



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- 20220864SW000000ECFB

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- क फाइल संख्या : File No : GAPPL/ADC/GSTP/2459/2021 -APPEAL / 3431 - 36
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-97 /2022-23**
दिनांक Date : **30-08-2022** जारी करने की तारीख Date of Issue : **30-08-2022**
- श्री मिहिर रायका_अपर आयुक्त (अपील) द्वारा पारित
- Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **ZU2404210346494** dated **29.04.2021** issued by Deputy Commissioner, CGST, Division-V (Odhav), Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Shri Brijesh Amrutbhai Patel of M/s. Amrut Enterprises,S/142, Karnavati Estate,B/h Royal Restaurant,Nr. ONGC Well,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) 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

Shri Brijesh Amrutbhai Patel of M/s.Amrut Enterprises, S/142, Karnavati Estate, Odhav, Ahmedabad 382 415 (hereinafter referred to as the appellant) has filed the present appeal online on dated 2-11-2021 against Order No.ZU2404210346494 dated 29-4-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, 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 24ESZPP7658J1ZJ has filed refund claim for Rs.17,93,386/- for refund of ITC accumulated due to inverted tax structure under Section 54 (3) of CGST Act, 2017. The appellant was issued show cause notice reference No.ZX2404210459094 dated 13-4-2021 for rejection of refund on the ground of wrong adjusted turnover and non filing of latest returns. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant due to non compliance to show cause notice.

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

That they had filed refund application with all the supporting evidence but due to second wave of Covid 19 they were not able to reach the Department in time to respond to the show cause notice. They had filed application with all the correct calculation and filed all the GST returns. They had claimed refund of inputs only and there is no involvement of input services. Major principal purchase covered under the rate of 18% and the finished products cover under the rate of 5%. Due to inverted duty structure, they had major liquidity stuck in the form of GST credit. They requested to consider their application as early as possible. In view of above submissions, the appellant requested to allow the appeal.

4. Personal hearing was held on dated 10-8-2022. Shri Sachin B Patel and Omi S Patel, authorized representative appeared on behalf of the appellant on virtual mode. They were given three working days for additional submission. Accordingly, the appellant via email dated 18-8-2022 submitted copy of Hon'ble Supreme Court Order dated 10-1-2022 and contended that as per said Order they are eligible to file appeal and hence requested to consider their appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the appellant and documents available on record. At the outset, I find that the impugned order was communicated to the appellant on dated 29-4-2021 and present appeal was filed online on dated 2-11-2021 (physical copy on 3-11-2021) ie after a period of six months from the date of communication of order 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. In this case the refund claim was rejected due to non compliance to show cause notice. From the facts and documents available on record and also on verifying the GST portal I find that the appellant has not filed reply to show cause notice. However, I find that as per Rule 92 of CGST Rules, 2017 it is a statutory 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 present case refund claim was filed on dated 25-3-2021. In the show cause notice issued on dated 13-4-2021 the appellant was asked furnish reply within fifteen days which falls on or before 28-4-2021. Personal hearing was also fixed on dated 20-4-2021 and the impugned order was issued on 29-4-2021 ie on the very next day of the date on which reply is to be filed. It is apparent from the above course of events that the processing of refund claim was completed within a span of one month. I fail to comprehend any reason for such a hasty and hurried disposal of refund claim without given any further opportunity to submit reply to the show cause notice and without providing any opportunity of personal hearing. Consequently, this has resulted in passing the impugned order without considering reply to show cause notice and without following the statutory provisions and thus rendered the impugned order a non speaking order which I find is bad in Law and not legally sustainable and tenable.

7. I further find that in the show cause notice issued to the appellant the reason of wrong adjusted turnover and non filing of latest return was taken as ground for rejection of claim. However, it is not specified the reason as to how there was wrong adjusted turnover and also the period for which the return was not filed. Regarding non filing of latest returns, the claim in this case was filed in the month of March 2021 and as per status of return filing shown in GST portal I find that the appellant has regularly filed all the returns till March 2021 and even for subsequent period. Regarding wrong adjusted turnover, I find that in their refund application the appellant has shown adjusted total turnover at Rs.34142809/-. On scrutiny of GSTR3B returns filed for the claim period I find that that total taxable value of outwards supplies made during the claim was also Rs.34142809/-, as under.

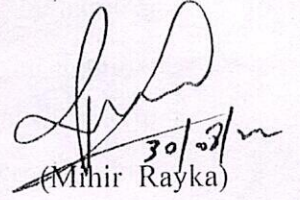
Month	Total taxable value	Month	Total taxable value
November 2019	622700	June 2020	3157740
December 2019	838550	July 2020	4039570
January 2020	1334750	August 2020	4082950
February 2020	1849150	September 2020	4658390
March 2020	1538095	October 2020	5204150
April 2020	0	November 2020	3431600
May 2020	533000	December 2020	2852164
Total	6716245	Total	27426564
34142809/-			



8. In view of above, I hold that the impugned order passed by the adjudicating authority is not legal and proper and deserve to be set aside inasmuch the adjudicating authority has rejected the refund claim arbitrarily and without properly verifying the facts and figures. Therefore, I allow this 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 by the appropriate authority in accordance with CGST Act and Rules made thereunder and by following the principles of natural justice. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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

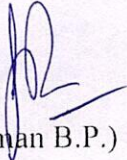
9. The appeal filed by the appellant stands disposed of in above terms.


(Mihir Rayka)

Additional Commissioner (Appeals)

Date :

Attested



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

To,

Shri Brijesh Amrutbhai Patel
of M/s.Amrut Enterprises,
S/142, Karnavati 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

