



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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DIN- 20220664SW000012121F

रजिस्टर्ड डाक ए.डी. द्वारा

- क फाइल संख्या : File No : GAPPL/ADC/GSTP/1309/2021 -APPEAL / 1915 - 1914
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-57/2022-23**  
दिनांक Date : **16-06-2022** जारी करने की तारीख Date of Issue : **16-06-2022**
- श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित
- Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **ZP2404210315216 DT. 27.04.2021**  
issued by Assistnat Commissioner, CGST, Division-V (Odhav), Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**M/s. Shree Shakti Industries, 103,104, GIDC Estate,**  
**Near Sai Nath 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

M/s.Shree Shakti Industries, 103,104, GIDC Estate, Near Sai Nath Estate, Odhav, Ahmedabad 382 415 (hereinafter referred to as the appellant) has filed the present appeal on dated 20-7-2021 against Order No.ZP2404210315216 dated 27-4-2021 (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 24ADBFS2079R1ZJ has filed refund claim for refund of Rs.55,78,230/- on account of ITC accumulated due to inverted tax structure under Section 54 (3) of CGST Act, 2017. The appellant was issued show cause notice No.ZV2404210114694 dated 9-4-2021 for rejection of claim on the ground 'Other' and that HSN 7323 has been shown as input service as well as inputs and to clarify GSTR1 for the period not filed/not visible. 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 portal.

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

- i. That they filed all the applicable returns till date and also filed application for refund on regular basis ;
- ii. They are engaged in the manufacturing business of SS Utensils in which the main raw material is procured at the rate of 18% and the finished goods are sold @ 12%. Due to said reason inverted tax structure exist in the business of assessee.
- iii. They filed refund application for the period October 2020 to December 2020 on dated 24-3-2021 as per provisions of CGST Act, 2017 and also uploaded all other necessary documents.
- iv. The proper officer raised SCN wherein it was mentioned that GSTR1 for the period October to December 2020 is not visible and also asked for clarification about HSN Code 7323.
- v. They had filed reply to show cause notice on dated 21-4-2021, wherein they clarified both the things asked in the SCN. That due to technical glitches of system GSTR1 was not visible to proper officer and they had also clarified about the HSN code by uploading revised Annexure B statement and GSTR1 for verification purpose.
- vi. However, the adjudicating authority has issued rejection order by mentioning that reply of SCN not visible. The said rejection was done due to technical glitches of systems.
- vii. The appellant also attached all the GSTR Forms for reference.



4. Personal hearing was fixed on dated 30-5-2022. No one appeared on behalf of the appellant. Personal hearing again fixed on 9-6-2022. During hearing, Shri Anil Gidwani, 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 in this case the refund claim was rejected on the ground that reply to SCN not made/not visible. I find the findings itself is very contradictory inasmuch as it does not indicate as to whether or not the appellant filed reply to SCN. However, I find that the appellant has filed reply to SCN in Form GST RFD 09 under Ref No.ZV2404210114694 dated 21-4-2021 dated 27-4-2021 wherein they have given clarification on the queries raised in the show cause notice and also uploaded supporting documents. 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.

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 that personal hearing was fixed on 16-4-2021 but it does not transpire from the order as to whether personal hearing was held on said date or on any other date subsequently. Since the claim was rejected without even looking into the reply to show cause notice, it does not appear to me that opportunity of personal hearing was given to the appellant before rejection of claim. 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. Consequently, I find that the impugned

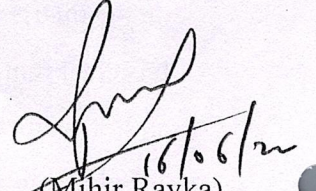


order passed by the adjudicating authority without following the provisions of Rule 92 of CGST Rules, 2017 is a non-speaking order and hence not legally tenable and sustainable.

8. 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 dealt with in accordance with Section 54 of CGST Act and Rules made thereunder observing 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।

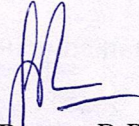
9. The appeal filed by the appellant stands disposed of in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested

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



By RPAD  
To,  
M/s.Shree Shakti Industries,  
103,104, GIDC Estate,  
Near Sai Nath 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

