



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- 20221264SW000000D393

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फाइल संख्या : File No : GAPPL/ADC/GSTP/2526/2022 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-201/2022-23**

दिनांक Date : **27-12-2022** जारी करने की तारीख Date of Issue : **27-12-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. **ZY2407220109587 DT. 08.07.2022** issued by Assistant Commissioner, CGST & CX, Division-V, Ahmedabad South

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

Pankajbhai Ganpatbhai Patel of M/s. Riya Enterprise 149, Grand Vishala Ind. Estate, Nr. Karnavati Ind. Estate, Odhav, Ahmedabad-382418

(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 दाखिल 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**Brief Facts of the Case :**

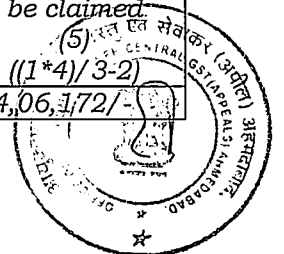
M/s. Riya Enterprise (Legal name - **Pankajbhai Ganpatbhai Patel**), 149, Grand Vishala Ind. Estate, Nr. Karnavati Ind. Estate, Odhav, Ahmedabad - 382 418 (hereinafter referred as 'Appellant') has filed the present appeal against the Refund Sanction/Rejection order in the form RFD-06 bearing No. ZY2407220109587 dated 08.07.2022 (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST, Division - V, 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.24ANYPP7883K1ZT had filed the refund application on account of "ITC ACCUMULATED DUE TO INVERTED TAX STRUCTURE" for the period from October-2021 to March-2022 vide ARN - AA2405220977053 dated 25.05.2021 for Rs.14,06,172/-. In response to said refund claim a Show Cause Notice dated 24.06.2022 was issued to the 'Appellant'. It was proposed that refund application is liable to be rejected for the reasons "Other" with Remark as "ITC available in GST 2A not provided. Also ITC in Ann B is less than ITC in RFD-01".

Thereafter, the 'adjudicating authority' has rejected the said refund claim of Rs.14,06,172/- vide 'impugned order' on the following grounds/observations -

- Refund claim filed within limitation of time.
- Following documents uploaded with refund application
 - o GSTR-2A for the relevant period (not in proper format);
 - o Annexure-B in format as mentioned vide circular 135-GST refunds;
 - o Undertakings and Declaration as prescribed;
 - o Sales & Purchase register and Statement 01A.
- SCN was issued to claimant as ITC in Annexure is less than ITC in RFD-01. Total ITC available in GSTR 2A has not been provided. Personal hearing dated 01.07.22 was given to claimant. The claimant vide reply dated 25.06.22 submitted the same set of documents uploaded earlier without fulfilling the query regarding total ITC available in GSTR 2A.
- Provision of unjust enrichment not applicable.
- Details of computation of refund claim amount and the admissible amount is tabulated as under :

Turnover of inverted rated supply of goods (1)	Tax payable on such inverted rated supply of goods (2)	Adjusted total turnover (3)	Net Input Tax Credit (4)	Maximum Refund amount to be claimed (5) ((1*4)/3-2)
1,79,37,518/-	8,97,395/-	1,79,37,518/-	23,03,567/-	14,06,172/-



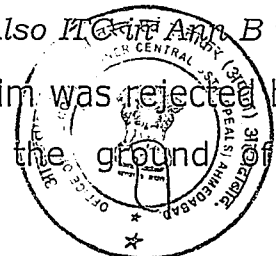
- In view of above, the refund claim filed by applicant is NOT found to be in order and accordingly refund of Rs.14,06,172/- is rejected on account of non satisfactory reply to SCN.

2(ii). Being aggrieved with the impugned order the appellant has filed the present appeal on dated 18.08.2022 on the grounds that they have filed the refund application for the period from October 2021 to March 2022. The appellant has produced the copy of reply to SCN in Form-GST-RFD-09 dated 25.06.2022 wherein mentioned that "GSTR 2A and Ann B upload original and other documents original upload". The appellant vide said reply has submitted supporting documents such as GSTR 2, ANN B, Declaration, Purchase Bill, Sales Bill, Sales Register, Purchase Register, Bank Details. In view of above submission the appellant has requested to approve their refund. Further, vide letter dated 09.11.2022 the appellant has submitted that their refund claim is rejected on the ground that their reply to SCN was not satisfactory, though they had submitted all the required documents along with refund application as well as along with reply to SCN. The appellant has further contended that their refund claim is rejected without considering the documents/reply submitted by them; and also the refund claim is not rejected on merit. Accordingly, in view of their submission they have requested to set aside the impugned order and allowed their appeal.

3. Personal Hearing in the matter was held on 09.11.2022 wherein Mr. Mahesh Patel, Tax Consultant 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 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 "ITC available in GST 2A not provided. Also ITC in Ann B is less than ITC in RFD-01". Thereafter, the said refund claim was rejected by the adjudicating authority vide impugned order on the ground of "non satisfactory reply to SCN".



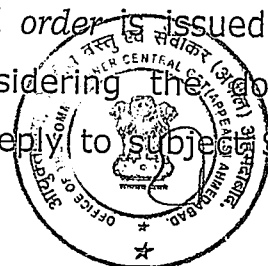
4(ii). In view of foregoing facts, I find that the entire refund claim of Rs.14,06,172/- is solely rejected for the reason of non satisfactory reply to SCN. From the copy of reply to SCN I find that the *appellant* has submitted various documents in support of their refund claim. However, I find that the entire amount of refund claim is rejected on the ground of GSTR 2A not in proper form or reply to SCN is not satisfactory. Therefore, I find that the grounds taken by adjudicating authority for rejection of entire refund claim is not valid, justifiable and legitimate. I am of the view that before rejecting any refund claim sufficient opportunity should have been provided to the claimant to represent their case properly with a view to follow the Principal of Natural Justice.

4(iii). Considering the foregoing facts, I find that in the present matter the refund claim is solely rejected on the ground that “*non satisfactory reply to SCN*” or “*GSTR 2A is not in proper form*”. 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 01.07.2022. 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/reply to subject SCN and



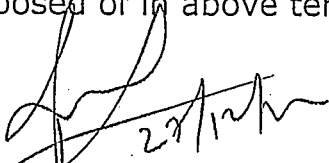
without communicating the valid or justifiable reason for rejection of refund claim.

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 entire refund claim without the considering documents/reply of *appellant's* 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 satisfactory reply to SCN or 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.

6. 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*.

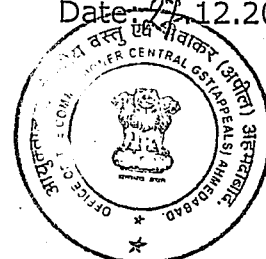
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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



(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 27.12.2022



Attested


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

By R.P.A.D.

To,
M/s. Riya Enterprise
(Legal name - Pankajbhai Ganpatbhai Patel),
149, Grand Vishala Ind. Estate, Nr. Karnavati Ind. Estate,
Odhav, Ahmedabad - 382 418

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

