



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/1273/2021 -APPEAL / 1242 - 1242

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-36/2022-23**

दिनांक Date : **31-05-2022** जारी करने की तारीख Date of Issue : **01-06-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZO2403210435626 DT. 31.03.2021** issued by Deputy Commissioner, CGST, Division IV (Narol), Ahmedabad South

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

**M/s. Jaorawala Dyeing and Printing Works 138, Jaorawala Compound, Behind Calico Mill, Behrampura, Ahmedabad-380022**

(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> .

Received By 08/06/22

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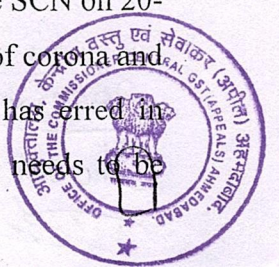
**ORDER IN APPEAL**

M/s.Jaorawala Dyeing and Printing Works, 138, Jaorawala Compound, Behind Calico Mill, Behrampura, Ahmedabad 380 022 (hereinafter referred to as the appellant) has filed the present appeal online on dated 24-6-2021 (filed on 2-7-2021 by physical mode) against Order No.ZZ2404210241683 dated 21-4-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division IV (Narol), Ahmedabad South (hereinafter referred to as the adjudicating authority)

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AACFJ8981D1ZB has filed refund claim for refund of Rs.54,19,364/- on account of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice for rejection of refund on the ground of wrong turnover and ITC availed in excess of ITC available in Annexure B. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that compliance to SCN not made/not visible on the portal.

3. Being aggrieved the appellant filed the present appeal on following grounds:  
The SCN made no specific reason to state that how the calculation of turnover was wrongly made. The turnover declared in RFD 01 was in accordance with the total turnover shown in GSTR3B /GSTR 1/Annual GSTR9 and audit report GSTR9C. The ITC was properly taken as per the books of accounts and matching with GSTR2A. Since the mistake was pointed out without any specification and to ensure immediate and to pump cash flow amendment in RFD 01 was done. The said reduction in ITC figure to be taken was done so as to reduce to credit of input service. That they had filed reply to SCN on portal on 19-4-2021 with all necessary response to the show cause notice. The adjudicating authority without even looking at the reply to the SCN made, rejected the refund application. Since the refund is rejected wrongly, interest on delayed payment of refund should be allowed as per judgment of M/s.Saraf Natural Stone Vs UOI (Gujarat High Court) SCA No.15925 of 2018.

4. Personal hearing was held on dated 27-5-2022. Shri Monish S Shah, authorized representative appeared on behalf of the appellant on virtual mode. He has been given three days to submit additional submission. Accordingly, on 30-5-2022, the appellant filed additional submission wherein they had given turnover and tax as per GSTR3B, GSTR1, GSTR9 and RFD 01 which comes to Rs.221909495/- in all the documents and further submitted that credit note reduce from turnover are not affected in the turnover reported in RFD 01 in order and not increase the refund to that extent. Thus, it can be seen that there is no difference turnover and the same is matching with books of accounts. The ITC mentioned in RFD 01 was Rs.1,65,28,270/-. However out of this ITC reflecting in GSTR2A for Rs.1,54,10,988/- which was also reflected in Annexure B. The said figure was altered while submitting the revised RFD 01 in replying to the SCN on 20-4-2021. They had also requested for condonation of delay 1 day due to second wave of corona and the while office of their advisor succumb to corona. The adjudicating authority has erred in rejecting the claim in the eyes of Law and natural justice. The refund application needs to be





reinvestigated as per applicable Law and necessary refund be granted along with interest thereon and the amount that is disallowed due to any provision of Law needs to be re-credited to the credit ledger as per provisions of CGST Act, 2017.

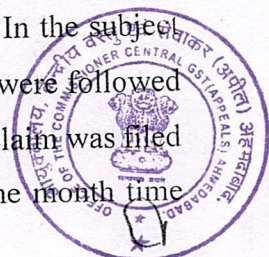
5. I have carefully gone through the facts of the case, ground of appeal, submissions made by the appellant and documents available on record. I find that the adjudicating authority has rejected the refund due to reason that compliance to SCN not made/not visible on the portal. I find the findings itself is very contradictory inasmuch as it does not indicate as to whether the appellant has not filed reply to SCN or filed reply to SCN but it is not visible on portal. However, I find that the appellant has filed reply to SCN in Form GST RFD 09 under Ref No.ZP2403210448871 dated 20-4-2021 wherein they have attached revised working of RFD 01 and requested to consider the same and to pass necessary order for refund and re credit the excess. Therefore, it is clear that the appellant has filed reply to SCN but due to invisibility of reply to the adjudicating authority in the portal the refund was rejected. In such a situation as an alternative mode the adjudicating authority could have obtained a physical copy of the reply uploaded in the portal and verified the same but instead of doing so rejected the entire claim without even looking into the reply filed by the appellant. I further notice that in the show cause notice, wrong turnover and excess ITC in Annexure B was given as reason for rejection of refund. As per Rule 90 of CGST Rules, 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.

6. I now refer to the provisions governing rejection of refund contained under Rule 92 (3) is as under:

*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.*

7. As per provisions of sub rule (3) of Rule 92 of CGST Rules, it is mandatory requirement to issue show cause notice; consider the reply filed by the claimant; provide opportunity of personal hearing and record the reasons in writing for rejection of refund claim. In the subject case it is evident that except issuance of show cause notice, no other procedures were followed by the adjudicating authority before rejecting the refund claim. I further find that claim was filed on dated 23-3-2021 and impugned order was passed on 21-4-2021 ie within one month time



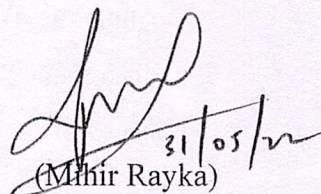


period. Therefore, it is clear that the adjudicating authority has passed the impugned order in a hasty and pre-determined manner without even looking into the reply and without providing another opportunity to the appellant to defend their stand. I find the above action on the part of the adjudicating authority is against the principles of natural justice and not a justifiable action for denial of substantive benefit to the appellant. Therefore, I hold that the impugned order passed without following the provisions of Rule 92 of CGST Rules 2017 and against the principles of natural justice is bad in Law and hence legally untenable and unsustainable.

8. In view of above, I hold that the impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside. Therefore, I allow this appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequent to this Order may be dealt with in accordance with provisions of Section 54 (3) of CGST Act, 2017 read with Rules framed thereunder and by strictly following the principles of natural justice. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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

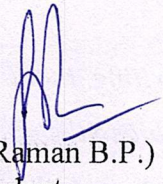
9. The appeal filed by the appellant stands disposed of in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested

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



By RPAD

To,

M/s.Jaorawala Dyeing and Printing Works,  
138, Jaorawala Compound, Behind Calico Mill,  
Behrampura, Ahmedabad 380 022

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 Deputy Commissioner, CGST, Division IV (Narol) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

