



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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फाइल संख्या : File No : GAPPL/ADC/GSTP/1610/2022 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-239/2022-23**

दिनांक Date : **21-02-2023** जारी करने की तारीख Date of Issue : **21-02-2023**

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. **ZV2404210176538 DT. 15.04.2021** issued by
The Deputy Commissioner, CGST, Division-IV, Narol, Ahmedabad South

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

**M/s. Roopalee Dyeing & Printing, 320, Near Mahalaxmi Fabrics,
Narol Isanpur Road, Narol, Ahmedabad - 382405**

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| (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 information 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 :**

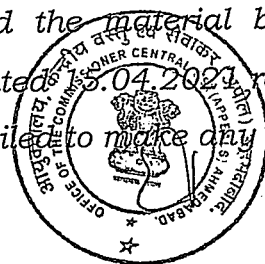
M/s. Roopalee Dyeing & Printing, 320, Near Mahalaxmi Fabrics, Narol Isanpur Road, Narol, Ahmedabad - 382 405 (hereinafter referred as '*Appellant*') has filed the present appeal against the Refund Sanction/Rejection Order in the form RFD-06 bearing No. ZV2404210176538 dated 15.04.2021 (hereinafter referred as '*impugned order*') passed by the Deputy Commissioner, CGST, Division - IV Narol, 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.24AAPFR7397L1Z9 had filed the refund application on account of "*Refund on account of ITC accumulated due to Inverted Tax Structure*" for the period from April 2019 to March 2020 on dated 25.02.2021 for Rs.6,65,219/-. In response to said refund claim a Show Cause Notice dated 07.04.2021 was issued to the '*Appellant*'. It was proposed that refund application is liable to be rejected for the reasons "*Miss Match of ITC*" with Remark as "*ITC OF CAPITAL GOODS AVAILED*".

Thereafter, the '*adjudicating authority*' has rejected the said refund claim of Rs.6,65,219/- vide '*impugned order*' for the reason '*Miss Match of ITC*' with Remarks as "*REPLY TO SCN NOT MADE / NOT VISIBLE*"

2(ii). Being aggrieved with the *impugned order* dated 15.04.2021 the '*Appellant*' has filed the present appeal on dated 10.05.2022 on the following grounds :

- *In response to Show Cause Notice proposing rejection of refund claim on the ground of 'Miss Match of ITC' with Remark as 'ITC of Capital Goods availed', the Appellant vide letter dated 11.04.2021, most respectfully explained that the Appellant has not claimed any ITC in respect of Capital Goods and thus there was no amount standing the electronic cash ledger with respect to the capital goods, whose ITC could have been denied u/s 17 of the ACT.*
- *The Appellant further explained that the entire ITC which was claimed by them was against the inputs, whose levy exceeded the output and thus it was eligible to claim the Refund in accordance with the provisions of Section 54 of the CGST Act, 2017.*
- *However, without appreciating the facts and the material brought on record the adjudicating authority vide order dated 15.04.2021 rejected the refund claim on the basis that Appellant has failed to make any reply.*



- Learned Proper Officer has erred in law and on facts of the case in rejecting the refund claim of Rs.6,65,219/-.
- The Ld. Proper Officer has not properly appreciated and considered various submissions, evidences and supporting placed on record during the course of the assessment proceedings and not properly appreciated various facts and law in its proper perspective. This action of Ld. Proper Officer in not appreciating various evidences placed before him and rejecting the refund without referring to evidences placed before him is breach of principles of natural justice and therefore deserves to be quashed.

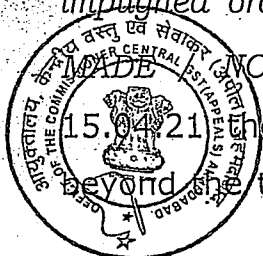
In view of above submissions the appellant has made prayer as under :

1. To quash and set aside the order under appeal dated 15.04.2021;
2. Direct the Proper Officer to issue Refund in terms of Section 54 of the CGST Act, 2017;
3. Direct the Proper Officer to grant interest on such delayed refund;
4. Any other and further relief deemed just and proper be granted in the interest of justice;
5. To provide for the cost of this Appeal.

3. Personal Hearing in the matter was held on 23.11.2022 wherein Mr. Moh. Aarif U. Devdiwala appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has stated that they want to submit additional information, same was approved and 03 working days period was granted for the same. Accordingly, the 'Appellant' on 24.11.2022 submitted the additional information/documents such as Reply to SCN vide RFD-09 dated 11.04.2021, Refund Application, Refund rejection order etc.

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 application "Refund 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 for amount of Rs.6,65,219/-. In response to said refund application Show Cause Notice was issued to them proposing rejection of refund claim for the reason "Miss Match of ITC" with Remark as "ITC OF CAPITAL GOODS AVAILED". Thereafter, the said refund claims was rejected by the *adjudicating authority* vide *impugned order* dated 15.04.2021 with Remark as - "REPLY TO SCN NOT VISIBLE". Accordingly, against the impugned order dated 15.04.2021 the Appellant has filed the present appeal on 10.05.2022 i.e. beyond the time limit prescribed under Section 107 of the CGST Act, 2017.



However, I find that in view of the order passed by the Hon'ble Supreme Court on 10.01.2022 in matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020, the said appeal is considered to be filed within the time limit prescribed under the provisions of the CGST Act, 2017.

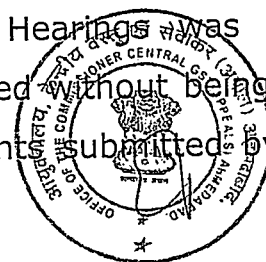
4(ii). In view of above facts, I find that the refund claim is rejected for the reason that either the *appellant* failed to comply to SCN or it is not visible to the *adjudicating authority*. However, I find that the *appellant* in the present appeal proceedings produced the copy of reply to SCN submitted by them under FORM-GST-RFD-09 dated 11.04.2021. Further, the appellant has submitted in their submission that they have explained in the said reply to SCN under RFD-09 that they have not claimed any ITC in respect of Capital Goods; that the entire ITC claimed by them is against the inputs.

4(iii). Considering the foregoing facts, I find that in the present matter the refund claim is solely rejected on the ground that "REPLY TO SCN NOT MADE/ NOT VISIBLE". 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 14.04.2021. 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 as well as without the reply of appellant in respect of subject SCN.

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 refund claim without considering the *appellant's* reply 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 reply/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: 21.02.2023

Attested

(Dilip Jadav)

Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
M/s. Roopalee Dyeing & Printing,
320, Near Mahalaxmi Fabrics,
Narol Isanpur Road, Narol,
Ahmedabad - 382 405

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 Dy/Asstt. Commissioner, CGST, Division-IV Narol, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

