



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
07926305065- टेलिफैक्स 07926305136



DIN- 20230364SW0000555FD9

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/1672/2022 -APPEAL 1963 - 68
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC- 262/2022-23**
दिनांक Date : **20-03-2023** जारी करने की तारीख Date of Issue : **20-03-2023**
- श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **CGST/WSO8/REF/Demand/13/MK/20-21 DT. 15.02.2021** issued by The Deputy Commissioner, CGST, Division-VIII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Hiteshkumar Kamleshkumar Sukhlani of Babaz Sales Corportaion, 2/F Satnam Estate, Bh. H P Petrol Pump, Bavla Raod, Santhal Chowkdi, Ahmedbad- 382210

(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 provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .

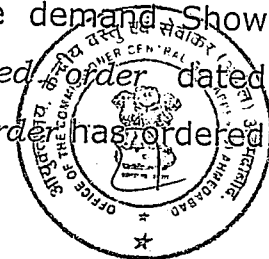
ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Babaz Sales Corporation (Legal Name - Hiteshkumar Kamleshkumar Sukhlani), 2/F, Satnam Estate, B/h. H P Petrol Pump, Bavla Road, Sanathal Chowkdi, Ahmedabad - 382 210 (hereinafter referred as '*Appellant*') has filed the appeal on 30.05.2022 against the Order No. CGST/WS08/Ref/Demand/13/MK/20-21 dated 15.02.2021 (hereinafter referred as '*impugned order*') passed by the Deputy Commissioner, CGST, Division - VIII, Ahmedabad South (hereinafter referred as '*Adjudicating Authority*').

2(i). The Brief facts of the case is that the '*Appellant*' holding GST Registration - GSTIN No.24EYNPS7615N2ZI had filed refund application for "*Refund of ITC on Export of Goods & Services without payment of Tax*". Accordingly, refund of Rs.47,71,063/- was sanctioned vide OIO No. CGST/WS08/Ref-130/BSM/2018-19 dated 19.12.2018. The said Order-in-Original dated 19.12.2018 was challenged by the Revenue Department by filing appeal under Section 107 of the CGST Act, 2017 before the Appellate Authority, CGST Appeals, Ahmedabad. It was contended by Revenue Department in the said appeal that the claimant had declared Total Adjusted Turnover of Rs.91,22,446/- in the Refund Application (RFD-01), however, as per GSTR 3B & GSTR 1 the Total Adjusted Turnover was Rs.1,21,67,586/-. Accordingly, by considering the said correct Total Adjusted Turnover of Rs.1,21,67,586/- instead of Rs.91,22,446/- in the prescribed formula under Rule 89(4) of the CGST Rules, 2017, and calculated the admissible amount of refund as Rs.35,78,576/-. Thus, there was excess sanctioned of refund of Rs.11,92,487/- [Rs.47,71,063/- (sanctioned) Minus Rs.35,78,576/-(admissible)].

In the said appeal proceedings, the OIO vide which refund of Rs.47,71,063/- sanctioned was set aside to the extent of excess sanctioned of Refund of Rs.11,92,487/- vide OIA No. AHM-EXCUS-014-APP-JC-021/20-21 dated 21.08.2020 by the Joint Commissioner (Appeals), CGST, Ahmedabad. Accordingly, in view of said OIA the Revenue Department has initiated action for recovery of inadmissible refund of Rs.11,92,487/- as sanctioned erroneously.

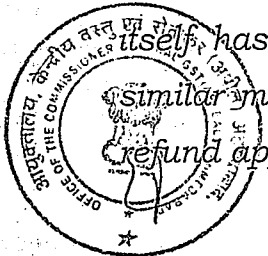
2(ii). Since, the Appellate Authority has passed OIA dated 21.08.2020 in favour of the Revenue; the Deputy Commissioner, CGST, Division VIII, Ahmedabad South has invoked protective demand Show Cause Notice dated 09.07.2020 and passed *impugned order* dated 15.02.2021. The *adjudicating authority* vide *impugned order* has ordered



for recovery of erroneously sanctioned refund of Rs.11,92,487/- under Section 73(1) of the CGST Act, 2017 along with interest at applicable rate under Section 50 of the CGST Act, 2017.

2(iii). Being aggrieved with the "impugned order" the 'Appellant' has filed the present appeal on 30.05.2022 on the following grounds -

- They had claimed refund of accumulated ITC for the month of October 2018 which was sanctioned vide OIO dated 19.12.18 for Rs.47,71,063/-. However, during post audit of said refund claim it was observed by Revenue Department that refund was admissible for Rs.35,78,576/-.
- Accordingly, they have been called upon by Ld. AC, CGST, Div. VIII, Ahmedabad South and asked as to why -
 - o "The Refund of Rs.11,92,487/- erroneously sanctioned to them vide OIO dated 19.12.18 should not be recovered from them under Section 73(1) of the CGST Act, 2017 read with Section 50 of the CGST Act, 2017."
- An appeal was also filed by the Revenue Department against said OIO dated 19.12.18 before the CGST Appeals, Ahmedabad. Accordingly, the Appellate Authority vide OIA No. AHM-EXCUS-014-APP-JC-021/20-21 Dated 21.08.2020 set aside the said OIO dated 19.12.18.
- They do not agree with the findings of the Ld. Commissioner (Appeal) Central GST, Ahmedabad and are challenging the said OIA before the Hon'ble GST Tribunal. However as on date the GST Tribunals are not constituted and hence it's not possible for them to file an appeal against said OIA of Ld. Commissioner (Appeal), Central GST Ahmedabad.
- They had been called upon to submit their reply to SCN and meanwhile they were under impression that subject SCN would not be adjudicated simultaneously since the very reason for which the SCN has been issued itself was under challenge by them.
- They had not received any message or email communication with respect to the subject refund application SCN adjudication and personal hearing and hence appellant did not get an opportunity to submit their reply and represent their case before the adjudicating authority and the subject OIO had been passed ex-parte is in abundant violation of principle of natural justice.
- The impugned OIO dated 15.02.2021 issued by taking cognizance from the OIA dated 21.08.2020 without considering the fact that said OIA itself has not yet reached to finality and again adjudicating on very similar matter would give rise to multiple litigations for the very same refund application.

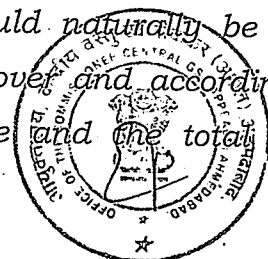


- Attention is invited to the Order No. 9/2019-Central Tax dated 03.12.2019 and Circular No. 132/2/2020-GST dated 18.03.2020, which provides that the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. Appellants submit that it is also provided that the appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office.
- SCN is decided without offering an opportunity of Persona Hearing or counter reply. Impugned OIO has been decided ex-parte is in abundant and gross violation of principle of natural justice.
- Alleged inadmissible refund is on account of difference in the adjusted total turnover as per refund application and zero rated supply of goods. They do not have any domestic supply. Department considers FOB value i/r. of zero rated supply and CIF value of export supplies as adjusted turnover which is absolutely incorrect and unlawful.
- As regards to export value, they referred C. Ex. Act, 1944, Finance Act 1994, Section 15 of the CGST Act, Section 20 of the IGST Act. They also referred Circular No. 37/11/2018-GST dated 15.03.2018.
- In view of order dated 10.01.22 of Hon'ble Supreme Court in the matter of Miscellaneous Application No. 21 of 2022 in M.A. 665 of 2021, in SMW(C) No. 3 of 2020 ; the last date to file appeal against the impugned OIO is 29.05.2022 which happened to be a public holiday i.e. Sunday and hence as per the General Clause Act the last date to prefer an appeal against impugned OIO stands as 30.05.2022.

In view of above, the appellant has made prayer for set aside the impugned OIO.

3. Personal Hearing in the matter was held on 16.12.2022 wherein Mr. Pratik Trivedi, C.A. was appeared on behalf of the 'Appellant' as authorized representative. During P.H. he has submitted written submission dated 16.12.2022 and stated that they have nothing more to add to it. The appellant in their written submission dated 16.12.2022 stated that -

- As can be seen from the records that they have total supply on account of zero rated supply only and there is no other supply in domestic market or otherwise during refund period i.e. Oct-2018 and hence whatever the turnover is taken for adjusted total turnover would naturally be the turnover representing their zero rated supply turnover and accordingly both denominator and numerator would be same and the total ITC



availed during said period i.e. Oct-2018 subject to the balance in credit ledger of Rs.47,71,063/- would be admissible as refund.

- They referred and relied on following case laws :
 - o M/s. Sayona Enterprise – OIA No. AHM-CGST-002-APP-ADC-019 to 021/2022-23 dated 26.05.2022
 - o M/s. JAMP India Pharmaceuticals Pvt. Ltd. – OIA No. AHM-CGST-001-APP-ADC-102/2022-23 dated 30.08.2022
- On perusal of above its amply clear that refund claimed by them in subject refund application is correct and lawful and the impugned OIO proposing to reject the same deserves to be dropped.

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 submission. I find that the Appellant had claimed refund of "accumulated ITC due to export of goods & services without payment of tax" and accordingly claim of Rs.47,71,063/- was sanctioned to the Appellant vide order dated 19.12.2018. However, during post audit of said claim it was observed that refund of Rs.35,78,576/- only was found admissible to the claimant. Accordingly, an appeal was filed by the Revenue Department against said order dated 19.12.2018 on the grounds that excess amount of refund of Rs.11,92,487/- had been sanctioned erroneously to the Appellant. I find that in the said appeal proceedings the OIO dated 19.12.2018 was set aside to the extent of erroneously sanctioning of refund of an amount of Rs.11,92,487/- in excess of the eligible refund vide OIA No. AHM-EXCUS-014-APP-JC-021/20-21 dated 21.08.2020.

4(ii). Since, the Appellate Authority vide aforesaid OIA dated 21.08.2020 had allowed the appeal of the Department and set aside the order dated 19.12.18 to the extent of sanction of excess refund of Rs.11,92,487/- ; the Revenue department has initiated the action for recovery of said inadmissible refund of Rs.11,92,487/- as erroneously sanctioned. Accordingly, I find that the *impugned order* is passed by the *adjudicating authority* for recovery of inadmissible refund of Rs.11,92,487/- under Section 73(1) of the CGST Act, 2017 with interest at applicable rate under Section 50 of the CGST Act, 2017.

4(iii). Further, I find that the *appellant* in the present appeal has mainly contended that they do not agree with the findings of OIA dated 21.08.2020 and they challenged the said OIA before Hon'ble GST Tribunal; however, as the GST Tribunal is not constituted, it is not possible for them



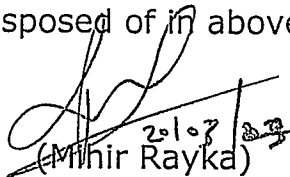
to file an appeal against the said OIA of Ld. Commissioner (Appeals), CGST, Ahmedabad. I find that in this regard the *appellant* has referred the Order No. 9/2019-Central Tax dated 03.12.19 and Circular No. 132/2/2020-GST dated 18.03.20. Further, the *appellant* has also contended that the *impugned order* is passed without offering them opportunity of Personal Hearing and submission of counter reply, hence the *adjudicating authority* has violated the principle of natural justice in passing the *impugned order*.

4(iv). On going through the OIA dated 21.08.2020 I find that the said OIA was passed after being heard the *appellant* as well as after considering the submission of *appellant* i.e. of M/s. Babaz Sales Corporation. Therefore, I find that the said OIA was passed after carefully going through the all available records. It is relevant to mention here that the Appellate Authority vide aforesaid OIA dated 21.08.2020 held that refund of Rs.11,92,487/- has been sanctioned erroneously as in excess of eligible refund. Since, the said OIA is passed by the Appellate Authority on merit of the case, I am of the view that it is not proper and legal to again examine the matter of said excess refund of Rs.11,92,487/- in the present appeal proceedings. I find that on the basis of said OIA dated 21.08.20 the Department has initiated the action for recovery of excess refund of Rs.11,92,487/- and it is as per the law, there is nothing wrong in it. Further, I find that the *appellant* has not mentioned any Rules or Regulation which prohibits the department from recovery action of excess refund so sanctioned.

5. In view of the above, I do not find any force in the contentions of the *Appellant*. Therefore, I do not find any reason to interfere with the decision taken by the "Adjudicating Authority" vide "Impugned Order". In view of above discussions, I find that the present appeal filed by the *appellant* is not sustainable and maintainable. Accordingly, I hereby reject the present appeal of the 'Appellant'.

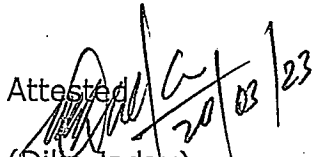
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

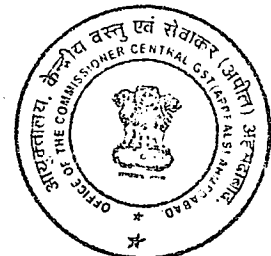
The appeal filed by the *appellant* stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 20.03.2023

Attested

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



By R.P.A.D.

To,
M/s. Babaz Sales Corporation
(Legal Name - Hiteshkumar Kamleshkumar Sukhlani),
2/F, Satnam Estate, B/h. H P Petrol Pump,
Bavla Road, Sanathal Chowkdi, Ahmedabad - 382 210

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-VIII, Ahmedabad South.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
- ✓ 6. Guard File.
7. P.A. File

