



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, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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क फाइल संख्या : File No : GAPPL/ADC/GSTP/1306/2021 -APPEAL

/122F-123H

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-21/2022-23**

दिनांक Date : **12-05-2022** जारी करने की तारीख Date of Issue : **19-05-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZQ2405210061951 DT. 05.05.2021** issued by Deputy Commissioner, CGST, Division IV, Ahmedabad South

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

Shri Radha Mohan Kabra of M/s. Karnvati Enterprises, 13, Sangam Residency, Narol, Ahmedabad-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) 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 .



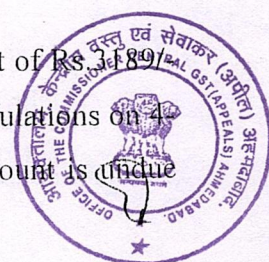
ORDER IN APPEAL

Shri Radha Mohan Kabra of M/s.Karnavati Enterprises, 13, Sangam Residency, Narol, Ahmedabad 382 405 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 30-6-2021 against Order No.ZQ2405210061951 dated 5-5-2021 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, CGST, Division IV, Ahmedabad South (hereinafter referred to as 'the adjudicating authority').

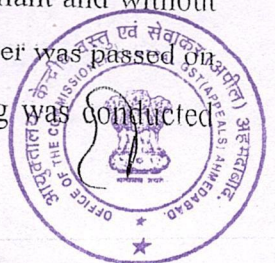
2. Briefly stated the fact of the case is that the appellant registered under GSIN No.24AAXPK6811A1ZT has filed refund application for refund of Rs.5,39,263/- under Section 54 of the CGST Act, 2017. The appellant was issued show cause notice No.ZR2404210215805 dated 19-04-2021 proposing rejection of the claim on the ground that ITC of stationery and capital goods availed. The adjudicating authority vide impugned order held that refund of Rs.5,39,263/- is inadmissible to the appellant on the ground that compliance to SCN not made/not visible in the portal.

3. Being aggrieved the appellant filed the present appeal on the following grounds:

- i. That they refute the rejection order as the contentions made in show cause notice are fallacious and incorrect and are based entirely on assumption and presumptions and without appraising the facts and circumstances in the legal perspective. The appellant denied to have contravened any Rule/Provisions of the CGST ACT, SGST Act, CGST Rules, 2017 and the rejection of refund as initiated vide the impugned show cause notice is only arbitrary and against the legislative laws.
- ii. The acknowledgement in GST RFD 02 issued is time barred itself as the appellant had filed refund application on 3-3-2021 and acknowledgement as per Rule 90 (2) was issued on 19-3-2021. As acknowledgement was not issued within time period of 15 days from the date of filing of application it was time barred and hence relying on the judgment of Hon'ble Delhi High Court in the case of M/s.Jian International Vs Commissioner of Delhi GST, revenue has not right to point out any deficiency in refund application after fifteen days and refund application shall be deemed to be approved only.
- iii. In accordance to Rule 90 (3) a deficiency memo shall be issued in Form GST RFD 03 in case of any deficiency are noticed by the proper officer. In the instant case the proper officer failed to issue any deficiency memo for rectification of deficiency and file a fresh refund application.
- iv. The adjudicating authority has issued SCN mentioning that full amount of refund is inadmissible with reason mentioned in remark that 'ITC of stationery and capital goods availed';
- v. They had unintentionally added availed credit of capital goods to the extent of Rs.3,18,91, each in CGST and SGST which was also excluded while filing revised calculations on 4-5-2021. However, rejecting full claim of refund basis on such a small amount is undue hardship on the appellant.



- vi. They are engaged in business of Flour Mill stores as well as Flour Mills, so HSN used for Flour Mills cannot be treated as capital goods for the appellant as appellant had not capitalized the same and rather this is the item, in which appellant, use in the course of business in accordance to definition of input as per Section 2 (59) of CGST Act, 2017.
 - vii. Stationery items such as letter heads, printing pages or any other stationery used for day to day office and business work, shall always be covered under the definition of inputs according to Section 2 (59) and stationery items are always use in the course or for furtherance of business and credit of the same cannot be disallowed based on any assumption. Considering that stationery items are not capital goods and are neither capitalized in the books of account of appellant ; that these items are used for various things such as printing of invoices, books of accounts, marketing templates and many other things and which are either in course or for furtherance of business, ITC on stationery as well as Flour Mill Machinery should get allowed fully and as both the items are covered by definition of inputs, hence refund of same shall also be allowed.
 - viii. The order is contrary to Law and facts of the case and it has been passed in haste and the order is devoid of judicious and rational approach to reject the lawful claim of refund of unutilized ITC.
 - ix. The order passed is contrary to the principles of natural justice and fair play.
 - x. In view of above submissions, the appellant requested to set aside the impugned order and allow the appeal.
4. Personal hearing was held on dated 13-4-2022. Shri Keshav Maheswari, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission till date.
5. I have carefully gone through the facts of the case, ground of appeal, submissions made by the appellant and documents available on record. I find that the adjudicating authority has rejected the refund due to reason that compliance to SCN not made/not visible on the portal. I find the findings itself is very contradictory inasmuch as it does not pin point as to whether the appellant has not filed reply to SCN or filed reply to SCN but it is not visible on portal. However, I find that the appellant has filed reply to SCN in Form GST RFD 09 under Ref ZR2404210215805 on dated 4-5-2021. Therefore, it is clear that the appellant has filed reply to SCN but due to invisibility of reply to the adjudicating authority in the portal the refund was rejected. In such a situation as an alternative mode the adjudicating authority could have obtained a physical copy of the reply uploaded in the portal and verified the same but instead of doing so rejected the entire claim without even looking into the reply filed by the appellant and without considering the reply filed by the appellant. I further note that the impugned order was passed on the next day of filing of reply which further indicate that no personal hearing was conducted before rejecting the refund claim.



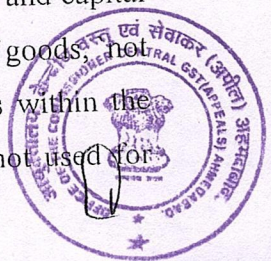
6. In this regard, I refer to the provisions governing rejection of refund contained under Rule 92 (3) is as under:

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.

7. As per provisions of sub rule (3) of Rule 92 of CGST Rules, it is mandatory requirement to issue show cause notice; consider the reply filed by the claimant; provide opportunity of personal hearing and record the reasons in writing for rejection of refund claim. In the subject case it is evident that except issuance of show cause notice, no other procedures prescribed under Rule 92 (3) was followed before rejecting the refund claim. Besides, even if the appellant has claimed refund taking into account the ITC on capital goods the proper course of action is to issue deficiency memo in terms of Rule 90 of CGST Rules, 2017 rather than issuing show cause notice proposing rejection by pointing out deficiencies. Therefore, I find that impugned order passed for rejection of refund claim without following the provisions of Rule 90 and 92 (3) of CGST Rules, 2017 and without following the principals of natural justice is bad in Law and hence legally untenable and unsustainable.

8. Regarding merit of the case, I find that in the show cause notice the entire claim was proposed for rejection on the ground that the appellant has availed ITC of stationeries and capital goods. At the outset I find that the reasons as to why and how by availing ITC on such items leads to inadmissibility of entire claim of refund is not mentioned in the show cause notice. I find that as per definition of 'input' given under Section 2(59), "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Capital goods is defined under Section 2 (19) of CGST Act 2017 as "capital goods mean goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business." Thus, all the goods other than capital goods which are used for furtherance of business are notified as input. I further find that under Rule 89 (5) of CGST Rules, 2017 read with para 14 of Circular No.79/53/2018-GST dated 31-12-2018, for the purpose of refund under Section 54 (3), the ITC availed on inputs only need to be considered for Net ITC and ITC on inputs services and capital goods are not considered for Net ITC. Therefore, in order to consider inward supply of goods, not an input', it is imperative either to establish that the said goods are capital goods within the definition of capital goods given under Section 2 (19) or that the said goods are not used for

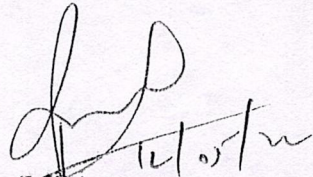


furtherance of business. In other words, merely on the basis of description of goods it is wrong to consider inward supply of goods on which ITC was availed, 'not an input' and deny refund without considering the ITC availed on such goods. Moreover, even if the adjudicating authority is of the view that ITC on stationeries and capital goods are not admissible for refund, he/she ought to have arrived the admissible refund taking into account ITC availed on other eligible inputs and sanctioned refund to such extent, instead of rejecting entire amount of refund. Therefore, I find that rejection of entire amount of refund, without even considering the ITC availed on eligible inputs, is also not in accordance with the provisions of Rule 92 (3) of CGST Rules, 2017. Further, the appellant themselves has reduced the ITC availed on capital goods and revised their claim amount along with their reply filed on 4-5-2021. However, from the facts of the case it is clear that neither the reply nor the revised claim amount was not even seen or considered by the adjudicating authority before passing the impugned order.

9. In view of above facts and discussions I hold that the impugned order passed by the adjudicating authority without following the statutory provisions of CGST Rules prescribed for sanction/rejection of refund claim, is not legal and proper and hence deserve to be set aside. Hence, I allow this appeal with consequential benefit in accordance with Section 54 (3) of CGST Rules, 2017 and Rules framed thereunder. Accordingly, I set aside the impugned order and allow this appeal.

अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।


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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad



By RPAD
To,
Shri Radha Mohan Kabra
of M/s.Karnavati Enterprises,
13, Sangam Residency,
Narol, Ahmedabad 382 405

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division IV (Narol) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

