



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- 20221264SW000041414C

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2844,2845,2846,2847,2848,2849/2022 -APPEAL /6115-50

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC- 194 to 199/2022-23**  
दिनांक Date : **23-12-2022** जारी करने की तारीख Date of Issue : **23-12-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

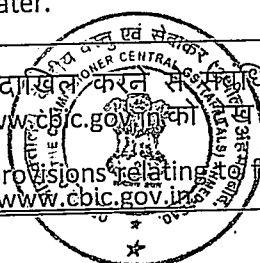
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZW2407220368332 DT. 26.07.2022,**  
**ZT2407220368154 DT. 26.07.2022, ZT2407220368009 DT. 26.07.2022,**  
**ZN2407220318210 DT. 22.07.2022, ZO2407220368410 DT. 26.07.2022 &**  
**ZP2407220368232 DT. 26.07.2022** issued by The Assistant Commissioner, Division-I,  
Ahmedabad South

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

**M/s. Ketan Olivarbhai Khambata of M/s. The Loyal Infrastructure, 6, Nazreth Colony, Nr. Methodist Church, Sionna nagar, Maninagar, Ahmedabad, Gujarat-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 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. The Loyal Infrastructure (Legal Name - Ketan Olivarbhai Khambata)**, 6, Nazreth Colony, Nr. Methodist Church Sionna Nagar, Maninagar, Ahmedabad - 380 008 (hereinafter referred as '*Appellant*') has filed the following appeals against the following Refund Sanction/Rejection orders (hereinafter referred as '*Impugned Orders*') passed by the Assistant Commissioner, CGST, Division - I (Rakhial), Ahmedabad South (hereinafter referred as '*Adjudicating Authority*').

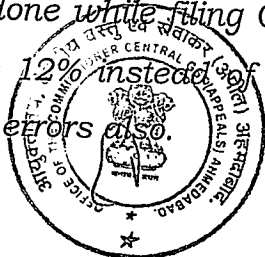
Appeal Nos. (All Dated 20.10.2022)	RFD-06 Order Nos. and Date (All Dated 26.07.2022 except Order i/r. June'21 which is of 22.07.2022)	Amount of Refund Rejected	Refund Claim period
GAPPL/ADC/GSTP/2844/2022	ZW2407220368332	Rs.4,23,172/-	March'20
GAPPL/ADC/GSTP/2848/2022	ZO2407220368410	Rs.15,188/-	September'20
GAPPL/ADC/GSTP/2847/2022	ZN2407220318210	Rs.1,14,826/-	June'21
GAPPL/ADC/GSTP/2846/2022	ZT2407220368009	Rs.8,70,772/-	July'21
GAPPL/ADC/GSTP/2845/2022	ZT2407220368154	Rs.5,58,406/-	August'21
GAPPL/ADC/GSTP/2849/2022	ZP2407220368232	Rs.12,44,852/-	September'21

**2(i):** Briefly stated the facts of the case is that the '*Appellant*' is holding GST Registration - GSTN 24AGYPK7415P1ZJ had filed the refund applications on account of "*Excess payment of tax*" for the period and amount as mentioned in above table. In response to said refund claims Show Cause Notices were issued to the '*Appellant*'. It was proposed that refund applications are liable to be rejected on the grounds "*Other*". Further, following Remark was mentioned in the SCNs :

- *There are not specified the reasons / details of excess payment, the amount of Rs.4,23,172/-, Rs.15,188/-, Rs.1,14,826/-, 8,70,772/-, Rs.558406/- & Rs.12,44,852/- seems inadmissible.*

Thereafter, the '*Adjudicating Authority*' has rejected the said refund claims as mentioned in aforesaid Table at Para 1 above, vide '*Impugned Orders*' on following grounds :

- *Refund claim for the same period has not been filed in the same category including any claim filed under 'Any Other' Category.*
- *Claimant did not appear in PH and in his reply, they stated that they are a real estate developer and they had made excess payment of GST due to mistake done while filing GSTR-3B in which the effective rate of GST is taken as 12% instead of application rate of 8% and there are some calculation errors also.*



- In his reply, claimant stated that they have received total receipt from customers as per Bank Statement & Books of accounts. Further, the claimant has not specified the details about excess payment made in GSTR-3B. Not submitted any reasons or explanation as to how excess payment has been made by them. The claimant enclosed the following documents with the SCN :
  - o GST reconciliation
  - o Date wise payment
  - o Members receipt
  - o Sale deed sample
  - o Bank statement
- Gone through each and every documents submitted by claimant and none of the documents reveal any excess payment. Therefore, reply of claimant is not acceptable.
- Provision of unjust enrichment are applicable in terms of Section 54(8) of the CGST Act, as they have received the payment from customers where GST amount is included. This GST amount received from their customers is the full tax amount which has been paid by them and for which the refund is sought here.
- Refund claims filed by applicant are not found in order and accordingly refund claims are rejected as per SCN.

**2(ii).** Being aggrieved with the impugned order the appellant has filed the present appeals on dated 20.10.2022 on the following grounds :

- Engaged in the activities of construction and selling of Affordable Residential housing Units falling under SAC 995411.
- Filed refund applications for excess payment of tax with explanation stating that such excess payment of GST has been done while filing GSTR-3B for the relevant period due to errors in calculations of taxable value of sales and rate of GST application on the taxable value resulting into excess payment of GST.
- In pursuance to SCNs they have filed their reply, stating that they have made excess payment of GST due to mistake done while filing GSTR-3B in which effective rate of GST is taken as 12% instead of applicable rate of 8%. Further, attached detailed GST Reconciliation of GSTR-3B with their Books of Accounts for the relevant period along with Members receipt register from their audited books of accounts and Bank Statements for the relevant period.



- *The Ld. Proper Officer has issued Order-In-Original citing reason that the documents submitted by them does not reveal any excess payment of tax.*
- *The learned Tax Officer erroneously rejected refund application by impugned orders without considering the documents and detailed written explanation submitted with application and also explanation provided by their representative during physical hearing.*
- *The Learned Tax Officer has rejected the refund applications stating that the provision of unjust enrichment are applicable in terms of section 54(8) of the CGST Act, without considering appellant's explanation that the GST has been collected by appellant from the customers at the rate of 5% instead of applicable rate of 8% on sales value from which it can be seen that the appellant has collected lesser GST from customer and paid GST at the rate over and above the specified rate of tax and it can be identified that appellant has made excess payment of GST from their own pocket and no burden of excess paid GST has been passed on to customer.*

In view of above submissions the appellant has made prayer that impugned orders may be set aside and appeals filed by them may be allowed.

**3.** Personal Hearing in the matter was held on 20.12.2022 wherein Mr. Nikunj Kukadiya, C.A. 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 submissions 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 on account of "Excess payment of tax". I find that the appellant in the present appeals has submitted that they are engaged in activities of construction and selling of Affordable Residential housing Units; that by mistake while filing GSTR-3B they have considered GST @ 12% instead of applicable rate of 8%. Accordingly, they have made excess payment of tax. Further, as regards to applicability of provision of unjust enrichment as per Section 54(8) of the CGST Act, 2017, I find that the appellant has submitted in the present appeals that they have collected GST @ 5% from their customer instead of applicable rate of GST @ 8%.

**4(ii).** Further, I find that the refund claims are rejected for the reasons that appellant has not specified the details about excess payment



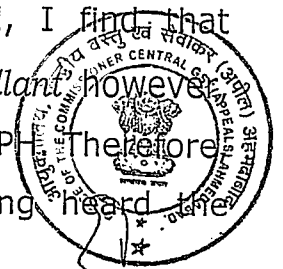
made in GSTR-3B; not submitted any reasons or explanation as to how excess payment has been made by them. Further, I find that the adjudicating authority has given findings that he gone through each and every document submitted by the appellant and observed that none of the documents reveal any excess payment and accordingly, reply of appellant is not acceptable. Further, I find that the adjudicating authority has issued the impugned orders without being heard the appellant.

**4(iii).** Considering the foregoing facts, I find that according to the appellant they are liable to pay GST @ 8% however, by mistake they paid GST @ 12%, and thus they made excess payment of GST. Further, I find that the appellant has provided the documents with refund applications as well as while responding the SCNs. However, I do not find any findings regarding correct applicable rate of GST and GST discharged by the appellant during the relevant refund claims period. Therefore, I find that the refund applications are rejected without considering the documents submitted by the appellant and without being heard the appellant. 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 submissions 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 hearings were provided to the 'Appellant however as per the impugned orders the appellant did not appear for PH. Therefore I find that the impugned orders are issued without being heard the



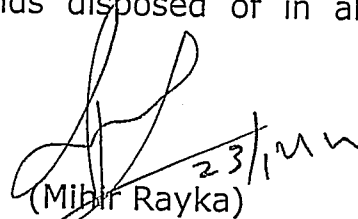
'Appellant' and without considering the documents submitted by appellant with refund applications as well as vide replies to SCNs in question.

5. 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 claims without considering the *appellant's* replies to SCNs 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 orders 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 claims 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 of appellant were rejected on the ground of non submission of proper documents or replies in support of their refund claims, 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 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*.

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

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

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 23.12.2022

Attested

  
(Dilip Ladav)

Superintendent (Appeals)  
Central Tax, Ahmedabad



By R.P.A.D.

To,  
M/s. The Loyal Infrastructure  
(Legal Name - Ketan Olivarbhai Khambata),  
6, Nazreth Colony, Nr. Methodist Church Sionna Nagar,  
Maninagar, Ahmedabad - 380 008

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



