



## आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN- 20231064SW000000D303

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या File No : GAPPL/ADC/GSTP/1368/2023 -APPEAL / १७९२ - ५६

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-CGST-001-APP-JC-130/2023-24  
दिनांक Date : 12.10.2023 जारी करने की तारीख Date of Issue : 26.10.2023

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. ZF2403230121795 DT. 07.03.2023 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. McNally Bharat Engineering Company Co. Limited, Office No 120B, Devpath Complex behind Lal Bunglow Office, CG Road, Ahmedabad (GSTIN 24AABCM9443R1ZV)	The Assistant Commissioner, 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 दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbic.gov.in](http://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](http://www.cbic.gov.in).



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

This appeal has been filed by M/s. MCNALLY BHARAT ENGINEERING COMPANY LIMITED, Office No. 120B, Devpath Complex, Behing Lal Bungalow Office, C.G. Road, Ahmedabad-380006 (hereinafter referred to as "Appellant") against the Refund Order No. ZF2403230121795 dated 07.03.2023 issued by the Assistant Commissioner, Division VI, Ahmedabad South(hereinafter referred to as " Adjudicating officer")

**2(i).** Facts of the case, in brief, are that the appellant, having GSTIN 24AABCM9443R1ZV, had executed work contract services and also provided supply of materials and other services to M/s Gujarat State Electricity corporation limited (hereinafter referred to as GSECL/customer). The GSECL has levied Liquidated Damages on the Appellant for delay in providing of Desired services amounting to 10,92,50,000/- and levied GST(CGST+SGST) amounting to Rs. 1,66,65,254/- on the same. Hence the appellant had filed refund application vide ARN No. AA240123013317W dated 04.01.2023 amounting to Rs. 1,66,65,254/- for the period Oct-2020 in the Category of ANY OTHER(Specify) under form GST-RFD-01.

**2(ii).** During the scrutiny of the refund claim some discrepancies were observed and hence a SCN Vide RFD-08 No. ZL2402230222316 dated 15.02.2023 was issued. The discrepancies observed in the SCN are as under:

- Refund Claim is time barred as it is not filed within relevant period as per provisions of Sec 54 of CGST Act, 2017.
- No evidence regarding debit of refund claimed amount in credit ledger while filling present refund claim.
- From copy of Invoice dated 29.10.2020, it is not clear that said invoice pertains to Liquidated Damage as Claimed by said claimant.
- Claimant failed to provide documentary evidence that payment has been made to Gujarat State Electricity Corporation Limited.
- Said claimant has not provided copy of returns and other documents in respect of said refund claim.
- The circular No. 178/10/2022-GST dated 03.08.2022 on which refund has been preferred appears have not covered the period of refund as claimed by said claimant.

**2(iii).** The appellant had submitted reply to SCN on 20.02.2023 to the adjudicating Authority. The Adjudicating Authority issued Refund Order in form RFD-06 dated 07.03.2023 rejecting the said refund claim on the following grounds:

- Non ascertainment as to whether said penalty pertains to liquidated damage or any other kind of penalty.
- Non Ascertainment of payment made and Payment particulars submitted.
- Non applicability of Circular No. 178/10/2022-GST dated 03.08.2023 in the instant case.

3. Being aggrieved with the Order issued in form RFD-06 dated 07.03.2023, the appellant preferred this appeal on 06.04.2023 on the following grounds:

- That the penalty has been issued under SAC Code 999794 and the full nomenclature of SAC Code 999794 as per explanatory Notes to scheme of classification of services under GST is "Agreeing to tolerate an act." Liquidated damages is penalty in nature for non-performance of the contract within the stipulated time frame and the customer has rightly assigned the SAC Code as 999794.
- That the appellant have provided the documentary evidences of encashment of Bank Guarantee proof by way of submission of Statement of Cash Credit account. The Bank Guarantee number is also mentioned in the said Cash Credit account against the encashment of the BG. That the Adjudicating Authority has not provided any opportunity of personal hearing before rejecting the instance refund claim in terms of Proviso to sub-rule(3) of rule 92 of CGST Rules, 2017.
- That the Customer M/s Gujarat State Electricity Corporation Limited has invoked the BG amounting to Rs. 10,92,50,000/-on 3<sup>rd</sup> april 2019 however made a delay in issuance of the invoice towards recovery of Liquidated Damages. The appellant is not at all liable for delay in issuance of invoice by the customer i.e M/s Gujarat State Electricity Corporation Limited.
- That the Circular 178/10/2022-GST dated 03.08.2023 clarifying that no GST is applicable on the Liquidated Damages is in the nature of clarification of the taxability of an event, in the present matter being, charging GST on recovery of Liquidated Damages, so the question of retrospective or prospective applicability of the circular is not at all under consideration.

3(i). In view of above submissions the appellant has made prayer for the following order:

- Order for quashing the impugned order of rejection of refund application passed by the Ld. Adjudicating Authority;

- Order for restoring the Application of Refund and provide the opportunity of Personal hearing to explain all details of the documents;
- Prays for passing suitable order or order granting the refund application.

#### PERSONAL HEARING:

4. Opportunity of Personal Hearing in the matter was accorded to the appellant on 31.07.2023 to which the appellant requested for adjournment. Next Personal hearing was fixed on 17.08.2023 wherein Mr. Utpal Kumar Saha appeared on behalf of the 'Appellant' and reiterated the facts/grounds submitted vide the appeal memorandum and prayed that the impugned OIO may be set aside and appeal may be allowed.

#### DISCUSSION AND FINDINGS :-

5. I have carefully gone through the facts of the case available on records, submissions made by the 'Appellant' in the Appeals Memorandum. I find that the 'Appellant' had filed refund claim amounting to Rs. 1,66,65,254/- on the Liquidated Damage during Oct 2020 " under Section 54 of the CGST Act, 2017. In response to said refund application, Show Cause Notice No. 2402230222316 dated 15.02.2023 in form RFD-08 was issued to them proposing rejection of refund claim for the reason mentioned thereunder. Thereafter, the said refund claims was rejected by the *adjudicating authority* vide *impugned order* dated 07.03.2023. Accordingly, against the impugned order dated 07.03.2023, the Appellant has filed the present appeal on 06.04.2023. I find that the *appellant* in the present appeal proceedings produced the copy of reply to SCN submitted by them under FORM-GST-RFD-09 dated 20.02.2023. Further, I find that the appellant, while submitting their clarification to the propositions made in the SCN vide Form GST-RFD-09, have also, *interalia*, requested for providing the opportunity of **Personal Hearing** to explain the matter in detail.

6. Considering the foregoing facts, records available on file and submissions made by the applicant, I find that before deciding the matter, Rule 92(3) of the CGST Rules, 2017 need to be referred and the 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.**

6(ii). 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. In the present matter the *adjudicating authority* has considered the reply of the applicant and issued the *impugned order*. 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 copy of impugned Order, I find that the date of Personal Hearing was fixed on 20.02.2023. Whether the personal hearing was conducted or whether the PH opportunity was availed by the Appellant is nowhere mentioned in the Impugned order. The said fact has also been re-iterated by the Appellant in his appeal memorandum and in the submission made before me by the appellant in the Personal Hearing conducted on 17.08.2023. I find no such evidence available on records so as to ascertain that the Personal Hearings in matter of Show Cause Notice issued was conducted before issuance of the impugned order. Therefore, I find that the adjudicating authority has violated the principles of natural justice in passing the impugned order. Further, I am of the view that speaking order should have been passed by giving proper opportunity of personal hearing in the matter to the appellant. Else such order would not be sustainable in the eyes of law.

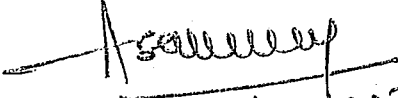


7. Considering the above facts, the adjudicating authority is hereby directed to process the refund application of the appellant by following the principle of natural justice. The 'Appellant' is also directed to submit all the relevant documents/submission before the adjudicating authority.

8. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is set aside for being not legal and proper and 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 read with Rule 89 of the CGST Rules, 2017. The 'Appellant' is also directed to submit all relevant documents/submission before the *adjudicating authority*.


9. 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.

  
14/10/2023  
(Adesh Kumar Jain)  
Joint Commissioner (Appeals)

Dated:

Attested by:

  
(Mohit Kumar)  
Superintendent,  
CGST Appeals,  
Ahmedabad.



**By R.P.A.D.**

To,

M/s. McNally Bharat Engineering Company Co. Limited,  
Office No. 120B, Devpath Complex,  
Behing Lal Bunglow Office,  
C.G. Road, Ahmedabad-380006.

**Copy to:-**

1. The Chief Commissioner, Central GST & Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central GST & Central Excise, Ahmedabad South.
3. The Assistant Commissioner, Central GST & Central Excise Division-VI, Ahmedabad South.
4. The Assistant Commissioner (Systems), Central GST& Central Excise, Ahmedabad South.
5. Guard File.
6. P.A.

