15.03.2020 till



28.02.2022 shall stand excluded and consequently balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022 and that in cases where the limitation would have expired during the period from 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

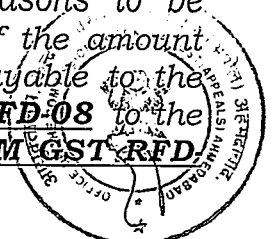
**4(v).** In the present matter, the "*impugned orders*" are of 06.05.2020 & 30.04.2021 so, the normal appeal period of three months was available up to 05.08.2020 & 29.07.2021 respectively. Whereas, in the present matter appeals filed on 28.05.2022. However, in view of above order of Hon'ble Supreme Court the last date for filing of appeal comes to 29.05.2022 (considering 90 days from 01.03.22). Accordingly, in view of above order of Hon'ble Supreme Court as discussed in above paras, the present appeals are considered to be filed in time.

**5.** In view of above and also looking into the **Covid-19 pandemic situation** in the instant matter, I am inclined to condone the delay of filing of appeal. Therefore, I find that the present appeals are filed within stipulated time limit. Accordingly, I am proceeded to decide the case.

**6(i).** In view of foregoing facts, I find that the refund claims are rejected for the reason that either the *appellant* failed to furnish reply/documents i/r. SCNs 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 dated 27.04.2021.

**6(ii).** Considering the foregoing facts, I find that in the present matter the refund claims are solely rejected on the ground that "**REPLY OF SCN NOT MADE/ 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-**

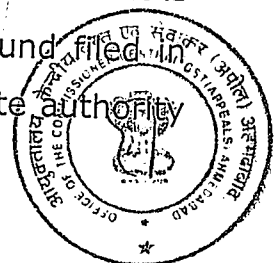


**09** within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06** sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and 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 SCNs, I find that opportunity of Personal Hearing was provided to the 'Appellant' on 27.04.2020 & on 04.05.2021 vide SCNs dated 20.04.2020 & 27.04.2021 respectively. However, no such evidence available on records that Personal Hearings were conducted. Therefore, I find that the *impugned orders* are issued without being heard the 'Appellant' and without considering the reply of the 'Appellant' in Form GST RFD 09.

7. In view of above, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned orders* 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/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 the Rule 89 of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017.

8. 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 the 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*.

9. 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)*  
01/12/22

Additional Commissioner (Appeals)

Date: 01.12.2022

Attested

*(Dhir Jadaav)*  
01/12/22  
Superintendent (Appeals)  
Central Tax, Ahmedabad

By R.P.A.D.

To,

M/s., Kalash Metal (Legal name - Kamlesh Dungarmal Bohra),  
4, Sitaram Ind. Estate Hub, B/h. Sitaram Estate,  
B/s. Gopinath Estate, 100 Feet TP Road, Odhav,  
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 Odhav, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File



