



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-20220664SW0000333FA6

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1429 /2021 -APPEAL

1830 - 1835

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-45/2022-23**

दिनांक Date : **14-06-2022** जारी करने की तारीख Date of Issue : **14-06-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZS2404210316261 DT. 27.04.2021**
issued by Deputy Commissioner, Division IV (Narol), Ahmedabad South

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

Shri Fezal Firozbhai Vadnagarwala of M/s. Almaas Enterprises 31, S. No. 230/231/234, Near Chhipa Kui, Maharaj Nu Khatar, Nr. Sikander Market, 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) 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

Shri Fezal Firozbhai Vadnagarwala of M/s.Almaas Enterprises; 31, S.No.230/231/234, Near Chhipa Kui, Maharaj Nu Khetar, Nr. Sikander Market, Behrampura, Ahmedabad 380 022 (hereinafter referred to as the appellant) has filed the present appeal on dated 28-7-2021 (online on dated 15-7-2021) against Order No.ZS2404210316261 dated 27-4-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, 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 24AITPV9525A1ZW has filed refund claim for refund of Rs.83,634/- on account of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No.ZV2404210215161 dated 19-4-2021 for rejection of refund on the ground of mis match of ITC. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant due to mis match of ITC and also on the ground that compliance to SCN not made/not visible on portal.
3. Being aggrieved the appellant filed the present appeal on following grounds:
They had filed reply to the SCN on 27-4-2021 and also submitted and explained all the details. On the basis of GSTR3B and GSTR2A it is crystal clear that there is no mismatch in ITC. Therefore, the adjudicating authority has erred in Law and rejected the refund claim.
4. Personal hearing was held on dated 7-6-2022. Shri Rohan Shah, 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 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 RefNo.ZV2404210215161 dated 27-4-2021 wherein they stated that they had remain present for personal hearing on 26-4-2021 but the adjudicating authority was not present for personal hearing. They had also attached reconciliation working, GSTR2A, Annexure B and Statement and requested to consider the same and to pass necessary order for refund. 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, mis match of ITC 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. I find from the reply filed to SCN that on the schedule date of personal hearing on 26-4-2021 the appellant was present, but the adjudicating authority was not present for personal hearing. On the very next day ie on 27-4-2021 the impugned order was passed. This further shows that rejection was ordered not only without considering the reply to SCN but also without providing any opportunity of personal hearing on any other date. Therefore, it is evident that except issuance of show cause notice, no other procedures were followed by the adjudicating authority before rejecting the refund claim. Therefore, I find that the impugned order passed by the adjudicating authority is a non-speaking order and hence bad in Law and not legally tenable and sustainable.

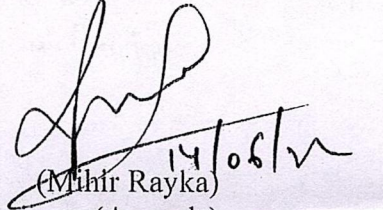
8. On further scrutiny of documents submitted during appeal I find that the appellant has claimed refund taking into account ITC of Rs.5,72,148/-. The ITC as per Annexure B on inputs is also Rs.5,72,148/-. Therefore, there is no mismatch of ITC shown in above documents. However, I find that as per provisions of Rule 92 of CGST Rules, 2017, the sanctioning authority is empowered to sanction the admissible refund and reject the refund found inadmissible recording reasons in writing. I further find that vide Circular No.135/05/2020 – GST dated the 31st March, 2020, it was also clarified that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Further as per Rule 89(5) of CGST Rules, ITC availed on input services and capital goods are kept out of purview of 'Net ITC' in the formula prescribed for determining the admissible refund. Accordingly, so far as refund of ITC accumulated due to inverted tax structure cases are concerned, specific statutory provisions and

clarification is in force. However, the adjudicating authority without applying the provisions of Rule and clarifications rejected the entire claim of refund. Further, even if there is mis match in ITC shown in the documents filed with the claim, the adjudicating authority ought to have sanctioned refund to the extent admissible in accordance with CGST Act, Rules and Circulars issued by Board rather than rejecting the whole amount of refund. Therefore, I find that rejection of entire amount of refund on the ground of mis match of ITC in the documents filed with the claim and without recording reasons for rejection is against the statutory provisions and hence not legally sustainable and tenable.

7. In view of above, I hold that impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside. Therefore, I allow the present appeal with consequential benefit to the appellant. I further order any claim of refund made in consequent to this order may be examined and processed in accordance with CGST Act and Rules made thereunder and also on the basis of Circulars issued by the Board. 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।

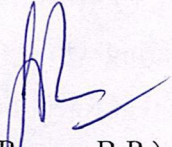
8. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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



By RPAD

To,

Shri Fezal Firozbhai Vadnagarwala
of M/s.Almaas Enterprises,
31, S.No.230/231/234,
Near Chhipa Kui, Maharaj Nu Khetar,
Nr. Sikander Market, B
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

