



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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टेलीफैक्स 07926305136



DIN- 20230364SW0000215860

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2962 to 2965/2022 -APPEAL /0153 - 62

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-254 to 257/2022-23**
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. **ZM2408220057755 DT. 04.08.2022,**
ZJ2408220057722 DT. 04.08.2022, ZG2408220057744 DT. 04.08.2022 &
ZI2409220056412 DT. 05.09.2022 issued by The Assistant Commissioner, CGST,
Division-VI, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Rajni Jayesh Shah of M/s. Picture Perfect, UL3, Murlidhar Complex,
S. M. Road, Ambawadi, Ahmedabad-380006

(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. Picture Perfect (Legal Name – Rajni Jayesh Shah), UL 3, Murlidhar Complex, S. M. Road, Ambawadi, Ahmedabad – 380 006 (hereinafter referred as 'Appellant') has filed the following appeals against the Refund Sanction/Rejection order in the form RFD-06 Orders (hereinafter referred as 'impugned orders') passed by the Assistant Commissioner, CGST, Division – VI, Ahmedabad South (hereinafter referred as 'adjudicating authority').

Appeal Nos. (All Dated 06.10.2022)	RFD-06 Order Nos.	Amount of Refund Claim	Refund Claim period
GAPPL/ADC/GSTP/2965/2022	ZM2408220057755 dtd. 04.08.22	Rs.4,480/-	June'20
GAPPL/ADC/GSTP/2964/2022	ZJ2408220057722 dtd. 04.08.22	Rs.9,578/-	Dec.'20
GAPPL/ADC/GSTP/2963/2022	ZG2408220057744 dtd. 04.08.22	Rs.10,550/-	Sept.'20
GAPPL/ADC/GSTP/2962/2022	ZI2409220056412 dtd.05.09.22	Rs.10,050/-	March'21
TOTAL		Rs.34,658/-	

2(i). Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AHBPS5283R1ZM had filed the refund applications on account of "Excess payment of Tax" for the period and amount as mentioned in above table. The adjudicating authority vide impugned orders rejected all the said refund applications filed by 'Appellant'. The 'Appellant' has accordingly filed the aforesaid appeals on 06.10.2022 against the impugned orders. The appellant in the in the present appeal has submitted that –

- While filing Annual Return GSTR 4 F.Y. 2021-22 appellant observed negative cash liability in their cash ledger and return. Accordingly, they taken up issue with GST Helpdesk on dated 27.04.22. Also they informed to Helpdesk that while filing Annual GSTR 4 for F.Y. 2020-21 they skipped table 6. Showing outward supplies as the same turnover was already showing tale 5 as per CMP 08 file during the year. So, the amount showing negative tax liability is the same which they have paid in F.Y. 2020-21 during the year.
- The Helpdesk by resolving Ticket No. G-202204278144127 has informed to the Taxpayer on 29.04.2022 that -
 - o "While filing GSTR-4 (Annual) of any financial year, you may not have filled up table 6 of the said return. Consequently, whatever amount was paid through Form CMP-08s of the year was credited to negative liability statement. Now the system has nullified such negative liability from the aforesaid statement. If you



have utilized any amount from the said statement, the same has been debited in the cash ledger".

- o "In case the balance in the cash ledger has become negative, kindly deposit the amount through challan for such amount. In case you have already paid the amount credited to negative liability through DRC-03 or CMP-08 or GSTR-4 of next FY, then you can claim refund of the excess amount paid by filing refund application in Form RFD-01. An email has also been sent to you about the debit entries."

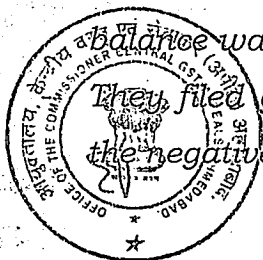
2(ii). Accordingly, in view of above the subject refund applications were preferred by the *appellant*. The said refund applications are rejected by *adjudicating authority* vide *impugned orders* on the following grounds -

- Claimant has submitted excess payment challan of Rs.34,658/-.
- Claimant has adjusted negative cash liability along with turnover in 2nd quarter of 2021-22 i.e. CMP 08 of September 2021 wherein, they have included annual turnover of Rs.34,66,628/- of F.Y.2020-21 with turnover of September 2021 of Rs.11,54,060/- and paid taxes after adjusting it with taxes payable. Their annual turnover shown in GSTR 4 of F.Y. 2021-22 is Rs.82,01,869/- whereas claimant has declared annual turnover of Rs.47,36,129/- only during F.Y. 2021-22 and claimed that, amount of Rs.34,66,628/- pertaining to F.Y. 2020-21 is included in it.
- However, they have not provided any documents such as audited balance sheet, Profit & Loss statement of F.Y. 2020-21 & 2021-22 substantiating their claim. They have also not submitted DRC 03 evidencing excess payment of tax. In absence of same, the refund claim is liable for rejection.

2(iii). Being aggrieved with the *impugned orders* dated 04.08.2022 & 05.09.22 the '*Appellant*' has filed the present appeals on dated 06.10.2022 on the following grounds :

- They would like to justify the refund claims if given proper time, as the amount is for the whole year paid again as excess as per the grievance reply received.
- In the Annual Return of F.Y. 2020-21 table 6 was skipped due to oversight and the paid tax appeared to be excess balance in cash ledger which was adjusted in CMP 08 2nd Quarter of F.Y. 2021-22 along with turnover itself. After which portal adjusted it against cash ledger for which negative cash balance was showing while filing Annual Return of F.Y. 2021-22.

They filed grievance on 27.04.22 against it and were advised to pay off the negative cash in ledger and then apply for refund in RFD 01.



- So as advised they paid the total amount of CGST & SGST again for F.Y. 2020-21 on 07.06.2022 and filed their Annual Return on 07.06.2022
- Payment was done as under :

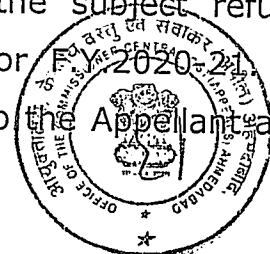
Month	CGST	SGST	Total	Date
June'20	2240	2240	4480	28.07.2020
Sept'20	5275	5275	10550	17.10.2020
Dec'20	4789	4789	9578	16.01.2021
March'21	5025	5025	10050	13.04.2021
Total	17329	17329	34658	
GSTR 4 (21-22)	17329	17329	34658	07.06.2022 paid again as advised.

The Appellant has further stated that they always filed GST returns in due time and had paid taxes as well ; and now while following rules, guidelines and advisory of the GSTIN grievance cell they paid the whole GST for F.Y. 2020-21 again, so for the same they eligible for the refund.

3. Personal Hearing in the matter was held on 20.12.2022 wherein Mr. Vishal I. Chauhan, C.A. 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 four separate refund applications for total refund of Rs.34,658/- on account of "Excess payment of Tax". I find that the appellant in the present appeal has contended that while filing Annual Return GSTR 4 F.Y. 2021-22 they observed negative cash liability in their cash ledger and return and accordingly, they raised grievance with GST Helpdesk. Further, in response to said grievance I find that the GST Helpdesk has advised to the Appellant that if the balance in the cash ledger has become negative then deposit the amount through challan for such amount and if already paid the amount through DRC-03 or CMP-08 or GSTR-4 of next FY, then file the refund application in Form RFD 01 of excess amount paid. The appellant in the present appeal proceedings contended that they have paid GST of Rs.34,658/- of F.Y. 2020-21 on 28.07.20, 17.10.20, 16.01.21 & 13.04.21 and again paid Rs.34,658/- of F.Y. 2020-21 on 07.06.22 as advised by GST Helpdesk while filing Annual Return of F.Y. 2021-22. Therefore, I find that the appellant has made the excess payment of Rs.34,658/-. Accordingly, the appellant has filed the subject refund applications of total Rs.34,658/- of GST paid again for F.Y. 2020-21. In response to said refund applications SCNs were issued to the Appellant and



the appellant has also submitted replies under Form-GST-RFD-09. However, I find that the subject refund applications are rejected on the ground that the appellant failed to produce documents such as Audited Balance Sheet, Profit & Loss Statement of F.Y. 2020-21 & 2021-22 and DRC 03 evidencing excess payment of tax. Therefore, I find that the subject refund applications are rejected on the ground of incomplete documents.

4(ii). I find that the appellant in the present appeal proceedings contended that proper time was not provided to them to justify their refund claims, as they have paid the tax again for whole year as advised by Helpdesk in response to their grievance. Further, from the impugned orders I find that refund claims are rejected on account of incomplete documents however, it is not revealed that whether appellant was being heard before being rejecting the subject refund claims. Therefore, I find force in appellant's contention that to justify their claims no proper opportunity was provided. Therefore, I am of the view that the subject refund claims are rejected by the adjudicating authority without being heard the appellant, considering replies (RFD-09) of appellant and without communicating valid and legitimate reasons for rejection of subject refund claims.

4(iii). Considering the foregoing facts, I find it pertinent to refer the Rule 92(3) of the CGST Rules, 2017. The 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 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 *Impugned Orders*, I find that opportunity of Personal Hearing was provided to the 'Appellant' on 11.07.22.



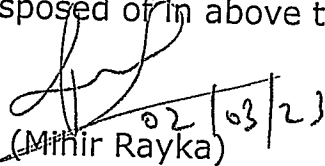
However, no such findings are available in the impugned orders or evidence on records that Personal Hearings were conducted. Therefore, I find that the *impugned orders* are issued without being heard the 'Appellant' and without considering the documents submitted by appellant with refund application as well as without the 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 order* vide which rejected the refund claim without considering the *appellant's* 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 application of the *appellant* by following the principle of natural justice. Needless to say, since the claims were 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 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*.

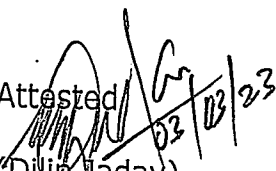
7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 02.03.2023

Attested 
(Dip Jadhav)

Superintendent (Appeals)
Central Tax, Ahmedabad



By R.P.A.D.

To,
M/s. Picture Perfect (Legal Name - Rajni Jayesh Shah),
UL 3, Murlidhar Complex, S. M. Road, Ambawadi,
Ahmedabad - 380 006

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



