



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- 20230964SW0000888DCC

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फाइल संख्या : File No : GAPPL/ADC/GSTP/1701/2023 -APPEAL

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अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-JC-122/2023-24**

दिनांक Date : **25.09.2023** जारी करने की तारीख Date of Issue : **30.09.2023**

श्री आदेश कुमार जैन संयुक्त आयुक्त (अपील) द्वारा पारित

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

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Arising out of Order-in-Original No. **ZI2403230208195 DT. 13.03.2023** issued by The Assistant Commissioner, CGST, Division-VI, Ahmedabad South

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

Appellant				Respondent
M/s.	Bioweaves	Retail	LLP,	The Assistant Commissioner, CGST, Division-VI, Ahmedabad South
D-405,	4th Floor,	The First,	Nr.	
Keshavbaug	Party Plot,	Vastrapur,		
Ahmedabad-380015				
(GSTIN 24AAUFB5087E1Z8)				

(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) <u>Full amount of Tax, Interest, Fine, Fee and Penalty</u> arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to <u>twenty five per cent</u> 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 दायर करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.appeals.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.appeals.gov.in

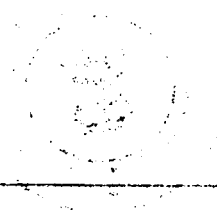


ORDER-IN-APPEAL**Brief Facts of the Case :**

M/s. Bioweaves Retail LLP, D-405, 4th Floor, The First, Near Keshavbaug Party Plot, Vastrapur, Ahmedabad - 380015 (hereinafter referred as 'Appellant') has filed the present appeal against the Refund Sanction/Rejection order in the form RFD-06 bearing No. ZI2403230208195 dated 13.03.2023 (hereinafter referred as *impugned order*) passed by the Assistant Commissioner, CGST, Division - VI, Ahmedabad South (hereinafter referred as '*adjudicating authority*').

2. Briefly stated the facts of the case is that the 'Appellant' is holding GST Registration - GSTIN No.24AAUFB5087E1Z8, has filed refund application (Export without payment of Tax) vide ARN No. AA240123121257T dated 23.01.2023 amounting to Rs. 7,76,321/- for the period July 2022 to September 2022 in the category of Export of goods/services-W/O payment of Tax (Accumulated ITC) under Form GST RFD-01. During the verification of refund claim some discrepancies have been observed accordingly a SCN No. ZL2402230363794 dated 23.02.2023 was issued as to why their refund claims vide ARN No. AA240123121257T dated 23-01-2023 amounting to Rs. 7,76,321/- should not be rejected with following remarks:

- The provision of Para 47 of Circular no. 125/44/2019-GST dated 18.11.2019 is as follows:
"during the processing of refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund."
 Accordingly, by taking lower value from invoice value and Fob value of Shipping Bill, zero rated turnover is Rs. 3,44,45,037 /-;
- As per GSTR 3B for relevant period, Net ITC is 7,76,322. However, as Per Annexure B, Net ITC comes to only 7,64,464/-. In view of the above, Refund amounting to Rs. 18,839/- is liable for rejection;
- HSN/SAC code in case of some suppliers in Annexure-B are missing, further, GSTIN of one supplier namely James baker is missing. Therefore, it is requested to submit revised Annexure-B.



Further, the adjudicating authority had rejected the refund claim amounting to Rs. 7,76,321/- with the following observations:

- Rule 89(4) provides the formula as per which refund shall be granted and as per formula refund amount is calculated as per net ITC and as per said rule "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.
- That Capital goods is not covered under definition services out of total ITC for a relevant tax period, CBIC issued Circular No. 135/05/2022-GST dated 31.03.2020 added a column relating to HSN/SAC Code. Therefore, HSN/SAC Code in Annexure-B is mandatory to distinguish ITC on capital goods and /or input services.
- That no such revised annexure B containing details of HSN/SAC Code are found with their reply dated 01.03.2023. Therefore, in absence of supporting evidence/revised Annexure-B, the genuineness of the claim could not be ascertained and hence the refund claim is liable for rejection.

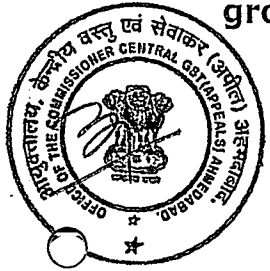
3. Being aggrieved with the 'impugned order' the appellant have filed the present appeal on 22.05.2023 on the following grounds:

- All the details mentioned in the application are being supported by necessary evidence. The initial annexure B which was uploaded at the time of filling the refund application missed certain HSN Code, which were added in the revised annexure but due to some technical issue, the said attachment was not uploaded. We hereby attach all the relevant details of the said annexure B along with necessary supporting documents.

On the basis of submitted documents along with this appeal, they request to provide a relief on the said application and the rejected refund may please be sanctioned.

Personal Hearing:

4. Personal Hearing in the matter was held on 05.09.2023 wherein Mr. Dhruvin Amlani, C.A., appeared on behalf of the 'Appellant' as authorized representative. During P.H. he had reiterated written submission. He further submitted that due to some technical glitch Annexure "B" couldn't be uploaded, though it is mentioned in the reply to SCN. Copies of the same have been attached with appeal memo. After



submission it was not informed to them that Annexure "B" is not received and claim rejected. In view of above requested to allow appeal.

Discussion and Findings :

5(i). 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 in respect of (Export without payment of Tax) vide ARN No. AA240123121257T dated 23.01.2023 amounting to Rs. 7,76,321/- for the period July 2022 to September 2022 in the category of Export of goods/services-W/O payment of Tax (Accumulated ITC) under Form GST RFD-01. In response to said refund application a Show Cause Notice was issued to the appellant on 23.01.2023 proposing rejection of refund claim was issued with following remarks:

- *The provision of Para 47 of Circular no. 125/44/2019-GST dated 18.11.2019 is as follows:*

"during the processing of refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill/bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund."

Accordingly, by taking lower value from invoice value and Fob value of Shipping Bill, zero rated turnover is Rs. 3,44,45,037 /-;

- *As per GSTR 3B for relevant period, Net ITC is 7,76,322. However, as Per Annexure B, Net ITC comes to only 7,64,464/-. In view of the above, Refund amounting to Rs. 18,839/- is liable for rejection;*
- *HSN/SAC code in case of some suppliers in Annexure-B are missing, further, GSTIN of one supplier namely James baker is missing. Therefore, it is requested to submit revised Annexure-B.*
- *Thereafter, the said refund claim was rejected by the adjudicating authority vide impugned order with Remark as - "no such revised annexure B containing details of HSN/SAC Code are found with their reply dated 01.03.2023. Therefore, in absence of supporting evidence/revised Annexure-B, the genuiness of the claim could not be ascertained and hence the refund claim is liable for rejection.*

6(i). Further, I find that the appellant has contended in the present appeal that they have provided all the required documents and uploaded the same while filing application for GST refund. However, I find that appellant while filing the refund application missed certain HSN Code,



which were added by the appellant in the revised annexure. The appellant further stated that due to some technical issue, the said attachment was not uploaded. Accordingly the *adjudicating authority* has rejected the amount of refund on the ground that the appellant had not attached and uploaded annexure B containing all the HSN/SAC codes for input credit claimed for the relevant period.

Accordingly, I find it pertinent to refer the relevant provisions, the same is as under:

Section 54. Refund of tax.- *

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

(4) The application shall be accompanied by-

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

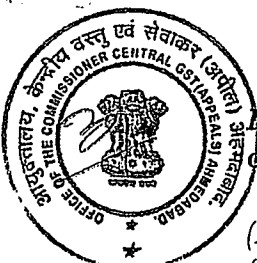
(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods, 11[other than electricity];

11[(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity];

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as



the case may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

2[(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;]

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

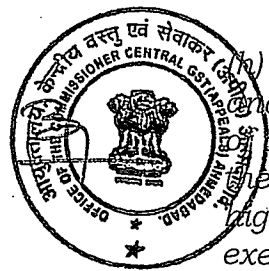
(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

17[(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these



invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;]

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

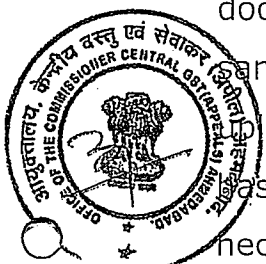
(m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

In view of above provisions, I am of the view that while filing refund application certain documents are required to submit and uploaded by the appellant for the eligibility/genuineness of the refund claim.

6(ii). I find that the refund claim is rejected for the reason that the *appellant* failed to provide the relevant details/documents. However, I find that the *appellant* has submitted all the required documents while filing application for GST refund and also uploaded the same but due to some technical issue, the said attachment was not uploaded at the time of reply to SCN. However, I find that the appellant has submitted all the relevant details of the said annexure B along with necessary supporting documents while filing Form GST APL-01 and during personal hearing. In this connection, I find that the during the appeal the appellant have stated that on 23.01.2023 SCN was issued requiring certain information and documents to be submitted by the due date and reply was submitted by the appellant on 01.03.2023 with all the required documents and whatever documents not provided during a reply to SCN the has submitted while filing Form GST APL-01 in this office. In this regard, I find that the appellant had submitted the reply to the SCN and they have also submitted all the documents during filing of appeal memorandum in this office.

6(iii). Considering the foregoing facts, I find it pertinent to refer the Rule 92(3) of the CGST Rules, 2017, same is reproduced as under :

(3) 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.

In view of above legal provisions, if the proper officer is of the view that whole or any part of refund is not admissible to the applicant he shall issue notice to the applicant and after considering the reply of applicant he can issue the order. However, in the present matter the *adjudicating authority* has issued the *impugned order* without considering the reply of *appellant*. Further, I find that “no application for refund shall be rejected without giving the applicant an opportunity of being heard”. In the present matter, on going through the copy of impugned order and grounds of appeal, I find that the *appellant* has submitted the reply of



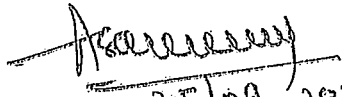
and also submitted all the documents, while filing appeal in this

In view of above, I find that the *adjudicating authority* has not followed the principle of natural justice in passing the *impugned order* vide which rejected the refund claim without considering the *appellant* reply, documents/details as well as without communicating the valid or legitimate reasons before passing said order. Further, I am of the view that proper speaking order should have been passed by giving proper opportunity to the *appellant* to produce required documents/details and detailing factors leading to rejection of refund claim should have been discussed. Else such order would not be sustainable in the eyes of law. Therefore, the *adjudicating authority* is hereby directed to process the refund application of the *appellant* by following the principle of natural justice. Needless to say, since the claim was rejected on the ground of non submission or unavailability of documents/details, the admissibility of refund on merit is not examined in this proceeding. Therefore, any claim of refund filed in consequence to this Order may be examined by the appropriate authority for its admissibility on merit in accordance with the provisions of Section 54 of the CGST Act, 2017.


8. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper to the extent of rejection of refund claim of Rs. 7,76,321/-. Accordingly, I allow the appeal of the *Appellant* without going into merit of all other aspects, which are required to be complied by the claimant in terms of Section 54 of the CGST Act, 2017. The '*Appellant*' is also directed to submit all relevant documents/submission before the adjudicating authority for verification of the facts, who shall verify the facts and pass order accordingly.

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

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


25/09/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 25.09.2023

Attested


(Sandheer Kumar)
Superintendent (Appeals)



By R.P.A.D.

To,
M/s. Bioweaves Retail LLP,
D-405, 4th Floor, The First,
Near Keshavbaug Party Plot,
Vastrapur, Ahmedabad - 380015.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Deputy/Assistant Commissioner, CGST & C. Ex, Division - VI, Ahmedabad South.
5. The Superintendent (System), CGST Appeals, Ahmedabad.
6. Guard File.
7. P.A. File.



