



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2528/2022 -APPEAL

1283-288

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-275/2022-23**

दिनांक Date : **31-03-2023** जारी करने की तारीख Date of Issue : **31-03-2023**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

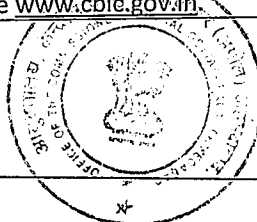
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZY2406220410808 DT. 24.06.2022**, issued by The Assistant Commissioner, CGST, Division-V, Odhav, Ahmedabad South

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

Dineshkumar Bhagvanbhai Satapara of M/s. Shakti Polyplast ,C/103, Zaveri Industrial Estate, Singarava to Kathwada Road, Kathwada, Ahmedabad-382430

(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. Shakti Poly Plast (Legal Name – Dineshkumar Bhagvanbhai Satapara), C/103 Zaveri Industrial Estate, Singarava to Kathwada Road, Kathwada, Ahmedabad – 382 430 (hereinafter referred as '**Appellant**') has filed the appeal against the Refund Sanction/Rejection Order in the form RFD-06 bearing No. ZY2406220410808 dated 24.06.2022 (hereinafter referred as '**impugned order**') passed by the Assistant Commissioner, CGST, Division – V Odhav, 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.24BLSPS3284E2Z0 had filed the refund application on account of "*Supplies made to SEZ Unit / SEZ Developer with payment of Tax*" for the period from 01.09.21 to 31.03.22 on dated 01.05.2022 for Rs.2,72,749/-. In response to said refund claim a Show Cause Notice dated 03.06.2022 was issued to the '**Appellant**'. It was proposed that refund application is liable to be rejected for the reasons "*Other*" with mentioning Remark as "*Declaration to second and third proviso to Section 54(3) not provided*".

Thereafter, the '**adjudicating authority**' has rejected the said refund claim of Rs.2,72,749/- vide '**impugned order**'. The reason for rejecting refund claim as mentioned in the *impugned order* is that –

- *A Show Cause Notice dated 03.06.22 was issued to the claimant to submit the Declaration under second and third proviso to Section 54(3) and Personal Hearing was given to the claimant dated 10.06.22. The claimant submitted reply to SCN dated 09.06.22 but failed to attach Declaration under second and third proviso to Section 54(3).*
- *Refund amount claimed, has not been debited from the electronic credit ledger, in terms of sub-rule (3) of Rule 89 of the CGST Rules.*
- *In view of above, the refund claim filed by applicant is rejected as applicant failed to submit the required documents and RFD-06 is being issued in AIO.*



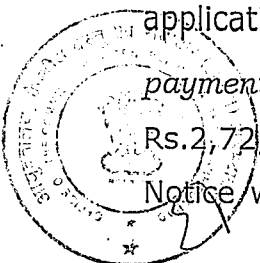
2(ii). Being aggrieved with the *impugned order* dated 24.06.2022 the '*Appellant*' has filed the present appeal on dated 26.08.2022 on the following grounds :

- *Refund Application in Form RFD-01 was filed by them on 01.05.22 for refund of Rs.2,72,749/- vide ARN No. AA2405220002690 under the category 'On account of Supplies made to SEZ Unit/SEZ Developer with payment of Tax' for the period from September 2021 to March 2022.*
- *In response to refund application a SCN was issued to them and asked to submit declaration i/r. second and third proviso to Section 54(3).*
- *In response to aforesaid SCN they have submitted their reply on 09.06.22 along with attachment of declaration under second and third proviso to Section 54(3). However, on generation of acknowledgement in Form RFD-09 they noticed that due to technical glitch or lacuna of system, supporting documents was not attached and reply was accepted by system without supporting documents.*
- *As the proper officer was unable to check declaration filed by them as demanded in SCN, he forced to reject the refund and accordingly rejection order of refund was issued on 24.06.22.*
- *Considering the above facts, grounds of the appeal is that the refund should not be rejected on non-attachment of declaration under Section 54(3) which is in fact due to technical glitch or lacuna of system.*
- *In view of above submissions the appellant has made prayer that the refund may be granted to them.*

3. Personal Hearing in the matter was held on 22.11.2022 wherein Mr. Dipesh D. Dixit, C.A. appeared on behalf of the '*Appellant*' as authorized representatives. During P.H. he has stated that they have nothing more to add to their written submissions till date.

Discussion and Findings :

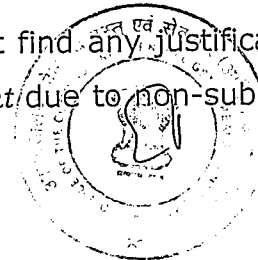
4(i). I have carefully gone through the facts of the case available on records, submissions made by the '*Appellant*' in the Appeals Memorandum. I find that the '*Appellant*' had preferred the refund application '*On account of Supplies made to SEZ Unit/SEZ Developer with payment of Tax*' under Section 54 of the CGST Act, 2017 for amount of Rs.2,72,749/-. In response to said refund application Show Cause Notice was issued to them proposing rejection of refund claim for the



reason that "Declaration to second and third proviso to Section 54(3) not provided". Thereafter, the said refund claims was rejected by the *adjudicating authority* vide *impugned order* dated 24.06.2022 on the grounds that the *appellant* failed to submit the required documents. Accordingly, I find that the refund claim was rejected solely on the ground that appellant has not submitted the declaration to second and third proviso to Section 54(3).

4(ii). The *appellant* in the present appeal proceedings produced the copy of Reply to SCN submitted by them under Reply Reference Number - ZS2406220053375 dated 09.06.2022 and contended that due to technical glitch or lacuna of system, supporting documents was not attached and reply was accepted by system without supporting documents. In this regard, I have gone through CBIC Circular No.125/44/2019 - GST dated 18.11.2019 wherein documentary evidences required to be submitted with various types of refund application are prescribed. I find that according to said Circular it is prescribed that 'Declaration under second and third proviso to section 54(3)' need to be furnished with refund application filed 'On account of Supplies made to SEZ Unit/SEZ Developer with payment of Tax' under Section 54 of the CGST Act, 2017. However, ongoing through the copy of Reply to SCN submitted by *appellant*, I find that no supporting documents found attached.

4(iii). I have gone through the show cause notice and find that the only reason for rejection made in the show cause notice is non submission of 'Declaration under second and third proviso to section 54(3)'. The *appellant* in their reply filed in Form GST RFD 09 ZS2406220053375 dated 09.06.2022 submitted that "As directed by you via notice, we hereby attaching declaration of second and third proviso to section 54(3). Please consider the same and do needful." The *appellant* though stated that they had attached 'Declaration under second and third proviso to section 54(3)' however, it was not attached with their reply. Therefore, I do not find any infirmity in the finding of the *adjudicating authority*. However, I also find that as per Rule 90 of CGST Rules, 2017 for discrepancy of such nature, the proper course of action is by way of issue of deficiency memo for necessary rectification and not by way of issue of show cause notice. Therefore, I do not find any justification in denying substantive benefit due to the *appellant* due to non-submission



of required declaration, if refund is otherwise admissible to the *appellant*.

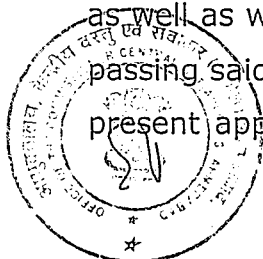
4(iv). Considering the foregoing facts, I find that in the present matter the refund claim is solely rejected on the ground of non submission of 'Declaration under second and third proviso to section 54(3)', and the *appellant* contended that due to technical glitch or lacuna of system, supporting documents was not attached and reply was accepted by system without supporting documents. 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. Further, I find that as per above provisions "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 Order*, I find that opportunity of Personal Hearing was provided to the '*Appellant*' on 10.06.22. However, no such findings are available in the *impugned order* or evidence on records that Personal Hearings was conducted. Therefore, I find that the *impugned order* is issued without being heard the '*Appellant*'.

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 being heard the *appellant* as well as without communicating the valid or legitimate reasons before passing said order. Hence, in the interest justice and fairness I allow the present appeal with consequential benefit to the *appellant*. Needless to



say, since the claim was rejected on the ground of non submission of required declaration, 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.

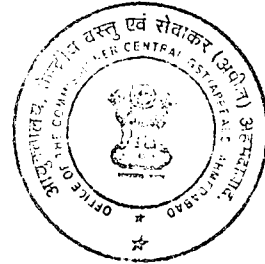

(Mihir Rayka)

Additional Commissioner (Appeals)

Date: 31.03.2023

Attested


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



To,
M/s. Shakti Poly Plast
(Legal Name - Dineshkumar Bhagvanbhai Satapara),
C/103 Zaveri Industrial Estate,
Singarava to Kathwada Road, Kathwada,
Ahmedabad - 382 430

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. Commr., CGST, Division-V Odhav, Ahmedabad South.
5. The Superintendent (Systems), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

