



## 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- 20220664SW000005630A

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2090/2021 -APPEAL

1812-1817

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-48/2022-23**

दिनांक Date : **14-06-2022** जारी करने की तारीख Date of Issue : **15-06-2022**

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZS2407210345764 DT. 31.08.2021**

issued by Assistant Commissioner, Division V (Odhav), Ahmedabad South

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

**Smt Kalavatiben Bharatkumar Panchal of M/s. Precision Products, 457,**

**L type Shed, GIDC Estate, Odhav, Ahmedabad 382415**

(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> .



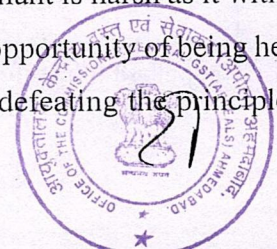
## ORDER IN APPEAL

Smt Kalavatiben Bharatkumar Panchal of M/s.Precision Products, 457, L type Shed, GIDC Estate, Odhav, Ahmedabad 382 415 (hereinafter referred to as the appellant) has filed the present appeal on dated 30-9-2021 against Order No.ZS2407210345764 dated 31-8-2021 (hereinafter referred to as the impugned order) passed by the Assistant Commissioner, CGST, Division V (Odhav), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24BPXPP6611K1Z9 has filed refund claim for refund of Rs.20,81,347/- on account of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No.ZS2407210346842 dated 27-7-2021 for rejection of refund claim on the ground that i) tax rate other than Government prescribed slabs ii) Sum of ITC not available in GSTR2A and iii) ITC of service availed in GSTR2A. The appellant has not filed any reply to the show cause notice. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that reply to show cause notice not made.

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

- i. They are engaged in the business of auto mobile parts and engine related parts. They dealt in two types of sales (local sales @ normal rate of tax and as a merchant exporter @ tax rate of 0.10%).
- ii. They had filed refund application by calculating 'inverted turnover' consisting only of those turnover supplied to direct exporter @ tax rate of 0.10% and local sales @ 12% amounting to Rs.99,29,846/- They had only taken input invoices which were uploaded by supplier in Form GSTR 01 and reflected in GSTR2A in compliance to para 5.2 of Circular No.135/05/2020 dated 31-3-2020 while calculating net ITC in RFD 01.
- iii. They submitted reply to each points mentioned in the show cause notice and requested to accept the reply.
- iv. The basic purpose behind bringing GST into the Indian Economy is to remove cascading effects, avoid unnecessary blockage of working capital and avoid double taxation and allowing free flow of credit in the system.
- v. The action of rejection of refund claim and not considering the facts of the case also devoid, the appellant of right of natural justice. The adjudicating authority failed to appreciate the above aspects and has arbitrarily rejected the refund application which is grossly illegal and bad in Law.
- vi. The impugned order rejecting the entire refund claim of the appellant is harsh as it without considering the facts of the case and providing sufficient second opportunity of being heard to a bona fide taxpayer who has made a minor mistake thereby defeating the principle of





intelligible differentia. Given this, the rejection of refund claim vide impugned order is not sustainable and liable to be set aside in the interest of justice.

- vii. It is well settled Law by various authorities and Courts that substantive benefit could not be denied for procedural mistakes in the present case, is an inadvertent and procedural mistake. The application of the appellant should not be rejected in the absence of any intention to defraud the Government.
  - viii. They are engaged in manufacturing automobiles parts and engine related parts etc prior to conversion to GST and the aforementioned fact is never disputed by the adjudicating authority.
  - ix. The error of non-updating on the GSTN portal may please be considered as an inadvertent error/mistake and be pardoned in the interest of justice.
  - x. The impugned order passed by the adjudicating authority is liable to be set aside as it is contrary to the facts on record and has been passed without considering the statutory provisions and without application of mind, on basis of assumption, presumptions, conjectures and surmises and without proper consideration of facts, records, opportunity of being heard and submission therein, without providing sufficient opportunity of being heard is illegal, unjustified and bad in Law and hence needs to be summarily quashed to meet the ends of justice. In view of above submissions, the appellant requested to set aside the impugned order.
4. Personal hearing was held on dated 3-6-2022. Shri Rahil Sanjivkumar 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. In this case refund claim was rejected on the sole ground of non submission of reply to show cause notice. The appellant was issued show cause notice on dated 27-7-2021 wherein they were asked to file reply within fifteen days and asking them to appear for personal hearing on dated 3-8-2021. However, till date of passing the impugned order on dated 31-8-2021 the appellant has not filed any reply to the show cause notice. This fact is also admitted by the appellant in their grounds of appeal. Therefore I do not find any infirmity in the findings of the adjudicating authority.
  6. However in their grounds of appeal the appellant submitted reply to show cause notice as under:

**1) Tax rate other than Government prescribed slabs:**

I find that the appellant is engaged in local supply on which tax rate of 12% was charged as well as for export as merchant exporters on which tax rate of 0.10% was charged. The appellant has submitted bifurcation of sales as under :





Particulars	Taxable value	IGST	CGST	SGST
Sales @ 0.10% (merchant exporter)	9819706	0	4910	4910
Sales @ 12% Local sales	110140	5004	4106	4106
Total Inverted turnover	9929846	5004	9016	9016

## II) Sum of ITC not available in GSTR2A.

The appellant has submitted copy of GSTR2A showing ITC of Rs.23,13,665/-

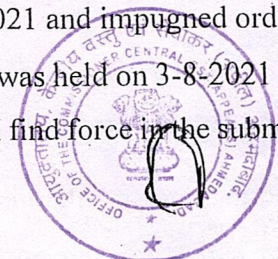
## III) ITC of services availed in GSTR2A.

They had claimed only input invoices which were uploaded by supplier in Form GSTR 01 and were reflected in GSTR2A and thus complied with para 5.2 of Circular NO.135/05/2020 dated 31-3-2020 while calculating net ITC. They had not claimed input services and capital goods in the refund application.

	CGST	SGST	IGST	Total
Input shown in 2A	1073962	1073962	34061	2181985
Inputs not shown in 2A	524	524	0	1048
Input services shown in 2A	64127	64127	0	128254
Capital goods shown in 2A	1143	1143	0	2286
Total				2313573

7. In view of above I find that in the current proceedings the appellant has complied with the queries raised in the show cause notice. I further 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. Besides, vide Circular No.135/05/2020 – GST dated the 31-3-2020, 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 for arriving the admissible refund, which need to be applied for arriving the admissible refund.

8. Regarding submission made for non grant of personal hearing, I find that as per Rule 92 (3) of CGST Rules, 2017, no refund claim can be rejected without providing opportunity of being heard. In the subject case personal hearing was fixed on dated 3-8-2021 and impugned order was passed on 31-8-2021. It does not appear to me that personal hearing was held on 3-8-2021 or any opportunity was given to the appellant on any other date. Therefore, I find force in the submission made by the appellant in this regard.

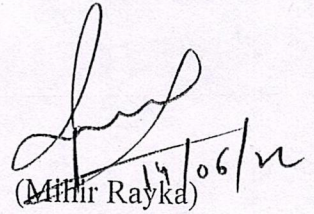




9. In view of above, since the appellant has complied with the requirement of show cause notice in the current proceedings, in the interest of justice and fairness, I allow this appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequent to this order may be examined in accordance with CGST Act and Rules made thereunder and also on the basis of Circulars issued by the Board, considering the reply filed by the appellant and observing the principle 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।


7. 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,

Smt Kalavatiben Bharatkumar Panchal  
of M/s.Precision Products, 457,  
L type Shed, GIDC Estate,  
Odhav, Ahmedabad 382 415

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

