



## 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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टेलीफैक्स 07926305136



DIN- 20220864SW0000111209

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/2455/2021 -APPEAL / 3136 - 3181

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-84/2022-23  
दिनांक Date : 24-08-2022 जारी करने की तारीख Date of Issue : 24-08-2022

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

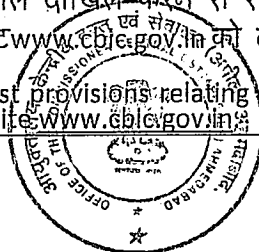
Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No ZX2403210425248 dated 30.03.2021 issued by Assistant Commissioner, Division V, Odhav, Ahmedabad South

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

**Abhaykumar Nanjibhai Ramani Proprietor of Walart Pharmaceutical Co  
18, Shriyam Industrial Estate, Nr. Royal Estate, B/H Kathwada GIDC, Odhav,  
Ahmedabad, Gujarat-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

Shri Abhaykumar Nanjibhai Ramani of M/s.Walart Pharmaceuticals Co, 18, Shriyam Industrial Estate, Near Royal Estate, Behind Kathwada, GIDC, Odhav, Ahmedabad 382 415 (hereinafter referred to as the appellant) has filed the present appeal online on dated 21-10-2021 against Order No.ZX2403210425248 dated 30-3-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commisisoner, CGST, Division V Odhav, Ahmedabad South (hereinafter referred to as the adjudicating authority).

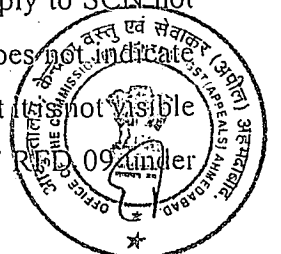
2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24AKDPR6480L2Z0 has filed refund claim for Rs.10,37,970/- for refund of ITC on account of export of goods under Section 54 (3) of CGST Act, 2017. The appellant was issued show cause notice reference No.ZQ2403210106837 dated 8-3-2021 for rejection of refund asking them to submit documents as mentioned in Notification N0.135/2020. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that reply to SCN not made/not visible in the portal.

3. Being aggrieved the appellant filed the present appeal on the ground that the adjudicating authority has rejected the whole amount of refund on the plea that they had failed to make a reply to show cause notice. They are eligible for the refund under Section 54 (3) of CGST Act, 2017 as applied for a refund within due time, they had exported their manufactured goods and also submitted all the relevant documents while refund application.

4. Personal hearing was held on dated 10-8-2022. Shri Ankit Indravadan, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submissions till date.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on records.. At the outset, I find that the impugned order was communicated to the appellant on dated 30-3-2021 and present appeal was filed online on dated 21-10-2021 (physical copy on 11-11-2021) ie after a period of seven months hence the appeal was filed beyond the time limit prescribed under Section 107 of the Act. However as per Hon'ble Supreme Court's Order dated 10-1-2022 in suo motu writ petition (C ) NO.3 of 2020 in MA No.665/2021, excluding the period from 15-3-2020 till 28-2-2022 in computing time limitation and providing 90 days extension from 1-3-2022 in filing appeals, I hold that the present appeal is not hit by time limitation factor.

6. 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 the appellant has not filed reply to show cause notice or filed reply but it is not visible in portal. However, I find that the appellant has filed reply to SCN in Form GST RFD-09 under



Ref No.ZQ2403210106837 dated 23-3-2021. 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.

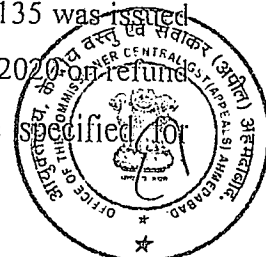
7. I now refer to the provisions governing rejection of refund contained under Rule 92 (3) is as under:

*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.*

8. 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 though the appellant has filed reply to the show cause notice, the adjudicating authority has rejected the claim without even looking into the reply to show cause notice which is against the statutory provisions and principles of natural justice.. 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.

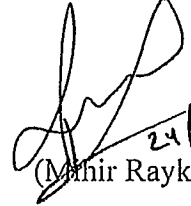
9. I further find that in the show cause notice, the appellant was asked to submit documents in terms of Notification No.135/2020. As per Rule 90 of CGST Rules, 2017 in such instances the proper course of action is by way of issuance of deficiency memo and not by way of issuance of show cause notice taking it as a ground of rejection. Further the documents which are required in terms of Notification No.135/2020 are also not mentioned in the show cause notice for necessary compliance by the appellant. As a matter of fact no Notification bearing number 135 was issued under GST in the year 2020. However, Circular No.135/05/2020 – GST dated 31-3-2020 on refund related issues wherein also, except revised Annexure B, no documents were specified for submission with refund application.



10. 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 that 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 |


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

  
24/02/21  
(Mahir Rayka)

Additional Commissioner (Appeals)

Date :

Attested

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



By RPAD

To,

Shri Abhaykumar Nanjibhai Ramani  
of M/s. Walart Pharmaceuticals Co,  
18, Shriyam Industrial Estate, Near Royal Estate,  
Behind Kathwada, GIDC,  
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

