



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/COM/STD/259/2022 -APPEAL / 291 - 96  
ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-235/2022-23**  
दिनांक Date : **14-02-2023** जारी करने की तारीख Date of Issue : **15-02-2023**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZY2411210239780 DT. 22.11.2021** issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

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

Appellant	Respondent
The Assistant Commissioner, CGST, Division-VI, Ahmedabad South.	M/s. Prism Johnson Limited, 106,107,108, Shivalik Plaza, IIM road, Nr. Panjrapole, Ambawadi, Ahmedabad-380015

(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> .

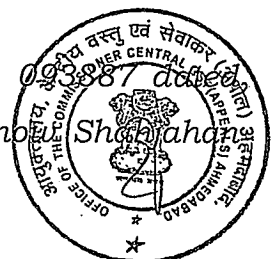
## ORDER IN APPEAL

The Assistant Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as the '*Appellant/Department*') has filed the present appeal on 13.05.2022 against the Order No. **ZY2411210239780** dated **22.11.2021** (hereinafter referred to as the '*impugned order*') passed by the Assistant Commissioner, CGST, Division VI, Ahmedabad South (hereinafter referred to as the '*Adjudicating Authority*') sanctioning refund to **M/s. Prism Johnson Limited**, 106-107-108, Shivalik Plaza, IIM Road, Nr. Panjrapole, Ambawadi, Ahmedabad-380015 (hereinafter referred to as the '*Respondent*')

2. Briefly stated the fact of the case is that the '*Respondent*' registered under GSTN 24AAACP6224A1Z3 had filed a refund claim of Rs.2,35,800/- vide ARN No. AA241021070668F dated 20.10.2021 u/s 54 of the CGST Act, 2017 on the basis of Appeal No. GST36/2018 dated 30.12.2018 decided by the Additional Commissioner of Appeal GR2, Commercial Tax Lucknow vide Order dated 23.05.2019. The *adjudicating authority* has sanctioned the said refund claim vide *impugned order* (RFD 06 ) dated 22.11.2021. The issue involved in the present appeal is that the *Respondent's* company had supplied '*Tiles*' to a unit/company located at Lucknow under cover of tax invoices & e-Way bills. During course of checking by Rawaldal Officer, they noticed mismatch/discrepancy between invoices and e-Way bills. Accordingly, in terms of Section 129(3) of the Uttarpradesh GST Act, 2017 the Assistant Commissioner Tax, Rawaldal-II passed order for duty levied Rs.1,17,900/- and imposed penalty Rs.1,17,900/-. The *Respondent* had challenged the said order before the Additional Commissioner Appeal, GR2, Commercial Tax Lucknow ; who vide Order dated 23.05.2019 allowed the appeal with consequential relief. Accordingly, the *Respondent* had preferred the refund claim in question and same is allowed by the *adjudicating authority* vide *impugned order* which is being challenged by the *department/appellant* in the present appeal proceedings.

3. The *appellant/department* filed the present appeal on 13.05.2022 on the following grounds:

- i. The claimant has filed the refund claim on the basis of the Order dated 23.05.2019, which has been passed by the Additional Commissioner of Appeal GR2, Commercial Tax Lucknow.
- ii. The claimant has uploaded a copy of Demand Draft No. 003087 dated 28.05.2018 issued by Kotak Mahindra Bank, 141, Lucknow.

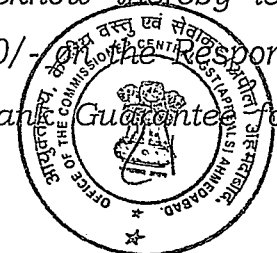


Road, Lucknow, addressed to the Assistant Commissioner, Commercial Tax, Mobile Squad, Lucknow.

- iii. The photocopy of above said Demand Draft is not a proof of payments to the exchequer. The claimant has not uploaded any DRC-03 of the jurisdiction of the adjudicating authority in this matter and the adjudicating authority should have insisted for the copy of the same, evidencing payment of duty and penalty to the government. Thus the adjudicating authority has grossly erred by sanctioning refund claim, as there is no evidence of payment to the government of the duty and penalty.
- iv. Therefore, the claim amount sanctioned of Rs.2,35,800/- is required to be recovered along with interest and penalty as the claimant has misled the department by uploading only a Demand Draft instead of DRC03; since the Demand Draft is not an evidence of payment of duty and penalty to the government.
- v. In view of above grounds the appellant/department has made prayer to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned Rs.2,35,800/- instead of rejecting same under Section 54(1) of the CGST Act, 2017 ; to pass an order directing the said original authority to demand and recover the amount erroneously refunded Rs.2,35,800/- with interest and penalty ; to pass any other order(s) as deemed fit in the interest of justice

4. Personal Hearing in the matter was held on 27.12.2022 wherein Mr. Siladitya Sarkar, Mr. Sudhir Kide & Mr. Vipin Lodha appeared through Virtual Mode on behalf of the 'Respondent' as authorized representative. During PH they have stated that they want to submit additional information & representation, same was approved and 10 working days period was granted for the same. Accordingly, the 'Respondent' has submitted the written submission dated 05.01.2023. The Respondent in their submission dated 05.01.2023 submitted that -

- i. They had supplied 'Tiles' vide tax invoices & e-Way bills. During inspection of the vehicle the officer had noticed discrepancies. On the basis of alleged discrepancies, the officer considered that the said supply was without e-Way bills and by invoking Section 129(3) of the UP GST Act, 2017, a seizure order No. 1058 dated 12.04.2018 was passed by the Assistant Commissioner, Commercial Tax, Rawaldal-II, Lucknow thereby levying duty of Rs.1,17,900/- and penalty of Rs.1,17,900/- on the Respondent. The order directed the Respondent to furnish Bank Guarantee for the same.



- ii. *Soon after receiving the Bank Guarantee, the officer intended to encash the Bank Guarantee. The Officer also submitted the Bank Guarantee for encashment vide letter No. 62 dated 25.05.2018.*
- iii. *The Respondent made representation before the concerned officer and got his permission to furnish Demand Draft. In accordance thereto, a Demand Draft No. 093887 dated 28.05.2018 issued by Kotak Mahindra Bank, Lucknow in favour of the Assistant Commissioner, Commercial Tax, Mobile Squad, Lucknow and requested the officer to return the bank guarantee. The officer wrote a letter dated 28.05.18 to the Bank requesting them to return the submitted bank guarantee. The demand draft was encashed by the department and the government exchequer (beneficiary) was credited on dated 06.06.2018 as confirmed by Kotak Mahindra Bank vide letter dated 09.12.2022.*
- iv. *Being aggrieved with said order dated 12.04.18 the Respondent filed appeal before Additional Commissioner of Appeal, GR2, Commercial Tax Lucknow ; who vide order dated 23.05.19 allowed the appeal with consequential relief and directed that the sum of Rs.2,35,800/- deposited by the company is refunded to them.*
- v. *Thereafter, the Respondent filed the refund claim, which has been sanctioned by the AC, CGST, Div. VI, Ahmedabad South vide impugned order dated 22.11.2021 and refund amount was finally credited to Respondent's account on 25.10.2022. Against the order sanctioning refund, the department had filed present appeal, thereby raising the disputes.*
- vi. *The Respondent most humbly submits that the procedure followed for detention of vehicle done manually as per the operating procedure in place at that time. The alleged lapse in procedure as laid down in the grounds of appeal filed by the department cannot be sustained as there was no procedure in the law during that time to discharge its liability through DRC-03. This is without prejudice to the contention that there was no lapse on the part of the company.*
- vii. *The amended procedure laid down as per Rule 142 of the CGST Rules, 2017 (as amended subsequently) read with Section 129 of the CGST Act, 2017 was not applicable during the period when the vehicle was detained and so there was no requirement to discharge the tax and penalty by way of DRC-03.*
- viii. *The Respondent had to upload the photocopy of the said demand draft at the time of making application as the original was deposited with the department. The encashment of the demand draft by the government*

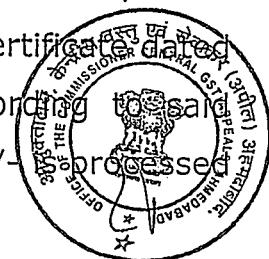


also confirmed by the Kotak Mahindra Bank vide certificate dated 09.12.2022 which establishes the contention of the Respondent that the Government exchequer (beneficiary) has been duly paid. The fact that the money has been received by the exchequer was also accepted by the Ld. Additional Commissioner, Grade 2 (Appeals), Lucknow, which is evident from the operative portion of the order.

### **Discussion and Findings:**

**5(i).** I have carefully gone through the facts of the case, grounds of appeal, submissions made by the Respondent and documents available on record. I find that the present appeal is filed to set aside the impugned order wherein the adjudicating authority has erroneously sanctioned refund of Rs.2,35,800/- to the respondent and to order recovery of the same along with interest and penalty. I find that the main issue involved in the present appeal is that the Respondent had supplied goods to the unit/company situated at Lucknow, however, during verification a discrepancies was noticed regarding e-Way bill; that accordingly in response to Order dated 13.04.18 of the AC, Commercial Tax, Lucknow, the Respondent has made payment of Rs.2,35,800/- through Demand Draft ; that appeal filed by the Respondent against said order dated 13.04.18 was allowed by the Additional Commissioner Grade-2 (Appeal), Commercial Tax Lucknow vide order dated 23.05.2019; that accordingly, the Respondent has filed refund claim in question, which was sanctioned by the adjudicating authority vide impugned order. However, the Department/Appellant has mainly contended in the present appeal that the Respondent has uploaded the copy of Demand Draft in support of proof of payment instead of DRC-03; that the Demand Draft is not an evidence of payment of duty and penalty to the Government.

**5(ii).** Further, in the present appeal proceedings I find that the department/appellant is not disputing about whether the Order dated 23.05.2019 of Additional Commissioner Grade-2 (Appeal), Commercial Tax Lucknow is being accepted or challenged by the concerned authority, based on which the Respondent had preferred the present refund claim. I find that the Appellant/Department is mainly disputing that the photocopy of Demand Draft is not a proof of payments to the exchequer and the Respondent has not uploaded any DRC-03 of the jurisdiction of the adjudicating authority. However, as regards to proof of payment to government exchequer is concerned, I find that the Respondent has produced copy of Certificate dated 09.12.2022 issued by Kotak Mahindra Bank Limited ; according to said certificate the Demand Draft dated 28.05.2018 of Rs.2,35,800/-



from account of Prism Johnson Limited – H&R Johnson (India) Division and the Beneficiary name is Asstt. Commissioner, Commercial Tax, Mobile Squad, UNI.

**5(iii).** Further, I find that the *department/appellant* has not referred any Notification, Circular, Rules or Section in support of their contention that the '*Demand Draft is not an evidence of payment of duty and penalty to the government*' in the present appeal proceedings. Thus it emerge that *department/appellant* has made the above contentions without support of any law/rules and regulations. Whereas, in support of proof of payment the Respondent has produced the copy of certificate issued by the Bank and also argued that "*the money has been received by the exchequer was also accepted by the Ld. Additional Commissioner, Grade 2 (Appeals), Lucknow which is evident from the operative portion of the order*".

**5(iv).** In view of above, in the present matter I find that the '*Respondent*' has made the payment of Rs.2,35,800/- in response to order dated 13.04.18 of the Assistant Commissioner, Commercial Tax, Lucknow. Whereas, in the appeal proceedings against said order, the Additional Commissioner Grade-2 (Appeals), Commercial Tax, Lucknow vide order dated 23.05.2019 has ordered to refund the said deposited amount. Accordingly, the Respondent is eligible for refund of Rs.2,35,800/-.

**6.** In view of the above discussions, I do not find any force in the contentions of the '*Appellant/Department*'. Accordingly, I find that the *impugned order* passed by the *adjudicating authority* is correct and as per the provisions of GST law. Consequently, I do not find any reason to interfere with the decision taken by the "*Adjudicating Authority*" vide "*Impugned Order*". Accordingly, I upheld the "*Impugned Order*" and reject the appeal filed by the '*Appellant/Department*'.

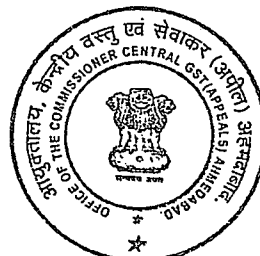
**7.** अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

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

15.02.23

  
(Mihir Rayka)  
Additional Commissioner (Appeals)  
Date: 14.02.2023



By R.P.A.D.

To,  
The Assistant / Deputy Commissioner,  
CGST, Division - VI, Ahmedabad South.

Appellant

M/s. Prism Johnson Limited,  
106-107-108, Shivalik Plaza, IIM Road,  
Nr. Panjrapole, Ambawadi,  
Ahmedabad-380015

Respondent

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



