



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 - 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20230964SW0000307278

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/817/2023 -APPEAL / 5198 - 5503

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-108/2023-24
दिनांक Date : 31.08.2023 जारी करने की तारीख Date of Issue : 11.09.2023

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

Passed by Shri Adesh Kumar Jain, Joint Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VI/Ref-15/Vision/AC/DAP/2022-23
DT.06.09.2022 issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South.

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

Appellant	Respondent
M/s. Vision Airconditioning, Office No. B/301, Sansarya Tower, Sarkari Vasaht Road, Vastrapur, Ahmedabad-380015 (GSTIN 24AHTPP6560G1ZW)	The Assistant Commissioner of CGST, Division-VI, Ahmedabad South

(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 दखिल 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

BRIEF FACTS OF THE CASE:

M/s. Vision Airconditioning, Office No. B/301, Sansarya Tower, SarkariVasaht Road, Vastrapur, Ahmedabad-380015 (GSTIN 24AHTPP6560G1ZW)(hereinafter referred to as the 'Appellant') has filed the present appeal against the Order No. CGST-VI/Ref-15/Vision/AC/DAP/2022-23 dated 06.09.2022 (hereinafter referred to as the 'impugned order') rejecting refund claim amounting to Rs. 1,56,800/- passed by the Assistant Commissioner, CGST &, C. Ex., Division-VI, Ahmedabad SouthCommissioneratate (hereinafter referred to as the 'adjudicating authority').

2 (i). Briefly stated the facts of the case are that the 'Appellant' is holding GST Registration No. 24AHTPP6560G1ZW and engaged in the trading of Air Conditioning Machines and has filed the present appeal on 13.02.2023. The 'Appellant' had filed the refund application on 23.03.2019 in Form GST RFD-01 vide ARN: AA241117011639E for the IGST amount paid on supplies to SEZ unit / SEZ developer for Rs. 1,56,800/- (Rupees One Lakh Fifty Six Thousand Eight Hundred only). Thereafter, the appellant had submitted copies of the documents such as RFD-1 together with requisite undertakings, declaration, ARN receipt, tax invoice duly endorsed by the SEZ Customs officer, DTA procurement confirmation etc. etc. In response to the said refund claim a show cause notice dated 18.03.2020 was issued upon issuance of deficiency memo dated 20.09.2019 to the Appellant. Personal hearing was also fixed for 23.03.2020. In the said SCN it was mentioned that "*the reply to the deficiency memo dated 20.09.2019 and reminder letter dated 18.12.2019 not received to this office. "If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex-parte on the basis of the available records and on merits"*".

2 (ii). After a lapse of some time, the appellant was intimated that the date of personal hearing has been fixed on 15.04.2021. However, when the appellants' authorized representative appeared for PH, but due to COVID-19, hearing didn't take place and documents were submitted at dispatch and duly acknowledged by the dispatch clerk. Again, through letter dated 07.02.2022, the appellant reminded the jurisdictional officer to issue the refund several times and also repeatedly followed up through their authorized representative, and submitted documents vide their letter dated 11.03.2022. A written consent on 26.04.2022 was also given to the jurisdictional office for credit of refund amount to their Electronic Credit Ledger. After repeated follow ups, the jurisdictional officer vide letter F. No. WS06/Ref-146/2019-20 dated 06.06.2022 granted personal hearing to the Appellant on 10.06.2022 wherein



Shri Pankaj R. Patel authorized representative of the Appellant appeared on 16.06.2022 and reiterated the submissions made by them vide letter dated 11.03.2022 and requested for further proceedings.

2 (iii). The adjudicating authority has rejected the refund claim vide impugned order stating that "I find that the Appellant did not submit required/necessary documents in material time. Hence their refund claim was not processed and liable for rejection. In view of the above, the refund amounting to Rs.1,56,800/- is liable for rejection. Accordingly, in view of the above, I pass the following order: I hereby reject the refund claim amounting to Rs.1,56,800/- (Rupees One Lakh Fifty Six Thousand And Eight Hundred Only) filed by M/s. Vision Air Conditioning (GSTIN, -24AH1PP6560G1ZW)."

3. Being aggrieved with the impugned order the appellant has filed the present appeal on 13.02.2023 mainly on the following grounds:

- Impugned order served on Appellant does not contain DIN. In the absence of a valid DIN it would be presumed that the said communication was never issued and impugned order is not served in Form GST RFD-06 hence the order is bad in law.
- The reason stated for rejection of refund mentioned in impugned order is not just and in accordance with the law.
- The adjudication authority has not followed the principle of natural justice by not relying on the evidences, documents and submissions available on record on the date of Personal Hearing.
- The delay in processing of the refund application is purely attributable to the jurisdictional office and appellant had submitted all the relevant documents within the permissible time hence adjudication authority has erred in law and on facts and has passed the order which is bad in law.
- The words "material time" mentioned in the reason for rejection at Para 12 of the Impugned order is not defined in the Act neither the adjudication authority has defined the same in the impugned order, therefore it is evident that the term is used subjectively and without having any relevance with the provisions of the Act just with an intent to deny the eligible refund.
- The Appellant had filed the refund application on 23/03/2019 hence the deficiency memo was required to be issued on or before 07/04/2019, however as accepted in Para 3 of the Order the deficiency memo was issued on 20/09/2019. This evidences that the deficiency memo is barred by limitation.



- Appellant was entitled for the provisional refund of 90% of the total amount of refund claimed within 7 days from the date of filing of the refund application in accordance with the provisions of Section 54(6) of the Act. However, no provisional refund was granted to Your Appellant.
- Appellant was also eligible for the 100% refund within 60 days from the refund application, however Your Appellant was also deprived of the same
- Appellant is eligible to claim interest at rate of 6% from the date of expiry of 60 days till the date of crediting of the refund amount.
- The appellant has requested to sanction the refund of Rs. 1,56,800/- (Rupees One Lakh Fifty Six Thousand Eight Hundred only) by quashing the impugned order passed by the Ld. Assistant Commissioner of Central GST, Division - VI, Ahmedabad South.
- The appellant has requested to sanction the interest @ 6% on non-payment of provisional refund till the date of receipt of actual receipt of such provisional refund.

PERSONAL HEARING:

4. Personal Hearing in the matter was held on 16.08.2023, wherein ShriPankaj R Patel, Advocate appeared in person on behalf of the 'Appellant' as Authorized Representative. During Personal Hearing he has reiterated that they have nothing to add more to their written submission till date.

DISCUSSION AND FINDINGS:

I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeal Memorandum. I find that the 'Appellant' had preferred the refund application before the refund sanctioning authority on 23.03.2019 in Form GST RFD-01 vide ARN: AA241117011639E for the IGST amount paid on supplies to SEZ unit / SEZ developer for Rs. 1,56,800/-. The refund sanctioning authority [Adjudicating Authority] has rejected the refund application vide impugned order mentioning the reason that "I find that the Appellant did not submit required/necessary documents in material time. Hence their refund claim was not processed and liable for rejection In view of the above, the refund amounting to Rs.1,56,800/- is liable for rejection." Accordingly, the appellant has preferred the present appeal. Further, I find that the adjudicating authority has not disputed about the admissibility of refund claim by the appellant.

5(ii). I find that in the present appeal the appellant in the ground of appeals has mainly stated that the Adjudicating Authority has violated and breached the principle of natural justice by passing the order by rejecting refund

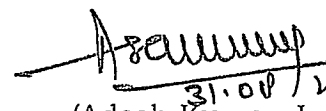
5 (vi). In the present matter, ongoing through copy of impugned order, I find that no specific reasons for rejection of refund claims have been recorded by the adjudicating authority. The adjudicating authority has mentioned in impugned order that "I find that the Appellant did not submit required/necessary documents in material time. Hence their refund claim was not processed and liable for rejection". It is evident that all the documents were available on record with the adjudication authority on the date of passing the order. The contention of the adjudication authority that the documents were not submitted by the appellant within material time is not correct. What is material time is not clarified by the adjudicating authority. Such non-speaking order are bad in law and in violation of the principle of natural justice without considering the facts on record. Further, it is noticed that the Refund application has been filed on 23.03.2019 in form GST RFD 01 and rejected without considering the reply on 06.09.2022 i.e. after a lapse of three and half year. Therefore, I find that the adjudicating authority has violated the principle of natural justice by not going into the evidences, documents and submissions available on record and without any speaking order.

6. Considering the above facts, the adjudicating authority is hereby directed to process the refund applications of the appellant by following the principle of natural justice. The 'Appellant' is also directed to submit all the relevant documents/submission before the adjudicating authority.

7. In view of above discussions, the impugned orders passed by the adjudicating authority is set aside for being not legal and proper and bad in law. I allow the appeals of the "Appellant" without going into merit of all other aspects, which are required to be complied by the Appellant in terms of Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017, with direction to adjudicating authority to verify the facts and evidences and pass order accordingly with consequential relief to the appellant.

अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

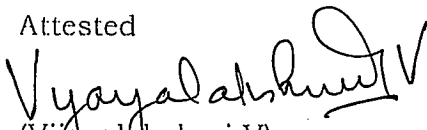
8. The appeal filed by the appellant stands disposed of in above terms.


31.08/2023
(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date : 31.08.2023

Attested


(Vijayalakshmi V)
Superintendent
Central Tax (Appeals),
Ahmedabad



By RPAD
To,
M/s. Vision Airconditioning,
Office No. B/301, Sansarya Tower,
SarkariVasaht Road,
Vastrapur, Ahmedabad-380015

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

