



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/1370/2021 -APPEAL

1286 - 1291

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-38/2022-23**

दिनांक Date : **03-06-2022** जारी करने की तारीख Date of Issue : **03-06-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZT2404210098816 DT. 08.04.2021**

issued by Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South

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

**M/s. Swastik Brokerages Pvt. Ltd. 2565/1/A/107, Anand Shoopng Centre,  
Opp Pir Mahamadshah Road, Ahmedabad-380001**

(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**

M/s.Swastik Brokerages Pvt.Ltd 2565/1/A/107, Anand Shopping Centre, Opp Pir Mahamadshah Road, Ahmedabad 380 001 (hereinafter referred to as the appellant) has filed the present appeal on dated 20-7-2021 against Order No.ZT2404210098816 dated 8-4-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division I (Rakhial), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAICS4979D1Z4 has filed refund claim for refund of Rs.86448/- on account of excess payment of tax. The appellant was issued show cause notice No.ZT2403210333248 dated 23-3-2021 for rejection of claim on the reason that amount of tax of Rs.69,780/- has been paid through cash and remaining Rs.16,750/- paid through credit and refund of credit is not admissible under Section 54 of CGST Act, 2017. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that the claimant neither appeared for personal hearing nor submitted reply to the SCN. Hence the claim is rejected under Section 54 of CGST Act, 2017.

3/ Being aggrieved the appellant filed the present appeal on the following grounds:

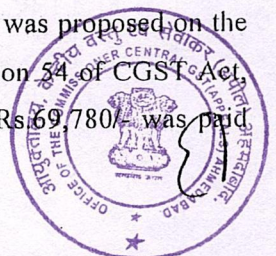
The sale invoice No.151 dated 31-7-2020 was cancelled which was amended in GSTR1 but not able to adjust in GSTR3B as no future GST liability is expected so they had applied for refund. The appellant has also requested to condone delay in filing appeal against the impugned order.

4. Personal hearing was held on dated 30-5-2022. Shri Harikrishna B. Patel 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. I find that impugned order was communicated to the appellant on dated 8-4-2021 and the present appeal was filed on 19-7-2021, which I find beyond three months time limit prescribed under Section 107 of CGST Act, 2017. The appellant has also filed request to condone delay due to Covid 19. I find that as per Hon'ble Supreme Court's Order dated 23-3-2020; Order dated 27-4-2021, Order dated 23-9-2021 and Order dated 10-1-2022, extending the time limit for filing of appeal from 15-3-2020 till further orders and excluding the period from 15-3-2020 till 28-2-2022 for the purpose of limitation in respect of all judicial or quasi judicial proceedings. I hold that the present appeal is not hit by time limitation factor.

5. I find that claim was made for refund of excess payment of tax which was partially paid through cash and partially paid through credit ie utilizing ITC. The adjudicating authority rejected the entire claim amount due to non appearance for personal hearing and non submission of reply to show cause notice. In the grounds of appeal, the appellant has not made submission against this ground. I have verified the status of refund application in GST portal and find that the appellant has not filed any reply to the show cause notice. Therefore, I do not find any infirmity in the findings of the adjudicating authority in this regard. However, by doing so, it also emerges that claim was rejected without considering reply to show cause notice and without recording reasons for rejection which I find is against the provisions of Rule 92 (3) of CGST Rules, 2017.

6. I find that in the show cause notice issued to the appellant, the rejection of refund was proposed on the ground that refund of tax paid through credit of Rs.16,750/- is not admissible under Section 54 of CGST Act, 2017. However, in the show cause notice itself it was mentioned that tax amounting to Rs.69,780/- was paid





through cash. I find that there is no dispute with regard to admissibility of refund of tax of Rs.69,780/- under Section 54 of CGST Act, 2017. The dispute is with regard to admissibility of refund of Rs.16,750/- paid through credit only. Therefore, proposal made for rejection of undisputed claim amount of Rs.69,780/- without any valid reason/ground is not justifiable by any means. In such instance, even if no reply was filed by the appellant, the adjudicating authority ought to have sanctioned refund of Rs.69,780/- rather than rejecting the entire claim amount which I find is against the provisions of Rule 92 of CGST Rules, 2017. Regarding rejection of refund of Rs.16,750/- which has been paid through credit due to inadmissibility under Section 54 of CGST Act, 2017, I find that Section 54 of CGST Act, 2017 covers all type of refund of tax including excess payment of tax. Neither Section 54 of CGST Act, 2017 nor any of the Rules framed thereunder disallows refund of tax paid by way of credit. Therefore, so long as excess payment of tax is not in dispute, refund of same is also squarely covered under Section 54 of CGST Act, 2017. However, in such cases, Rule 86 (4A) of CGST Rules, provide for manner of payment of refund as under:

*"(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03."*

7. As per above, Rule 86 (4A) of CGST Rules, 2017 in clear and unambiguous terms provide for sanction and payment of refund of tax paid through credit by way of re-credit in electronic credit ledger. In this case there is no dispute with regard to excess payment of tax and refund of tax so paid is also covered under Section 54 of CGST Act, 2017. Hence, in this case, excess tax of Rs.69,780/- paid through cash need to be refunded in cash and excess tax of Rs. 16,750/- paid through credit need to be refunded by way of recredit in electronic credit ledger. Therefore, I allow this appeal with consequential benefit to the appellant in terms of Section 54 of CGST Act, 2017 and Rules framed thereunder. Accordingly, I set aside the impugned order and allow the present appeal.

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

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

Date :

Attested

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

By RPAD

To,  
M/s.Swastik Brokerages Pvt.Ltd  
2565/1/A/107, Anand Shopping Centre,  
Opp Pir Mahamadshah Road,  
Ahmedabad 380 001

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 I (Rakhial), Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

Additional Commissioner (Appeals)

