



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.

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DIN- 20230164SW000000DCE2

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/424/2022 -APPEAL / 4020 - 25

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-208/2022-23**

दिनांक Date : **06-01-2023** जारी करने की तारीख Date of Issue : **09-01-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZO2411210018335 DT. 01.11.2021** issued by The Assistant Commissioner, CGST & CX, Division-VI, Ahmedabad South

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

**M/s. Adani Properties Private Limited, Shikhar, Nr. Adani House,
Mithakhali Six Roads, Navrangpura, Ahmedabad, 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) 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.cbtc.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.cbtc.gov.in



ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Adani Properties Private Limited, Shikhar, Nr. Adani House, Mithakhali Six Roads, Navrangpura, Ahmedabad - 380 009 (hereinafter referred as 'Appellant') has filed the present appeal against the Order in the form RFD-06 bearing No. ZO2411210018335 dated 01.11.2021 (hereinafter referred as 'Impugned Order') passed by the Assistant Commissioner, CGST, Division - VI (Vastrapur), 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.24AABCA3182H1Z0 had filed the refund application on account of "Excess payment of tax" for the period of June 2021 on dated 24.08.2021 for Rs.28,98,800/-. In response to said refund claim a Show Cause Notice dated 25.09.2021 was issued to the 'Appellant'. It was proposed that refund application is liable to be rejected on the grounds -

"RCM invoice date not matched with the invoices entry mentioned in uploaded Annexure-A, and excess payment of tax not specified with the Returns. Please clarify the same"

Thereafter, the 'adjudicating authority' has rejected the said refund claim of Rs.28,98,800/- vide 'impugned order'. In the impugned order the adjudicating authority has mentioned following Remarks -

"Refund claim filed for RCM Invoices does not pertains to refund period. Amount of tax in excess is not ascertainable with GSTR return. Refund claim filed in wrong category, hence liable for rejection"

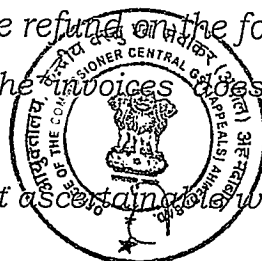
2(ii). Being aggrieved with the impugned order the appellant has filed the present appeal on dated 01.02.2022. The appellant has submitted in the appeal memo that -

- They are engaged in business of letting out property and commodity trading.
- In the month of June 2021 they received various invoices of various advocate services of Rs.80,52,220/-. In terms of Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017 they were liable to pay GST under Reverse Charge Mechanism (RCM) basis amounting to Rs.14,49,400/-.
- As per Section 7(3) of the IGST Act, 2017, if the location of supplier and place of supply is within the same state, the supply would be treated as an Intrastate Supply liable to CGST and SGST. On the contrary, the



location of supplier and place of supply is in different state, the supply would be treated as an Interstate Supply liable to IGST. In the appellant's case, the location of supplier i.e. location of advocates was outside Gujarat and the place of supply was in Gujarat, the appellant was liable to pay IGST on RCM amounting to Rs.14,49,400/- in respect of various advocate services received and accounted in books of accounts in June 2021.

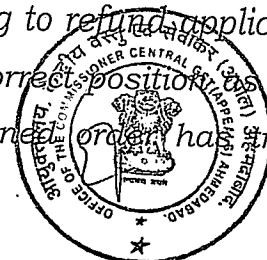
- However, at the time of filing GSTR 3B for the month of June 2021, the appellant inadvertently discharged GST under RCM considering aforesaid transactions as intrastate supply instead interstate supply and accordingly paid CGST and SGST amounting to Rs.14,49,400/- each (i.e. Rs.28,98,800/- in total) instead of IGST of Rs.14,49,400/-
- Subsequently, in July 2021 the appellant realized the inadvertent mistake of paying CGST & SGST instead of IGST, the appellant further paid GST under correct head i.e. IGST amounting to Rs.14,49,400/- at the time of filing GSTR 3B for the month of July 2021 in addition to CGST and SGST already paid amounting to Rs.28,98,800/- during June 2021. Accordingly, the appellant has filed the refund claim of Rs.28,98,800/- on 24.08.2021 considering excess payment of tax in terms of Section 77 of the CGST Act, 2017.
- In response to their refund application they received a system generated intimation over email on 25.09.2021 specifying that SCN for rejection of refund application in Form RFD-08 has been issued to them and same can be downloaded after logging in the GSTN Portal. However, after logging they observed that no copy of SCN in Form RFD-08 was available on GSTN Portal. Accordingly, they orally communicated the unavailability of SCN to the Learned Assistant Commissioner.
- The Learned Assistant Commissioner informed that due to some system related error/issues, the SCN in Form RFD-08 cannot be downloaded from the Portal. Accordingly, the appellant was provided with the screenshot of the department's internal website which specified the grounds for rejection with the instruction to consider the same in lieu of SCN in Form RFD-08.
- In response they filed the reply in Form RFD-09 wherein all clarification as required in terms of screenshot so provided. However, without considering submissions made by them in Form RFD-09, the learned Assistant Commissioner rejected the refund on the following grounds
 - o The refund claim filed for the invoices does not pertain to the refund period;
 - o Amount of tax in excess is not ascertainable with GST Return; and



- o *The refund claim is filed in the wrong category.*

Being aggrieved they filed the present appeal on the following grounds :

- *The impugned order has been passed without granting opportunity of being heard. As per Rule 92(3) of the CGST Rules, 2017, it is mandated that an application of refund shall not be rejected without giving the applicant an opportunity of being heard. Accordingly, it is evident that the learned Assistant Commissioner, while rejecting refund claim has not followed the proviso to Rule 92(3) of the CGST Rules, 2017. Therefore, impugned order is liable to be quashed and set aside. In this regard, they referred case of Dharampal Satyapal Ltd. vs. Dy. CCE Guwahati [2015 (320) ELT 3 (SC)].*
- *The impugned order has been passed without providing any reasons or justifications for rejection of refund claim and without considering their detail submissions. The learned Assistant Commissioner without considering the facts and reasons provided by them at the time of filing refund application and even without citing any appropriate reasons in support of such non-consideration. Since, no reasons provided in the impugned order in support of decision, hence it is not 'reasoned order', it is non-speaking order. Therefore, liable to be quashed. In this regard, they referred following cases:*
 - o *Tata Engineering & Locomotive Co. Ltd. vs CCE, Pune [2006 (203) E.L.T. 360 (S.C.)]*
 - o *Commissioner vs Ishan Technologies Pvt. Ltd. [2011 (269) ELT 157 (Guj.)]*
 - o *Parnikka Harvest Floratech Ltd. vs CCE, Hyderabad [2010 (256) ELT 417 (Tri. Bang.)]*
- *As per Rule 92(3) of the CGST Rules, 2017 it is require to serve SCN in Form RFD-08 requiring the concerned person to show cause why the refund claim should not be rejected. However, in the present matter no SCN was served by the adjudicating authority. The appellant was served merely with screenshot of the department's internal website. Reliance in this regard placed on case of Hon'ble Madras High Court in V N Mehta & Co. Vs. CCE [2019 (112) Taxman.com 376].*
- *The impugned order travelled beyond the scope. No SCN was served by adjudicating authority, however, even if for the sake of argument, it is assumed that the screenshot of the department's internal website seeking clarification of certain points pertaining to refund application is treated as service of SCN, which is not the correct position as per the facts and provisions of GST law. The impugned order has travelled*



beyond the scope of grounds for rejection of refund specified under the aforesaid screenshot.

- The screenshot had raised only two objections for rejection of refund-
 - o That the RCM invoices date not match with the invoices entry mentioned in Annexure-A of Form RFD-01; and
 - o Excess payment of tax is not specified in the returns.
- However, impugned order was passed rejecting the refund on the following grounds :
 - o Refund claim filed for RCM invoices does not pertain to refund period;
 - o Amount of tax in excess is not ascertainable with GST Return; and
 - o Refund claim is filed in wrong category.
- The first and third ground of rejection was never alleged or disputed as per the screenshot of the department's internal website provided to the appellant. However, the impugned order has travelled beyond the scope by introducing the aforementioned new grounds in the impugned order and by raising a new allegation/objection. Referred various case laws in this regard.
- As regards to first ground appellant submits that refund claim filed pursuant to Section 77 of the CGST Act, 2017 which provides that the registered person who has paid CGST and SGST, on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply, would be refunded the amount of taxes paid in the manner prescribed.
- Further, Rule 89(1A) of the CGST Rules, 2017 provides that the person claiming refund under Section 77 of any tax paid him, in respect of a transaction considered by him to be an intra-state supply, which subsequently held to be an inter-state supply, is required to file refund application in Form RFD-01 before expiry of period of two years from the date of payment of the tax on the inter-state supply.
- They satisfied the above requirements in the present matter; accordingly, refund should not be rejected on the ground that RCM invoices does not pertain to the refund period
- They produced screenshot of GSTR 3B of June 2021 in support of payment made towards CGST & SGST Rs.28,98,800/- (1449400+1449400) on RCM basis. Further, produced screenshot of GSTR 3B of July 2021 evidencing payment made towards IGST Rs.15,89,800/- (Rs.14,49,400/- of June 21 + Rs.1,40,400/- of July'21) on RCM basis.



- From above it can be clearly observed that GST under RCM amounting Rs.28,98,800/- was made in excess under wrong head in GSTR 3B of June 2021. The detail justification was also provided under reply to SCN in Form RFD-09. However, the adjudicating authority has rejected the refund claim.
- As regards to third ground for rejection of refund i.e. refund claim is filed under wrong category, they would like to submit that refund claim under Form RFD-01 is filed over the GSTN Portal under category "Excess payment of tax" instead of the category of "Tax paid on an intra-state supply which is subsequently held to be inter-state supply". Due to technical glitches over the GSTN portal they were not able to submit the statement showing details of transactions considered as intra-state supply but which is subsequently held to be inter-state supply. Accordingly, in absence of any alternative, they had filed refund application over GSTN Portal under category "Excess payment of tax". In this regard, referred following judicial rulings wherein, it has been categorically held that substantiate benefit provided under the law cannot be denied because of a mere procedural lapse or a procedural infraction:
 - o Uday Shankar Triyar vs Ram Kalewar Prasad Singh and Ors. [Manu/SC/2173/2005] – Supreme Court
 - o Commr. of Cus. & C. Ex. Vs. J. S. Gupta And Sons [2015(318) E.L.T. 63 (All.)] – Allahabad High Court

In view of above submissions the appellant pray to set aside the impugned order and refund of Rs.28,98,800/- along with applicable rate of interest be granted.

3. Personal Hearing in the matter was held on 29.08.2022 wherein Mr. Rahul Patel, CA appeared through virtual mode on behalf of the 'Appellant' as authorized representative. During P.H. they have asked that they want to submit additional reply, same was approved and three working days period was granted. Accordingly, the appellant has submitted the additional submission on 01.09.2022, vide which submitted the CA certificate date 26.08.2022. The appellant in the additional submission has stated that the CA has certified that liability of GST on reverse charge mechanism was discharged twice instead of once and for which refund is being claimed.

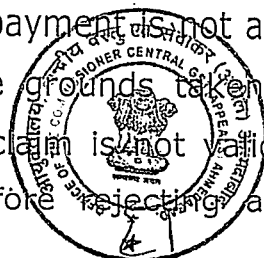
Discussion and Findings :

4(i). I have carefully gone through the facts of the case available on records, submissions made by the Appellant the Appeals



Memorandum. I find that the 'Appellant' had preferred the refund applications on account of "Excess payment of tax" under Form RFD-01. In response to said refund applications Show Cause Notice was issued to them proposing rejection of refund claim. However, the appellant has informed to the proper officer that no copy of SCN in Form RFD-08 is available. Accordingly, the refund sanctioning authority has provided the screenshot specified the grounds for rejection. In response to same the appellant has submitted the reply to SCN, in support of same the appellant in the present appeal proceedings has produced the copy of RFD-09 dated 08.10.2021 i.e. reply to SCN. Thereafter, the said refund claim was rejected by the *adjudicating authority* vide *impugned order* with Remarks as "Refund claim filed for RCM Invoices does not pertains to refund period. Amount of tax in excess is not ascertainable with GSTR return, Refund claim filed in wrong category, hence liable for rejection".

4(ii). In view of above facts, I find that the refund is basically arises as the appellant has considered the Inter-state supply as Intra-state supply and discharged the CGST & SGST under RCM basis in June 2021 of Rs.28,98,800/-. However, later on the appellant realizes that they were liable to discharge IGST on RCM basis. Accordingly, the appellant has paid the IGST of Rs.14,49,400/- considering the supply as Inter-state supply. Accordingly, the appellant has filed the present refund claim of Rs.28,98,800/- under Form RFD-01 alongwith relevant documents such as RCM Statement, Invoice Copy, 3B June'21, 3B July'21, C A Certificate. Further, on going through the Impugned Order it is noticed that the department is not disputing about the payment of IGST of Rs.14,49,400/- made by the appellant in July'2021 considering the Interstate supply which was earlier considered as Intrastate supply by the appellant in June'2021 and payment of CGST & SGST of Rs.28,98,800/- was made in June'2021. I find that the refund claim is mainly rejected on the ground that the RCM invoices does not pertains to refund period, excess payment is not ascertainable with GSTR return and the refund claim is filed under wrong category. From the copy of reply to SCN and refund application under Form RFD-01 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 that RCM invoices does not pertains to refund period or excess payment is not ascertainable with GSTR return. 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 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* vide which the appellant has clarified the issue. Further, I find that “no application for refund shall be rejected without giving the applicant an opportunity of being heard”. In the present matter, no SCN has been served to the appellant and when pointed out by the appellant about the same, a copy of screenshot specifying grounds for rejection of refund was provided. However, no such evidence available on records that Personal Hearings was provided to the appellant. 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 *impugned* speaking order should have been passed by giving proper opportunity of personal hearing in the matter to the ‘*Appellant*’ and detailing factors leading to

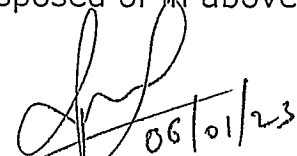


rejection of refund claim should have been discussed. Else such order would not be sustainable in the eyes of law. Therefore, the *adjudicating authority* is hereby directed to process the refund application of the *appellant* by following the principle of natural justice. Needless to say, since the claim was rejected on the ground of non submission of relevant RCM invoices 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: 06.01.2023

Attested


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



By R.P.A.D.

To,

M/s. Adani Properties Private Limited,
Shikhar, Nr. Adani House, Mithakhali Six Roads,
Navrangpura, Ahmedabad - 380 009

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-VI (Vastrapur), Ahmedabad South
5. The Superintendent (Systems) CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.



