



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- 20221264SW000000DFA8

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1728/2022 -APPEAL

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ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-176/2022-23**

दिनांक Date : **13-12-2022** जारी करने की तारीख Date of Issue : **14-12-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZU2404210241661 DT. 21.04.2021** issued by The Deputy Commissioner, CGST & CX, Division-IV, Ahmedabad South

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

**Maiya Ram Chaudhary of M/s. Chandrika Creation, C-101, Plot No. 134/3,  
Ser No. 99, Bhagirath City Homes, Opp. Narol Nr. Shriji Bunglows,  
Narol, Ahmedabad, Gujarat-382405**

(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 :**

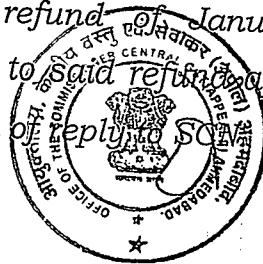
**M/s. Chandrika Creation** (Legal name - **Maiya Ram Chaudhary**), C-101, Plot No. 134/3, SER No. 99, Bhagirath City Homes, Opp. Narol Court, Nr. Shriji Bunglows, Narol, Ahmedabad - 382 405 (hereinafter referred as '*Appellant*') has filed the present appeal against the Refund Sanction/Rejection order in the form RFD-06 bearing No. ZU2404210241661 dated 21.04.2021 (hereinafter referred as '*impugned order*') passed by the Deputy Commissioner, CGST, Division - IV Narol, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

**2(i).** Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTIN No.24AZMPC4355R2ZU had filed the refund application on account of "*Refund on account of ITC accumulated due to Inverted Tax Structure*" for the period from January 2020 to December 2020 vide ARN - AA2402210941091 dated 25.02.2021 for Rs.7,16,461/-. In response to said refund claim a Show Cause Notice dated 09.04.2021 was issued to the '*Appellant*'. It was proposed that refund application is liable to be rejected for the reasons "*Other*" with Remark as "*WRONG INVERTED TURNOVER*".

Thereafter, the '*adjudicating authority*' has rejected the said refund claim of Rs.7,16,461/- vide '*impugned order*' with Remarks as "*COMPLIANCE OF THE SCN NOT MADE / NOT VISIBLE ON THE PORTAL*"

**2(ii).** Being aggrieved with the impugned order the appellant has filed the present appeal on dated 24.05.2022 on the following grounds :

- *Engaged in job work process of textile products. Inward supply majorly consists of chemicals which is having ITC of 18% and wood which consists of ITC 5%. Whereas outward GST liability on job work done over Grey Cloth consists of GST liability @ 5%*
- *As per Section 54 of the CGST Act, 2017 where a tax payer is dealing in any such products which is having higher tax liability on its Inward supplies and lower tax liability on its outward supplies, such tax payer shall be eligible to refund due to Inverted Duty Structure scheme.*
- *Accordingly filed refund application for refund of January'20 to December'20 for Rs.7,16,461/-. In response to said refund application, rejection order passed due to non-submission of reply to SCN*



- They were unable to respond to SCN due to genuine reasons and their intention was not of fraudulent nature. They must be given an opportunity to represent their case under Principle of Natural Justice.

In view of above submissions the appellant has requested to consider their points and provide them opportunity to represent their case before the concerned authority.

3. Personal Hearing in the matter was held on 10.10.2022 wherein Mr. Rajat Joshi 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 Show Cause Notice was issued to them proposing rejection of refund claim with Remarks as "WRONG INVERTED TURNOVER". Thereafter, the said refund claims was rejected by the adjudicating authority vide impugned order with Remark as - "COMPLIANCE OF THE SCN NOT MADE / NOT VISIBLE ON THE PORTAL"

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.**





*appellant* has submitted in the present appeal that they failed to represent their case before the concerned authority and the order for rejection of refund claim is issued accordingly. Further, I find that the appellant has submitted that they were unable to respond to the SCN in time due to some reasons and therefore, they may be given another opportunity to represent their case before the concerned authority by following the Principal of Natural Justice.

**6(ii).** Considering the foregoing facts, I find that in the present matter the refund claim is solely rejected on the ground that "COMPLIANCE OF THE SCN NOT MADE/ NOT VISIBLE ON THE PORTAL". 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 16.04.2021. However, no such evidence available on records that Personal Hearings was conducted. Therefore, I find that the *impugned order* is issued without being heard the 'Appellant' and without considering the documents submitted by appellant with refund application as well as without the reply of appellant in respect of subject SCN.

**7.** In view of above, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order*.

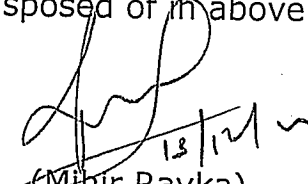


vide which rejected the refund claim without the *appellant's* reply to SCN and without being heard the *appellant* as well as without communicating the valid or legitimate reasons before passing said order. Further, I am of the view that proper speaking order should have been passed by giving proper 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/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 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*.

**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.

  
(Minir Rayka)  
Additional Commissioner (Appeals)

Date: 13.12.2022

Attested  
  
14.12.2022  
(Dilip Jadav)  
Superintendent (Appeals)  
Central Tax, Ahmedabad

By R.P.A.D.

To,  
M/s. Chandrika Creation (Legal name - Maiya Ram Chaudhary),  
C-101, Plot No. 134/3, SER No. 99, Bhagirath City Homes,  
Opp. Narol Court, Nr. Shriji Bunglows, Narol,  
Ahmedabad - 382 405



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



