



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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DIN- 20230364SW000061666F

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2309/2022 -APPEAL 1221 - 26

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC- 272 /2022-23**

दिनांक Date : **29-03-2023** जारी करने की तारीख Date of Issue : **30-03-2023**

श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित

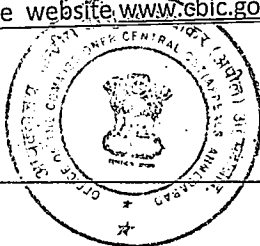
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZR2406220472686 DT. 30.06.2022**, issued by The Assistant Commissioner, CGST, Division-I, Ahmedabad South

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

**Jignesh Kumar Virabhai Patel of M/s. Gurukrupa Enterprise ,  
Nilkant Society, 39, OPP. Shivpark, I/S Ramrajya Nagar, Amraiwadi, Ahmedabad-380026**

(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) <b>Full amount of Tax, Interest, Fine, Fee and Penalty</b> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <b>twenty five per cent</b> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> 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 <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .



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

**M/s. Gurukrupa Enterprise (Legal Name – Jignesh Kumar Virabhai Patel)**, 39, Nilkant Society, Opp. Shivpark, I/S Ramrajya Nagar, Amraiwadi, Ahmedabad – 380 026 (hereinafter referred as '**Appellant**') has filed the present appeal against the Refund Sanction/Rejection Order in the form RFD-06 bearing No. ZR2406220472686 dated 30.06.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division – I Rakhial, 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.24ASWPP4160G1ZE had filed the refund application on account of "*Refund on account of ITC accumulated due to Inverted Tax Structure*" for the period from July 2018 to September 2018 on dated 29.04.2022 for Rs.1,79,264/-. In response to said refund claim a Show Cause Notice dated 14.06.2022 was issued to the '**Appellant**'. It was proposed that refund application is liable to be rejected for the reasons "*Other*" with mentioning Remark as "*Annexure-B is not attached*".

Thereafter, the '**adjudicating authority**' has rejected the said refund claim of Rs.1,79,264/- vide '**impugned order**'. The reason for rejecting refund claim as mentioned in the impugned order is that –

- SCN No. ZP2406220239775 dated 14.06.22 was issued to the applicant with remark "*The Annexure-B was not attached*" and PH date was scheduled on 17.06.22. In this connection, the applicant had neither attended the PH nor replied to the SCN.
- As in the absence of Annexure-B, the Net ITC could not be calculated and refund amount as well.
- In view of above, refund claim filed by applicant is not found in order under Section 54 of the CGST Act, 2017 and accordingly refund of Rs.179264/- is rejected and RFD-06 is being issued in AIO.

**2(ii).** Being aggrieved with the *impugned order* dated 30.06.2022 the '**Appellant**' has filed the present appeal on dated 06.08.2022 on the following grounds :

- They engaged in manufacture of various kinds of Flour Mill Machineries which attract tax rate of 5%. They procure inputs i.e. various types of machinery parts. Majority of input goods attract tax rate of 18%



- Accordingly, they preferred refund application for refund of accumulated ITC due to Inverted Tax Structure in terms of Section 54 read with Rule 89 of the CGST Rules, 2017.
- They filed refund application for period of July'18 to Septemebr'18 for Rs.1,79,264/- on 29.04.22 in light of Hon'ble Supreme Court's Order dated 10.01.22 that the period from 15.03.20 to 28.02.22 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.
- Further, CBIC has also vide Notification No.13/2022-Central Tax dated 05.07.22, excludes the period from 01.03.20 to 28.02.22 for computation of period of limitation for filing refund application under Section 54 or Section 55 of the said Act.
- They filed refund application as per formula prescribed under Rule 89(5) of the CGST Rules, 2017.
- The Tax Officer has issued Notice under Form GST RFD-08 for rejection of refund application for reason "Annexure B is not attached". And directed to furnish reply within 15 days and also directed to appear on 17.06.22.
- They filed reply to SCN in Form GST-RFD-09 dated 21.06.22 with attachment of relevant documents i.e. Annexure B and GSTR-2A for July'18 to September'18. Their authorized signatories Adv. Ramesh Shah/ C.A. Deep Talsania also appear before the assessing officer on 17.06.22 and then after filed reply to SCN.
- However, without consideration of facts mentioned in reply to SCN the assessing officer has issued refund rejection order.

In view of above submissions the appellant has made prayer that the impugned order may be set aside and refund of Rs.1,79,264/- may be granted.

3. Personal Hearing in the matter was held on 25.11.2022 wherein Mr. Ramesh Shah & Mr. Deep Talsania, C.A. appeared on behalf of the 'Appellant' as authorized representatives. During P.H. they have 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. 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



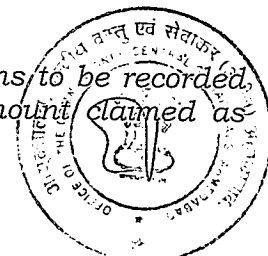
Rs.1,79,264/- . In response to said refund application Show Cause Notice was issued to them proposing rejection of refund claim for the reason that "Annexure B is not attached". Thereafter, the said refund claims was rejected by the *adjudicating authority* vide *impugned order* dated 30.06.2022 on the grounds that the *appellant* neither appeared for PH nor furnish reply to SCN and therefore, in absence of Annexure B, unable to calculate the Net ITC as well as refund amount. Accordingly, I find that the refund claim was rejected solely on the ground that appellant has not submitted the Annexure B and in absence of same adjudicating authority was not in a position to calculate Net ITC and subsequent amount of admissible refund.

**4(ii).** However, I find that the appellant in the present appeal proceedings produced the copy of Reply to SCN submitted by them. On going through same, I find that the appellant has submitted the Reply to SCN under Form-GST-RFD-09 dated 21.06.22 under Reply Reference Number - ZP2406220239775 along with supporting documents i.e. Annexure B as well as GSTR 2A July'18 to September'18. Further, the appellant in the present appeal proceedings contended that their representatives Mr. Ramesh Shah and Sh. Deep Talsania, C.A. were appear before the adjudicating authority on date of PH 17.06.2022.

**4(iii).** In view of above facts, I find that the refund claim is mainly rejected for the reason that the *appellant* failed to appear in Personal Hearing and failed to comply to SCN i.e. not submitted Annexure B. Consequently, the adjudicating authority has rejected the refund claim on the grounds that in absence of Annexure B, they could not calculate Net ITC and refund amount. 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 21.06.2022. Therefore, I find that the adjudicating authority has passed the impugned order without considering the reply to SCN submitted by the appellant.

**4(iv).** Considering the foregoing facts, I find that in the present matter the refund claim is solely rejected on the ground of non submission of Annexure B, though appellant contended that they have submitted the same with Reply to SCN. 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, as per impugned order, the appellant had not attended the PH. Whereas, appellant contended that their representatives were appear before the adjudicating authority on 17.06.2022. 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

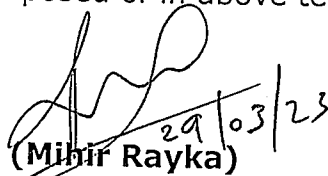


its admissibility on merit in accordance with the Rule 89 of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017.

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.

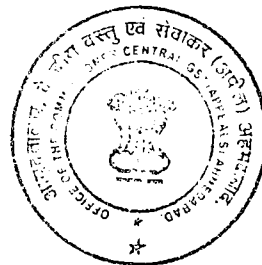
  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 29.03.2023

Attested

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



To,  
M/s. Gurukrupa Enterprise  
(Legal Name - Jignesh Kumar Virabhai Patel),  
39, Nilkant Society, Opp. Shivpark,  
I/S Ramrajya Nagar, Amraiwadi, Ahmedabad - 380 026

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-I Rakhial, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

