



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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रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : GAPPL/ADC/GSTP/2308/2022 -APPEAL

19181-86

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-250/2022-23**

दिनांक Date : **28-02-2023** जारी करने की तारीख Date of Issue : **01-03-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

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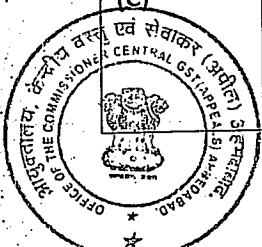
Arising out of Order-in-Original No. **ZW2404220324628 DT. 26.04.2022** issued by
The Assisnat Commissioner, CGST, Division-VI, Ahmedabad South

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

**The Sandesh Limited, Sandesh Bhavan Lad Society Road,
Bodakdev, Ahmedabad-380054**

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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. The Sandesh Limited, Sandesh Bhavan, Lad Society Road, Bodakdev, Ahmedabad – 380 054 (hereinafter referred as 'Appellant') has filed the present appeal against the Refund Sanction/Rejection Order in the form RFD-06 bearing No. ZW2404220324628 dated 26.04.2022 (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.24AAACT5730D1ZS had filed the refund application on account of "Excess payment of Tax" for the month of February 2020 on dated 19.02.2022 for Rs.1,80,000/-. The appellant in the present appeal has submitted that –

- They had organized an event named 'Ek Shaam Desh ke Rakshak ke Naam' on 13.02.2020 which was sponsored by the Tourism Corporation of Gujarat Limited ('Gujarat Tourism').
- Gujarat Tourism had issued a work order to them for publicity/promotion of Gujarat Tourism in the aforesaid event. Accordingly, the event was organized under sponsorship of Gujarat Tourism.
- They inadvertently raised an invoice under SAC Code 998364 which pertains to Sale of TV Advertisement and paid CGST and GGST. The same was also disclosed in GSTR 1 of February 2020. They raised an invoice numbered 1920002292 dated 02.02.20 amounting to Rs.10,00,000/- and charged GST of INR 1,80,000/- on Gujarat Tourism having GSTIN 24AAACT7252J1ZA.
- As per Notification No. 13/2017-Central Tax (Rate) dated 28.06.17 ('RCM notification'), sponsorship services provided to any Body Corporate or Partnership firm located in taxable territory is liable to tax under reverse charge mechanism ('RCM'). In the instant case, they provided sponsorship services to Gujarat Tourism, which is a Company and hence, the said services are liable for payment of tax under RCM. Gujarat Tourism has paid tax under RCM on the invoice issued by them. Gujarat Tourism has provided an undertaking to them that the taxes on the said services have been paid under RCM by them as per RCM notification.
- Pursuant to above, they filed refund application for refund of GST amounting to INR 1,80,000/- paid earlier, by mistake. The refund claim



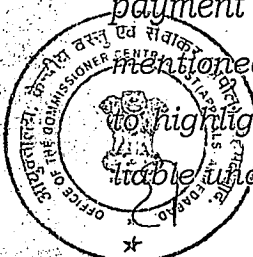
was filed by them in GST-RFD-01 on 19.02.22 having ARN AA240222073369B under head 'Excess payment of tax'.

- The appellant clearly mentioned in the refund application that the refund is on account of erroneous payment of tax on sponsorship services. They submitted following supporting documents :
 - o Invoice and work order
 - o RCM Notification
 - o Undertaking by Gujarat Tourism that GST has been paid under RCM
- The appellant received Show Cause Notice ('SCN') in response to the refund application dated 19.02.22. The SCN alleged the following for denying the refund :

"Also work order provided by them does not states the nature of services provided by them. Also no amended invoice is issued in respect of said mistake occurred in invoice dated 22.02.2020, as verified from GSTR 1 of said period. Therefore, said refund claim is liable for complete rejection. Hence SCN issued to the claimant. Please clarify the same"
- The SCN provided time of 15 days for submission of reply. The appellant had duly submitted detailed reply to SCN, within the time limit provided.
- The adjudicating authority did not give an opportunity of hearing on the matter and issued the order dated 26.04.22 ('impugned order'), rejecting the refund claim. The 'impugned order' upheld the SCN and denied the refund claim on the following grounds :
 - o Work order provided by Gujarat Tourism states publicity/promotion of Gujarat Tourism in the programme and does not mention about sponsorship.
 - o It is mentioned on the invoice that service provided is not subject to RCM.
 - o Amended Invoice in respect of error made in original tax invoice has not been issued by the Company.
 - o Non submission of any documentary evidence regarding payment of GST under RCM by Gujarat Tourism.

2(ii). Being aggrieved with the *impugned order* dated 26.04.2022 the 'Appellant' has filed the present appeal on dated 04.07.2022 on the following grounds :

- **A. Documentary Evidence of RCM Payment**
- Refund rejection order states that the documentary evidence of RCM payment by Gujarat Tourism is not submitted. The impugned order has not mentioned the nature of evidence required. In this regard, they would like to highlight that Gujarat Tourism has confirmed that the said services are liable under RCM and they have discharged GST under RCM.



- Since, the actual nature of the services is sponsorship service, which is liable to tax under RCM, it is amply clear that they are not liable to pay tax. They have discharged tax and therefore, they are entitled for refund of tax paid. The contention of the officer that the documentary evidence of RCM payment was not provided is unreasonable.

- **B. Provision of Sponsorship Service**

- The adjudicating authority has stated in the impugned order that work order provided by them states publicity/promotion of Gujarat Tourism in said programme and not about sponsorship of said programme by Tourism Corporation of Gujarat Ltd. In this regard, they would like to explain the meaning of sponsorship services and substantiate the presence of sponsorship in the subject transaction.
- The term sponsorship has not been defined under the CGST Act, 2017. Accordingly, they referred Service Tax regime. As per Section 65(99a) of Finance Act, 1994 :

“Sponsorship” includes naming an event after the sponsor, displaying the sponsor’s company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors.

- Further, referred Circular No. D.O.F. No. 334/4/2006-TRU issued on 28.02.2006 at the time of introduction of ‘sponsorship service’.
- Applying the analogy of the definition and the circular in the current scenario, it is evident that the Company is providing sponsorship service.
- In the invoice raised by them to Gujarat Tourism the term ‘sponsorship’ is clearly mentioned in the ‘Caption’ of the invoice. Further, the name of Gujarat Tourism was posted in the event as sponsor and the same can be verified from photos of event.
- On the basis of above, it is amply clear that they have provided sponsorship services to Gujarat Tourism. Therefore, the contention of officer is not tenable and liable to be quashed.

- **C. Error in issuance of Invoice does not change the nature of service**

- They have made error in invoice by mentioning wrong HSN of 998364 (sale of TV/radio advertising time) instead of HSN 998397 (sponsorship services and brand promotion services). However, they have mentioned the term ‘Sponsorship’ in the ‘Caption’ of the Invoice. As explained in the above ground, the services were sponsorship services and the same can be



verified by the photos. Erroneously mentioned the wrong HSN in the invoice and the same does not alter the factual nature of services.

- Since wrong HSN was selected, the statement –‘whether subject to reverse charge – No’ was also erroneously mentioned in the Invoice. The error was inadvertent in nature and the same does not alter the factual nature of services. Further, it is important to note that the Gujarat Tourism has confirmed that said services are liable under RCM and they discharged the GST under RCM.

- It is settled principle that a procedural requirement cannot be read so as to defeat the cause of justice. Referred following case laws :

- o Gravita India Ltd Vs. UOI [2016 (334) ELT 321 (Raj.)]
- o Oriental Carbon & Chemicals Ltd. Vs UOI [2021 (377) ELT 850 (Guj)]
- o Commissioner Vs Salora Components Private Limited [2020 (37) ELT A87 (SC)]

- The above judgment clearly states that substantial benefit should not be denied on account of procedural lapse.

- **D. No provision in GST Law for issuance of amended invoice**

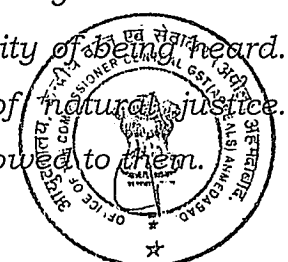
- As per impugned order they have not issued amended invoice for the said invoice issued to Gujarat Tourism. GST Law does not stipulate any provision for raising an amended invoice. The only provision available for revision of invoice is as per Section 31(3) of the CGST Act, 2017. The said section states that revised invoice can only be issued by a registered person within one month of issuance of certificate of registration against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him. There is no provision in the CGST Act, 2017 which allows amendment of invoice. Accordingly, the contention of officer is not supported by any legal provision and therefore same needs to be quashed.

- **E. Not provided any opportunity of being heard**

- At the outset, they are rightful claimant of refund of GST paid. Further, as per proviso to Rule 92(3) of the CGST Rules, 2017, no application of refund shall be rejected without giving opportunity of being heard.

- They wish to rely upon judgment of Hon'ble Bombay High Court in the matter of BA Continuum India Pvt Ltd Vs. UOI and Others – Appeal No. 3264/2020.

- The above case is squarely applicable in their case which has been decided without giving any opportunity of personally being heard. Order under Rule 92 is issued without granting any opportunity of being heard. This would amount to violation of the principles of natural justice. Accordingly, order should be quashed and refund be allowed to them.



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

- a) To set aside the impugned order and allow the appeal in full with consequential relief ;
- b) To grant the refund to the company of INR 1,80,000/- along with interest;
- c) To grant personal hearing on this matter to put forth submissions in detail;
- d) To permit to add, alter, amend, modify, or delete any or all of the submissions and provide any additional clarification/ documentation, as may be required.

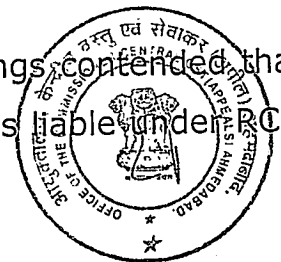
3. Personal Hearing in the matter was held on 23.11.2022 wherein Mr. Rahul Dutia appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has stated that they have nothing more to add to their submissions till date.

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 application for refund of Rs.1,80,000/- on account of "Excess payment of Tax". I find that the appellant in the present appeal has contended that they organized an event which was sponsored by the Tourism Corporation of Gujarat Limited ; that they discharged GST of Rs.1,80,000/- and disclosed the same in GSTR 1 of February 2020 and raised the invoice to Gujarat Tourism ; that Gujarat Tourism has informed them that said payment is under RCM liability as per Notification No. 13/2017 and in this context Gujarat Tourism has made the payment of GST on the same under RCM. Accordingly, the appellant has filed the subject refund application of Rs.1,80,000/- of GST paid earlier by them. In response to said refund application SCN was issued to the Appellant and the appellant has also submitted reply under Form-GST-RFD-09 dated 23.04.2022. However, I find that the subject refund application is rejected on the ground that

- Work order provided by Gujarat Tourism states publicity/promotion of Gujarat Tourism and does not states about sponsorship of programme by Tourisms Corporation of Gujarat Ltd;
- No amended invoice is issued in respect of error made in original tax invoice.
- As regards to payment of Rs.1,80,000/- under RCM by Gujarat Tourism, the claimant has not submitted any documentary evidence regarding said payment.

4(ii). The appellant in the present appeal proceedings contended that the Gujarat Tourism has confirmed that the said service is liable under RCM



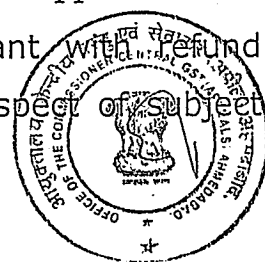
and they have discharged GST under RCM. Further, the appellant has contended that in view of section 65 (99a) of Finance Act, 1994 and Circular D.O. F. No. 334/4/2006-TRU dated 28.02.2006 they have provided Sponsorship service to Gujarat Tourism. Appellant has also contended that error in issuance of invoice does not change the nature of service. Further, I find that the *appellant* is mainly contending that the refund is rejected without being heard them and thus violated the principle of natural justice. The appellant has also referred Rule 92(3) of the CGST Rules, 2017 in this regard and also referred the related case laws in connection with violation of principle of natural justice.

4(iii). Considering the foregoing facts, I find that in the present matter the refund claim is rejected without being heard the appellant accordingly, 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, the appellant is contended that their refund claim is decided without giving them any opportunity of personal hearing. The refund claim is also rejected on the ground that documentary evidence is not produced by appellant regarding GST paid under RCM by Gujarat Tourism. 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.

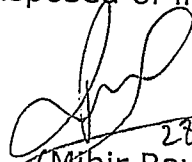


5. In view of above, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without considering the *appellant's* reply to SCN and without being heard the *appellant* as well as without communicating 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 incomplete 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।

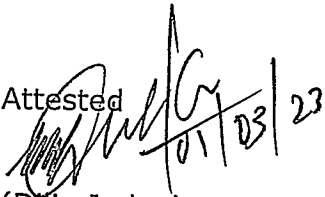
The appeal filed by the appellant stands disposed of in above terms.

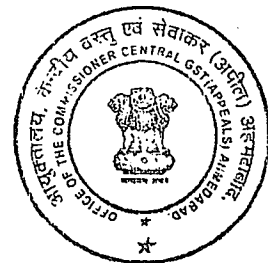

28/02/23
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 28.02.2023

Attested


01/03/23
(Dilip Jadav)
Superintendent (Appeals)
Central Tax, Ahmedabad
By R.P.A.D.



To,
M/s. The Sandesh Limited,
Sandesh Bhavan, Lad Society Road,
Bodakdev, Ahmedabad - 380 054

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



