



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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टेलिफैक्स 07926305136



DIN- 20230364SW00009909CD

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2855 to 2857/2022 -APPEAL /9163-18

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC- 251 to 253 /2022-23**
दिनांक Date : **02-03-2023** जारी करने की तारीख Date of Issue : **03-03-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZY2407220263176 DT. 19.07.2022,**
ZR2407220263232 DT. 19.07.2022 & ZS2407220263376 DT. 19.07.2022 issued by
The Assistant Commissioner, CGST, Division-VII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Viterra India Private limited, 8th Floor, 802,
Indraprasth Corporate,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) 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.
	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. Viterra India Private Limited, 8th Floor, 802, Indraprasth Corporate, Ahmedabad - 380 015 (hereinafter referred as 'Appellant') has filed the appeals against the following Refund Sanction/Rejection orders (hereinafter referred as 'Impugned Orders') passed by the Assistant Commissioner, CGST, Division - VII, Ahmedabad South (hereinafter referred as 'Adjudicating Authority').

Appeal Nos. (All Dated 13.10.2022)	RFD-06 Order Nos. (All Dated 19.07.2022)	Amount of Refund Rejected	Refund Claim period
GAPPL/ADC/GSTP/2857/2022	ZY2407220263176	Rs.1,04,826/-	Oct.'20
GAPPL/ADC/GSTP/2855/2022	ZR2407220263232	Rs.29,929/-	Dec.'20
GAPPL/ADC/GSTP/2856/2022	ZS2407220263376	Rs.26,753/-	March'21

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTN 24AACCG4264D1Z0 had filed the refund application on account of "Excess payment of tax" for the period and amount as mentioned in above table. In response to said refund claims Show Cause Notices were issued to the 'Appellant'. It was proposed that refund applications are liable to be rejected on the following grounds :

- Refund application filed under wrong category;
- Not submitted following documents :
 - o GSTR-1 and GSTR-3B of relevant period of claim not submitted ;
 - o Proof of payment of GST on ocean freight which is claimed as refund is not submitted ;
 - o Certification whether ITC of GST paid on Ocean Freight has been availed or not ;
 - o ITC of GST paid on Ocean Freight, if availed, the entry in the ledger reflecting availability of the ITC ; and
 - o ITC of GST paid on Ocean Freight, if availed, whether same has been deducted from ITC Ledger while filing refund claims;
- Refund application filed based on judgment of Hon'ble Supreme Court in the matter of levy of GST on Ocean Freight services on CIF basis declaring unconstitutional. So, refund application does not fall under any of the cases of refund mentioned in Section 54 of the CGST Act, 2017;



Thereafter, the 'Adjudicating Authority' has rejected the said refund claims as mentioned in aforesaid Table at Para 1 above, vide 'Impugned Orders' on following grounds :

- *Electronic credit ledger/ Cash ledger not debited while claiming refund ;*
- *Since the claims are filed based on judgment the claim should have been filed under category - (i) on account of assessment/provisional assessment/appeal/ any other order or (ii) any other (specify) ;*
- *Refund claims does not fall under any of the cases of refund under Section 54 of the CGST Act, 2017 ;*
- *Hon'ble Supreme Court judgment in the case of Mafatlal Industries Ltd. 1997 [89 ELT 247 (SC)] is squarely applicable in the instant case. In the said judgment, when any such provision in the statute has been held to be unconstitutional, refund of tax under such statute will be outside the scope of and purview of such enactment (in present case, GST Act) and under such circumstances, refund can only be claimed by way of a suit or by way of a writ petition.*

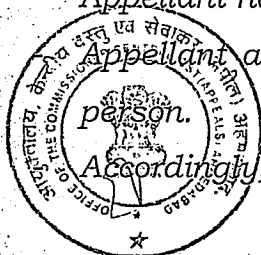
2(ii). Being aggrieved with the impugned order the appellant has filed the present appeals on dated 13.10.2022 on the following grounds :

- *Engaged in business of import and trading of agricultural commodities in India.*
- *Invoice issued by the foreign exporter is a consolidated invoice inclusive of freight. IGST on ocean freight paid on the basis of actual freight.*
- *The Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 prescribes a rate of 5% on the supply of services of ocean freight. Further, Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017 makes the importer of goods liable to make payment of tax on supply of ocean freight service.*
- *Tax is not payable under the provisions of IGST Act on services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India (hereinafter referred as 'ocean freight services'). However, in view of the uncertainty in the matter, the Appellant discharged the tax an abundant caution, i.e. paid the tax without accepting the liability and with liberty to file refund claim.*
- *Appellant has not availed ITC of the tax paid.*

Appellant also not passed on the burden of the tax paid to any other

person.

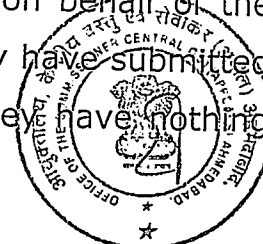
Accordingly, the Appellant had filed the subject refund applications.



- They have made various submissions in their replies to SCNs. However, the Ld. Deputy Commissioner has clearly overlooked the submissions made by appellant and rejected the refund claims by non-speaking order.
- Appellant has referred case of
 - o Cyril Lasarado (Dead) V. Juliana Lasarado 2004 (7) SCC 431.
 - o State of West Bengal V. Atul Krishna Shaw reported at 1991 Supp (1) SCC 414.
 - o Commercial Tax Dept., Kota V. Shukla & Brothers reported at 2010(254) ELT 6 (SC).
 - o Mohit Minerals V. Union of India 2020 – TIOL – 164 – HC – AHM – GST
- Refund claim has been correctly filed under category excess payment of tax. There is no condition that refund can be granted only in case where adjustment is not possible.
- Section 5(3) of the IGST Act provides for collection of tax under RCM basis only from the recipient of supply. Appellant is not the recipient of ocean freight service. Thus appellant cannot be made liable to pay integrated tax.
- Referred Section 5, 7, & 8 of the IGST Act.
- Referred recent judgment dated 19.05.2022 of Hon'ble Supreme Court of Indian in case of UOI v. Mohit Minerals Pvt. Ltd. – Civil Appeal No. 1390 of 2022.
- Further, Hon'ble High Court of Gujarat has in the case of Louis Dreyfus Company India Private Limited v. Union of India (Special Civil Application No. 11540 of 2021) vide order dated 07.07.2022 made reference to the order passed by the Hon'ble Supreme Court in the case of Mohit Minerals and passed the following order :
 "It is directed that if any IGST amount is collected, the same shall be refunded within six weeks along with statutory rate of interest."

In view of above submissions the appellant has made prayer for set aside the impugned orders dated 19.07.22 ; grant the subject refund claims ; pass such orders as may be deemed fit and proper in the facts and circumstances of the case.

3. Personal Hearing in the matter was held on 20.12.2022 wherein Mr. Shrenik Jain and Mr. Biju Daniel appeared on behalf of the 'Appellant' as authorized representatives. During P.H. they have submitted written submission dated 20.12.2022 and stated that they have nothing more to add to their written 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 as well as additional written submission dated 20.12.2022. I find that the 'Appellant' had preferred the refund applications on account of "Excess payment of tax". I find that the refund applications are related to IGST paid under RCM basis on ocean freight services. Further, I find that the appellant has referred the judgment of Hon'ble Gujarat High Court in the matter of M/s. Mohit Minerals in their support of refund applications. They have referred order of the Hon'ble Supreme Court in the case of M/s. Mohit Minerals (Civil Appeal No. 1390 of 2022) vide which struck down the levy of GST on ocean freight service.

4(ii). On carefully going through the impugned orders I find that the subject refund claims are rejected mainly on the ground that the appellant has not debited the Electronic credit ledger/Cash ledger while claiming refund and Refund claims does not fall under any of the cases of refund under Section 54 of the CGST Act, 2017. Further, I find that the adjudicating authority has rejected the subject refund claims by relying upon observation of Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. 1997 [89 ELT 247 (SC)] "*that when any such provision in the statute has been held to be unconstitutional, refund of tax under such statute will be outside the scope of and purview of such enactment and under such circumstances, refund can only be claimed by way of a suit or by way of a writ petition*".

In view of above, I find that by relying upon the observations of Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. [1997 (89) ELT 247 (SC)], the *adjudicating authority* has rejected the subject refund claims. However, as regards to the observations of Hon'ble Supreme Court in Mafatlal Industries Ltd case I find that Hon'ble High Court of Judicature at Madras in the case of Daily Thanthi [2021 (376) E.L.T. 615 (Mad.)] observed that '*not all observation of the Hon'ble Supreme Court can be said to have laid down the law*'. The relevant para of the judgment are reproduced as under :

52. The Hon'ble Supreme Court in para 92 in Mafatlal Industries v. UOI, 1997 (89) E.L.T. 247 : (1997) 5 SCC 536 has observed as follows :-

.....Now, where a person proposes to contest his liability by way of *appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest. It is difficult to imagine that a manufacturer*



would pay the duty without protest even when he contests the levy of duty, its rate, classification or any other aspect. If one reads the second proviso to sub-section (1) of Section 11B along with the definition of "relevant date", there is no room for any apprehension of the kind expressed by the Learned Counsel.

53. Again in para 91, the Hon'ble Supreme Court in *Mafatlal Industries v. UOI*, 1997 (89) E.L.T. 247 : (1997) 5 SCC 536 has also observed as follows :-

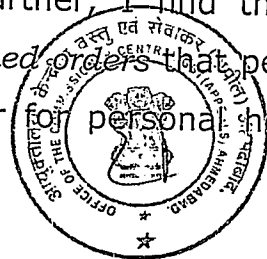
"All claims for refund, arising in whatever situations (except where the provision under which the duty is levied is declared as unconstitutional), has necessarily to be filed, considered and disposed of only under and in accordance with the relevant provisions relating to refund, as they obtained from time to time. We see no unreasonableness in saying so."

67. The observations of the Hon'ble Supreme Court in *Mafatlal Industries Ltd. v. UOI*, 1997 (98) E.L.T. 247 : (1997) 5 SCC 536 in paragraph 91 and 92 were made without considering the operations of other provisions of the Act and therefore cannot be construed as having laid down the law. It cannot be said that the Hon'ble Supreme Court has laid down a proposition of law on the other provisions of the respective Acts

95. The Hon'ble Supreme Court was really not concerned with the assessment procedures under the respective enactments. **However, in the course of discussion while upholding the constitutional validity of the amendments to Section 11B of the Central Excise Act, 1944 and Section 27 of the Customs Act, 1927, the Hon'ble Supreme Court has made several observations while attempting questions and answers that were posed by the Counsel for the manufacturer and importers. Therefore, all the observations in the said decision cannot be considered to have laid down the law.**

97. Therefore, not all observation of the Hon'ble Supreme Court can be said to have laid down the law as the Hon'ble Supreme Court was not concerned with the other provisions of the respective enactments.

4(iii). Further, I find that the *appellant* in the present appeals mainly contended that they have made various submissions before the Ld. Deputy Commissioner in their replies to SCNs, however, the Ld. Deputy Commissioner has clearly overlooked the submissions made by them and rejected the refund claims ; that the submissions made by them has not even discussed or least giving any findings on the same. Accordingly, the *appellant* in the present appeals has contended that the *impugned orders* being non-speaking orders has been passed in gross violation of principle of equity, fair play and natural justice and therefore *impugned orders* are liable to be set aside on this ground alone. Further, I find that the *adjudicating authority* has mentioned in the *impugned orders* that personal hearing was granted but claimant did not appear for personal hearing.



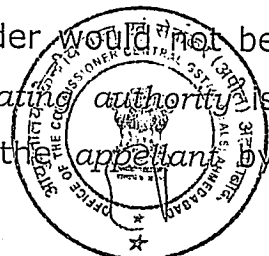
Accordingly, I have referred the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under :

*(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 orders* without considering the submissions/replies 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 the *impugned orders*, I find that the *adjudicating authority* has given findings that persons hearing was granted but claimant did not appear for personal hearing. Therefore, I find that the *impugned orders* are issued without being heard the '*Appellant*' and without considering the documents submitted by appellant with refund applications as well as replies of appellant in respect of subject SCNs.

5. In view of above, I find that the *adjudicating authority* has violated the principle of natural justice in passing the *impugned orders* vide which rejected the refund claims without considering the *appellant's* submissions & replies to SCNs 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 applications of the *appellant* by

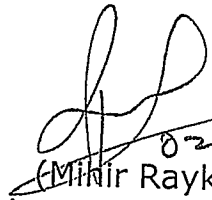


following the principle of natural justice. Needless to say, since the claims were rejected without considering the submissions of *appellant* and without being heard the appellant, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequence 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 orders* passed by the *adjudicating authority* are set aside for being not legal and proper and accordingly, I allow the appeals 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*.

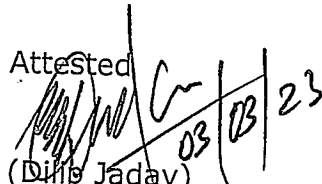
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

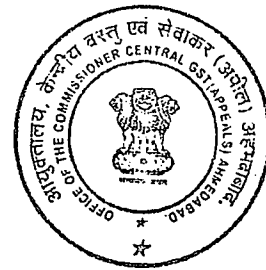
The appeals filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 02.03.2023

Attested

(Dilip Jadav)
03/03/23
Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
M/s. Viterra India Private Limited,
8th Floor, 802, Indraprasth Corporate,
Ahmedabad - 380 015

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./Asst. Commissioner, CGST, Division-VII, Ahmedabad South.
5. The Additional Commissioner, Central Tax (System), Ahmedabad South.
6. Guard File.
7. P.A. File