



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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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1294/2021 -APPEAL / 510 - 515

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-ADC-09/2022-23  
दिनांक Date : 20-04-2022 जारी करने की तारीख Date of Issue : 21-04-2022

श्री मिहिर रायका\_अपर आयुक्त (अपील) द्वारा पारित

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

ग Arising out of Order-in-Original No. ZT2404210348327 DT. 29.04.2021 issued by  
Deputy Commissioner, Division IV (Narol) Ahmedabad South

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

M/s. Jay Ambe Agro, 93, Aarasuri Rice Pulse Mill,  
OPP Jadaba Hall, Jetalpur, Ahmedabad-382426

(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.Jay Ambe Agro, 92, AArasuri Rice Pulse Mill, Jetalpur, Ahmedabad 382 426 (hereinafter referred to as 'the appellant') has filed the present appeal on dated 28-6-2021 against Order No.ZT2404210348327 dated 29-4-2021 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, CGST, 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 24AAGFJ9066R1ZK has filed refund claim for Rs.1,33,097/- for refund of ITC on export of goods and services without payment of tax. The appellant was issued show cause notice No.ZS2404210176405 dated 15-4-2021 proposing rejection of the claim on the ground that reply to SCN not made/not visible. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground that declaration of Rule 16 u/s 89 (4) ( C ).

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

That they received the show cause notice for rejection of application of refund by mentioning 'other reason' with remark reply to SCN not made/not visible mentioned ; that when they met the officer issued the SCN he had mentioned that only self-declaration under Rule 89 (4) ( c ) was required ; that they had made self-declaration under Section 89 ( 4 ) ( c ) with reply to SCN but the same was not uploaded to the GST portal and the adjudicating authority has issued refund rejection order; That it is only the technical problem found in the uploading of declaration. As the declaration was attached while giving the reply to notice but not upload to the GST portal and there was not any other discrepancy in filing of the refund application. The attached declaration under Rule 89 (4) ( c ) of CGST Rules, 2017 with this appeal and pray for grant of refund.

4. Personal hearing was held on dated 13-4-2022. Shri Darshan Panchal, authorized representative appeared on behalf of the appellant on virtual mode. He stated that they have nothing more to add to their written submission 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 record. I find that in this case the show cause notice was issued to the appellant proposing rejection of refund claim on the ground that reply to SCN not made/not visible. Apparently, there is an error/omission in the notice itself mentioning reply to notice/non visibility as a reason for rejection of refund and not mentioning the actual ground/reason under which the claim was found inadmissible in the SCN. This has led to faulty issue of notice depriving the appellant from making further reply/submission to the SCN. However, in spite of ambiguity in the notice the adjudicating authority has rejected the claim due to non- submission of declaration of Rule 16 under Section 89 (4) ( C ). At the outset I notice that in terms of Rule 90 of CGST Rules, if the application for refund is found deficient, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically. In the subject case instead of issuing deficiency memo asking the



appellant to submit the required declaration, the appellant was issued show cause notice without communicating any reason and the adjudicating authority has rejected the claim for want of declaration which I find against the provisions of Rule 90 of CGST Rules, 2017. Further, rejection of refund on a ground not mentioned in the SCN is also against the provisions of Rule 92 of CGST Rules, 2017 and against the principles of natural justice.

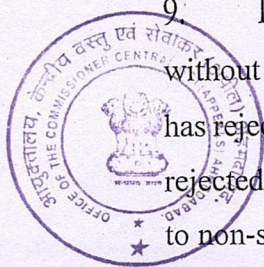
6. Nevertheless, I find that refund claim was rejected due to non submission of declaration under Rule 16 and u/s 89 (4) ( c). Rule 16 of CGST Rules, governs provisions for suo motto registration and not any way relate to refund matter. Section 89 of CGST Act, 2017 deals with provisions for recovery of tax, interest and penalty from private limited companies which is also not related to refund issues. However, Rule 89 (4) ( c) of CGST Rules, 2017 deals with provisions governing refund under Section 54 of CGST Act, 2017. Considering the omission of mentioning CGST Act instead of CGST Rules, 2017, I proceed further dealing with provisions of Rule 89 (4) of CGST Rules, 2016. I find that under clause ( c) of Rule 89 (4) , the turnover of zero rated supply of goods was defined as under :

*(C) —Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;.*

7. The appellant submitted that they had attached the declaration along reply to SCN but the same was not uploaded which resulted in rejection of refund claim. During appeal the appellant submitted the self-declaration stating that as per Rule 89 (4) ©, the value of export on account of claiming refund of ITC has been considered lower of 1.5 times of price of the item if sold in the domestic market or similar item sold or price of item on export invoice. So that the value of export taken in the refund application of Rs.2,72,85,742/- was the lower of the above conditions mentioned.

8. In this regard, I have gone through Rule 89 (2) of CGST Rules, 2017 and CBIC Circular No. 125/44/2019 - GST dated 18-11-2019 wherein documentary evidences required to be submitted with various types of refund application was prescribed. I find that nowhere under Rule and Circular it was prescribed that declaration under Rule 89 (4 ( C ) need to be furnished with refund claim filed under Section 54 of CGST Act, 2017 on the other hand compliance to Rule 89 (4) ( C) need to be satisfied on the basis of documentary evidences submitted by the appellant.

9. Looking into overall facts of the case, I find that the appellant was issued show cause notice without pointing out any reason/ground for rejection of refund claim. The adjudicating authority has rejected the claim on a reason/ground which is not mentioned in show cause notice and thereby rejected the claim on a ground without putting the appellant to notice. The rejection of claim due to non-submission of declaration under Rule 16 and Rule 89 (4) ( C ) is also legally unsustainable



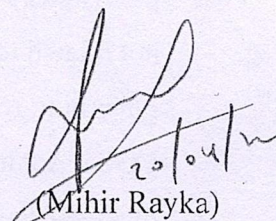


as nowhere in said Rules and CBIC Circular the requirement for submission of self-declaration was specified.

10. In view of above, I hold that the impugned order passed by the adjudicating authority rejecting refund on the ground of non submission of declaration under Rule 16 and Rule 89 (4) ( C ) is not legal and proper and deserve to be set aside. Therefore, I allow this appeal with consequential benefit under Section 54 (3) of CGST Rules read with Rules framed thereunder. 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 |

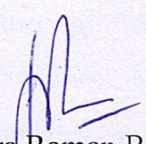
11. The appeal filed by the appellant stands disposed of in above terms.

  
(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested

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



By RPAD  
To,  
M/s. Jay Ambe Agro,  
92, AArasuri Rice Pulse Mill,  
Jetalpur, Ahmedabad 382 426

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 Assistant Commissioner, CGST, Division IV (Narol ) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file

