



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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ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-65/2022-23**

दिनांक Date : **22-06-2022** जारी करने की तारीख Date of Issue : **22-06-2022**

श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. **ZU2405210147840 DT. 11.05.2021**
issued by Deputy Commissioner, CGST, Division VIII (Vejalpur), Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**M/s. Dani Foods India, Survey No. 30/2 P3, Near Sadguru Coligoras Road,
Village Lakhupara, TA Mahuva, Bhavnagar-364290**

(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

M/s.Dani Foods India, Survey No.30/2 P3, Near Sadguru Coligoras Road, Village Lakhupara, TA Mahuva, Bhavangar 364 290 (hereinafter referred to as the appellant) has filed the present appeal online on dated 30-6-2021 against Order No.ZU2405210147840 dated 11-5-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, CGST, Division VIII (Vejalpur), Ahmedabad South (hereinafter referred to as the adjudicating authority).

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AAIFD5719M1Z6 has filed refund claim on dated 25-3-2021 for refund of Rs.10,18,691/- on account of ITC on export of goods and services made without payment of tax during the period April 2018 to March 2019. The appellant was issued show cause notice reference No.ZW2404210334427 dated 28-4-2021 for rejection of claim on the ground of delay in refund application. The appellant filed reply to show cause notice in Form GST RFD 09 reference NO.ZW2404210334427 dated 7-5-2021. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground of delay in refund application and that the reply to SCN is not satisfactory.

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

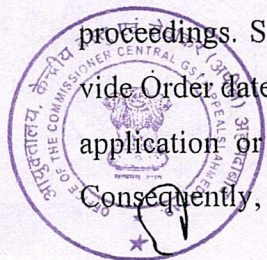
- i. The impugned order passed by the adjudicating authority is against the well-defined procedures of Law and hence the same is bad and illegal.
- ii. The adjudicating authority has erred in law by not following the principles of natural justice before rejecting the refund claim of the appellant. It is a well settled Law that any order passed by any authority, without following the principles of natural justice is clearly void and illegal.
- iii. The impugned order is clearly in violation of provisions of Rule 92 (3) of CGST Rules, 2017. The appellant was never given an opportunity of being heard before rejecting the refund claim.
- iv. The adjudicating authority has erred in Law and erred in facts by ignoring the submission made by the appellant and without even looking into the facts of the case.
- v. The adjudicating authority has also gone against the Hon'ble Supreme Court Order of suo motu extension, extending the period of limitation for any type of suit, appeal, application or proceedings. It is well settled fact that the Law pronounced by the Hon'ble Supreme Court is the Law of the land and every person is bound to follow it.
- vi. The adjudicating authority has not passed a speaking order, mentioning therein the reasons as to why he does not consider the submissions made by the appellant to be satisfactory. He has not given a single reason for him to arrive to such conclusion as to why the reply submitted by them was not considered to be satisfactory.
- vii. In view of above submission, the appellant requested to quash and set aside the impugned order and admit the appeal and sanction the refund along with interest.

4. Personal hearing was held on dated 19-4-2022. Shri Utkarsh Desai, authorized representative appeared on behalf of the appellant on virtual mode. He has been given seven working days to submit additional submission. Accordingly, the appellant vide letter dated 22-4-2022 filed additional submission as under;

- i. The appellant referring to judgement of Hon'ble Madras Court in the case of M/s.GNC Infra LLP Vs Assistant Commissioner (Circle) submitted that since the facts and circumstances of the case are identical to their case, the above referred judgement is squarely applicable to their case.
- ii. The appellant has also referred to judgement of Mumbai High Court in the case of M/s.Saiher Supply Chain Consulting Pvt.Ltd Vs Assistant Commissioner, CGST.
- iii. Considering the submission made in the first appeal together with this additional submission, the appellant requested to pass appropriate order after considering the above facts.

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 the refund claim was rejected on time limitation ground and unsatisfactory reply to the show cause notice. The claim was filed on dated 25-3-2021 for the period April 2018 to March 2019. As per Section 54 (1) of CGST Act, 2017 the time limit for filing of refund claim is two years from the relevant date prescribed under explanation 2 to Section 54. However, in the impugned order neither the relevant date nor the due date for filing refund claim is determined to arrive at the decision that there was delay in filing refund application beyond due date. The appellant on their part also not substantiated their submission with reference to relevant date and due date prescribed under Section 54 of CGST Act, 2017, but challenged the time limitation relying upon Hon'ble Supreme Court Order dated 8-3-2021 passed in Suo Motu Writ Petition (Civil No.3 of 2020) granting extension of limitation and also judgement of Hon'ble Madras High Court in the case of M/s.GNC Infra LLP Vs Assistant Commissioner and judgement of Hon'ble Bombay High Court in the case of M/s.Saiher Supply Chain Consulting Pvt.Ltd Vs Assistant Commissioner.

6. In this regard, I find that due to COVID outbreak in the Country, Hon'ble Supreme Court in suo motu writ petition (Civil) No.3/2020 vide Order dated 23-3-2020 ordered that period of limitation in filing petitions/applications/suits/ appeals/all other proceedings, irrespective of limitation prescribed under General Law or Special Laws, whether condonable or not shall stand extended with effect from 15-3-2020 till further orders to be passed by the Court in present proceedings. Subsequently, due to improvement in COVID situation, Hon'ble Supreme Court vide Order dated 8-3-2021 ordered that in computing the period of limitation for any suit, appeal, application or proceeding the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become



available with effect from 15-3-2021. Thereafter due to re-surge of Covid Cases, Hon'ble Supreme Court in Misc. Application No.665/2021 in SMW (C) No.3/2020 dated 27-4-2021 has restored Order dated 23-3-2020 and in continuation of Order dated 8-3-2021 directed that the period of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings whether condonable or not, shall stand extended till further orders. Later on, Hon'ble Supreme Court vide Order dated 23-9-2021 ordered that for computing the period of limitation for any suit, appeal, application or proceedings the period from 15-3-2020 till 2-10-2021 shall stand excluded and consequently balance period of limitation remaining as on 15-3-2020 if any, shall become available with effect from 3-10-2021 and that in cases where the limitation would have expired during the period from 15-3-2020 till 2-10-2021 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 3-10-2021. Thereafter vide Order dated 10-1-2022, the exclusion period was extended to 15-3-2020 till 28-2-2022 and 90 days extension was provided from 1-3-2022.

7. I have also gone through case laws relied by the appellant and I find that Hon'ble Bombay High Court in the case of M/s. Saiher Supply Chain Company Vs UOI (WP (L) No.1275/2021) in its judgment dated 12-1-2022, has extended the benefit of Hon'ble Supreme Court Order dated 23-9-2021 for determining time limit under Section 54 (1) of CGST Act, 2017 for refund claims also. Similarly, in the case of M/s.GNC Infra LLP Vs Assistant Commissioner, Hon'ble High Court of Madras vide Order dated 28-9-2021 has granted the benefit of suo-motu order of Hon'ble Supreme Court dated 27.04.2021 made in Miscellaneous Application No.665/2021 in SMW(c) No.3/2020, to refund claims filed under Section 54 of CGST Act, 2017. In another case of M/s.Gamma Gaana Ltd Vs UOI & Others, vide Order dated 3-3-2022, Hon'ble Allahabad High Court referring to Hon'ble Supreme Court Order dated 10-1-2022 also held that on the facts of the present case, we find that the refund application of the petitioner could not have been rejected by the respondent No.4 merely on the ground of delay, ignoring the afore quoted order of Hon'ble Supreme Court.

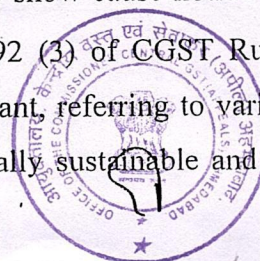
8. The above judicial decisions extend the benefit of time limitation granted in Hon'ble Supreme Court's Order dated 23-9-2021 and 10-1-2022 for filing refund claims under Section 54 also. Consequently, in respect of refund claims for which due date for filing refund claim falls during the period from 15-3-2020 to 28-2-2022, two years time limit under Section 54 of CGST Act, 2017 is to be reckoned, excluding the said period and within 90 days from 1-3-2022. Therefore, in the subject case also the due date for filing of refund claim is to be reckoned excluding the above period. I further find that in the official website of Hon'ble Supreme Court neither any appeal filed against the above Orders nor any stay order issued against the operation of above Orders is displayed. Accordingly, following the Orders passed by Hon'ble High Court, I hold that the present claim filed by the appellant on dated 25-3-2021 for the claim period April 2018 to March 2019 is not hit by time limitation prescribed under Section 54 of CGST Act, 2017. Hence, I find force in the submission made by the appellant and the appeal filed by the appellant succeeds on time limitation ground.

9. Regarding plea raised for non-grant of personal hearing and non-recording reasons for unsatisfactory reply, I 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.

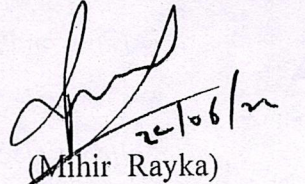
10. As per provisions of sub rule (3) of Rule 92 of CGST Rules, it is mandatory requirement to issue show cause notice; consider the reply filed by the claimant; provide opportunity of personal hearing and record the reasons in writing for rejection of refund claim. In the subject case, the appellant has filed reply to the show cause notice, which was not found satisfactory to the adjudicating authority. However, the adjudicating authority has not recorded any discussion on the reply or not recorded any reason as to why the reply is unsatisfactory to him. Regarding personal hearing, I find that in the show cause notice issued to the appellant, personal hearing was fixed on 7-5-2021. In order to ascertain whether personal hearing was held on the said date or any other date subsequently, a report in the matter was sought from the Deputy Commissioner, CGST Division VIII, Ahmedabad South. It was informed vide letter File No.CGST/GST-Ref/Misc.Appeal/Div VIII/2022-2023 dated 23-5-2022, that personal hearing had already granted to the appellant and fixed on 7-5-2021 and that the claimant replied to the show cause notice but did not attend personal hearing. Thus, it is very clear that no personal hearing was held before passing the impugned order. The proviso to Rule 92 (3) envisage to grant opportunity of being heard before rejection of refund claim. In other words, conduct of personal hearing is a statutory requirement and mere fixation of personal hearing date will not suffice the requirement of Rule 92 (3) of CGST Rules, 2017. Even otherwise, opportunity of personal hearing is one of the principles of natural justice and it is very well settled principle of Law that no adverse order should be passed without providing opportunity of being heard. Therefore, I firmly hold that the impugned order passed by the adjudicating authority is a non-speaking order inasmuch as it was passed without recording any discussion and finding on reply filed the show cause notice and without granting opportunity of personal hearing in terms of Rule 92 (3) of CGST Rules. Accordingly, I find strong force in the submission made by the appellant referring to various case laws, in this regard and find that the impugned order is not legally sustainable and not tenable.



11. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting refund on the grounds mentioned therein is not legal and proper and deserve to be set aside. Accordingly, I allow the appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequence to this Order may be dealt with in accordance with Section 54 of CGST Act, 2017 and Rules thereunder. Accordingly, I set aside the impugned order and allow this appeal.

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

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

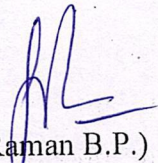


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested


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



By RPAD

To,

M/s.Dani Foods India,
Survey No.30/2 P3,
Near Sadguru Cold, Goras Road,
Village Lakhupara,
TA Mahuva,
Bhavangar 364 290

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

