



आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015



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DIN- 20220564SW00007757D9

रजिस्टर्ड डांक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1832,1833 & 1834/2021 -APPEAL

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ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-33/2022-23
दिनांक Date : 30-05-2022 जारी करने की तारीख Date of Issue : 31-05-2022

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZV2407210285319 DT. 22.07.2021, ZV2407210285408 DT. 22.07.2021 & ZX2407210285497 DT. 22.07.2021 issued by Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Fine Star Industry B-402, Samudra Complex, Girish Cold
Drink Cross Road CG Road, Navrangpura Ahmedabad, Gujarat-380009

(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

M/s.Fine Star Industry, B-402, Samundra Complex, Girish Cold Drink Cross Road, CG Road, Navrangpura, Ahmedabad 380 009 (hereinafter referred to as the appellant) has filed the following appeals on dated 23-8-2021 against Orders passed by the Assistant Commissioner, Division I (Rakhial), Ahmedabad South rejecting refund claim filed by them.

Sr No.	Appeal File No.	Date of filing of appeal	Impugned order number and date	Amount of refund rejected
1	GAPPL/ADC/GSTP/1832/2021	23-8-2021	ZV2407210285319/22-7-2021	102148/-
2	GAPPL/ADC/GSTP/1833/2021	23-8-2021	ZV2407210285408/22-7-2021	8964/-
3	GAPPL/ADC/GSTP/1834/2021	23-8-2021	ZX2407210285497/22-7-2021	7668/-

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24ADAPK6849E1Z0 has filed refund claims for refund of tax paid on outward supplies made to SEZ unit. The appellant was issued show cause notice for rejection of claim on the ground that declaration as per Rule 89 (2) (L) of CGST Rules, 2017 has not been uploaded. The adjudicating authority vide impugned orders held that refund is inadmissible to the appellant on the ground that the appellant has neither appeared for PH nor submitted reply to show cause notice.

3. Being aggrieved the appellant filed the present appeals on the following grounds:
They had submitted all relevant documents along with declaration as per Rule 89 (2) (L) of CGST Rules, 2017 on 2-7-2021. The adjudicating authority has rejected the refund application without considering all documents submitted by them. In view of above the appellant requested to consider refund application grant refund of tax paid on supplies made to SEZ unit with payment of tax.

4. Personal hearing was held on dated 25-5-2022. Shri Kushan Jagad, authorized representative appeared on behalf of the appellant on virtual mode. He stated that he has nothing more to add to their written submission till date.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. In these cases, the refund claim was rejected due to non-compliance to show cause notice and due to non-appearance for personal hearing fixed on 13-7-2021. In their grounds of appeal, the appellant has not made any submission regarding non submission of reply to show cause notice or non-appearance for personal hearing. I further find from GST portal that no reply was filed by the appellant against the show cause notice issued to them. However, I also find that as per Rule 92 (3) of CGST Rules, 2017, refund claim can be rejected only after considering reply to show cause notice and after providing opportunity of personal hearing, recording reasons for rejection in writing. In these cases, all the claims were filed on 16-6-2021 and impugned orders rejecting the claim was passed on dated 22-7-2021 i.e. within one month period. Accordingly, it transpires that the claims were rejected in a hasty and



hurried manner without waiting for reply to show cause notice and without affording another opportunity of personal hearing. Consequently, it also emerges that the refund claims were rejected without following the procedures prescribed for rejection of the claim.

6. In these cases, in the show cause notice issued to the appellant the refund was proposed for rejection on the sole ground that declaration as per Rule 89 (2) (L) of CGST Rules, 2017 has not been uploaded by the appellant. At the outset I find that as per Rule 90 of CGST Rules, 2017, in such cases, the proper course of action is by way of issuance of deficiency memo for necessary rectification and submission and not by way of issue of show cause notice. I find that Rule 89 (2) specifies various documents required to be submitted along with claim and under clause (L) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any person in a case where the amount of refund claim does not exceed two lakh rupees. In the grounds of appeal, the appellant contended that they had submitted the declaration as per Rule 89 (2) (L) on 2-7-2021. I find that on 2-7-2021 the appellant vide letter dated 1-7-2021 manually submitted various documents which does not include declaration as per clause (L) of Rule 89 (2). Therefore, submission now made by the appellant that they had submitted/uploaded declaration as per Rule 89 (2) (L) is incorrect and wrong.

7. During appeal, the appellant has submitted declaration as per Rule 89 (2) (L) of CGST Rules, 2017 for each claims stating that incidence of tax and interest claimed as refund has not been passed on to any other person. I further find that in the subject cases except non submission of declaration as per Rule 89 (2) (L) no other reason/ground was raised for rejection of refund which shows that refund is otherwise admissible to the appellant. Since the appellant has submitted declaration as per Rule 89 (2) (L) and thereby fulfilled the requirement for entitlement of refund, in the interest of justice and fairness I allow the appeals with consequential benefit to the appellant in accordance with Section 54 of CGST Act, 2017 read with Rules framed thereunder. Accordingly, I set aside the impugned orders and allow the appeals filed by the appellant.

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

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

Date :

Attested

(Sankara Raman B.P.)
Superintendent,
Central Tax (Appeals),
Ahmedabad

Additional Commissioner (Appeals)



By RPAD,

To,

M/s. Fine Star Industry
B-402, Samudra Complex,
Girish Cold Drink Cross Road CG Road,
Navrangpura Ahmedabad, Ahmedabad
Gujarat-380009

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 5) The Asst./Deputy Commissioner, CGST, Division-I, Ahmedabad South
- ✓ 6) Guard File
- 7) PA file

